

**RECEIVED**

**May 23 2022**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas**

**Hon. Perry H. Gravely, Circuit Court Judge**

**Common Pleas Case No. 2019-CP-23-02032**

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**Appellate Case No. 2021-001177**

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**JULIA SIBLEY-JONES,**  
*as Personal Representative of  
the Estate of William A.L. Si-  
bley, Jr.,*

*Respondent-Appellant,*

*v.*

**DECIDE4ACTION, INC.,**

*Appellant-Respondent.*

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**Record On Appeal – Volume I**

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**CONSENT ORDER COMPELLING  
DISCOVERY**

**THIS MATTER** comes before the Court upon the Motion to Compel Discovery of Plaintiff Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. (“Plaintiff”), pursuant to Rule 37, SCRCP. Before the hearing, the Court was advised that the parties had resolved Plaintiff’s motion by Defendant Decide4action, Inc.’s (“Defendant”) agreeing to respond fully to Plaintiff’s Second Interrogatories and Requests for Production of Documents to Defendant, in compliance with Rules 33 and 34, S.C.R.C.P., including, without limitation, a signed verification, as set forth herein.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT**, on or before January 18, 2021, Defendant shall:

1. Fully answer Plaintiff’s Interrogatory 25, setting forth an itemized statement of all damages claimed, describing in detail the damages claimed and method of computation, including the amounts and period for which the loss is claimed, how the amounts in the subject valuations will be used at trial, and what the total damages claim is.

2. Produce all documents responsive to Plaintiff's Request for Production of Documents 23, including Defendant's and CC+I's financial statements and tax returns from July 1, 2016, to the present. Such documents include the following:

- a. CC+I P&L – 7/1/2017-6/30/2018
- b. CC+I P&L – 7/1/2018-7/30/2019
- c. CC+I P&L – 7/1/2019-6/30/2020
- d. CC+I Tax Return - Year Ended June 30, 2020
- e. Decide4action Tax Return – Year Ended June 30, 2019
- f. Decide4action Tax Return – Year Ended June 30, 2018
- g. Decide4action Balance Sheets as of 6/30/18, 6/30/19, 6/30/20, and 12/31/20; and
- h. W2s, K1s, and 1099s to shareholders of CC+I and Decide4action from July 1, 2017 to the present.

**IT IS SO ORDERED.**

**WE CONSENT:**

WYCHE, P.A.

By: s/Gregory J. English  
Gregory J. English (#65470)

200 East Camperdown Way  
Post Office Box 728  
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Attorneys for Plaintiff

TRULUCK THOMASON, LLC

By: s/ Devon Puriefoy  
Devon Puriefoy  
Kimberly Thomason

1011 East Washington Street  
Greenville, SC 29601

Attorneys for Defendant

*Judge Gravely's Signature Page to Follow*



Greenville Common Pleas

**Case Caption:** Julia Sibley Jones Personal Representative, plaintiff, et al vs.  
Decide4action Inc , defendant, et al

**Case Number:** 2019CP2302032

**Type:** Order/Consent Order

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-01-08 09:44:05 page 4 of 4

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,  
Plaintiff,

vs.

Decide4action, Inc.,  
Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,  
vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant

---

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

CASE NO.: 2019CP2302032

**ORDER DENYING PLAINTIFF'S  
MOTION TO ALTER OR AMEND**

At the close of testimony and evidence in this matter, the Court issued an Order from the bench on July 28, 2021 granting Plaintiff's Motion for Directed Verdict as to Defendant's Counterclaim which provided that Plaintiff was entitled to the disputed escrow funds and the accrued interest. This Order was formalized in a written Order filed on July 30, 2021. Subsequently the Court issued an Order on August 6, 2021 directing that United Community Bank release the funds to the Plaintiff. Plaintiff filed a Motion to Alter and Amend Judgment on August 9, 2021 requesting pre-judgment interest and costs. On August 10, 2021, the Defendant filed a Notice of Appeal and Notice of Supersedeas as to the referenced Orders. On September 2, 2021, the South Carolina Court of Appeals dismissed the Defendant's Appeal because of pending post-trial motions and the case was remanded back to this Court for determination of Plaintiff's Motion.

Upon review of the record and argument of counsel as presented in their memoranda, the Court finds that there is no basis for altering or amending its ruling in open Court, the Order of July 30, 2021, nor the Order of August 6, 2021. Therefore, Plaintiff's Motion is respectfully denied. The Court also finds that the parties had ample opportunity to present their arguments in memoranda and that a hearing was not necessary to make this determination.

**IT IS SO ORDERED.**

*(E-Signature of Judge Gravely to Follow)*



Greenville Common Pleas

**Case Caption:** William A L Sibley Jr , plaintiff, et al vs. Decide4action Inc ,  
defendant, et al

**Case Number:** 2019CP2302032

**Type:** Order/Amend

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-10-12 13:58:34 page 3 of 3



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

September 21, 2021

ENTERED COMPUT.

The Honorable Paul B. Wickensimer  
Courthouse  
305 E North St  
Greenville SC 29601-2121

### REMITTITUR

Re: Julia Sibley-Jones v. Decide4Action, Inc.  
Lower Court Case No. 2019CP2302032  
Appellate Case No. 2021-000875

FILED-CLERK OF COURT  
PAUL B. WICKENSIMER  
GRENVILLE SC 29601

2021 SEP 28 AM 9:15

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*Catherine Hamner, deputy*  
CLERK

Enclosure

cc: Devon Marc Puriefoy, Esquire  
Gregory Jacobs English, Esquire  
Kimberly Truluck Thomason, Esquire



# The South Carolina Court of Appeals

Julia Sibley-Jones, as Personal Representative of the  
Estate of William A.L. Sibley, Jr., Respondent,

v.

Decide4Action, Inc., Appellant.

Appellate Case No. 2021-000875

FILED-CLERK OF COURT  
PAUL B. WICKHAM  
GREENVILLE, SC

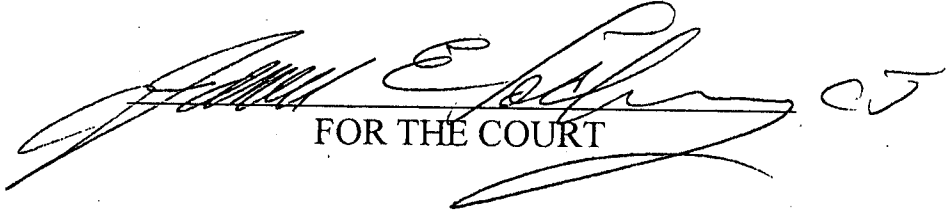
2021 SEP 28 AM 9:15

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## ORDER

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Because there are pending post-trial motions in the lower court, this appeal is dismissed without prejudice. *See Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of . . . Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions."). Because this appeal is dismissed, this court will take no action on Appellant's "notice of supersedeas."

  
FOR THE COURT

Columbia, South Carolina

**FILED**  
**Sep 02 2021**

cc:

Devon Marc Puriefoy, Esquire  
Gregory Jacobs English, Esquire  
Kimberly Truluck Thomason, Esquire

**FORM 4**

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

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2019CP2302032**

|                              |                                                               |                          |                           |
|------------------------------|---------------------------------------------------------------|--------------------------|---------------------------|
| <b>William A L Sibley Jr</b> | <b>Decide4Action Inc<br/>William A L Sibley Jr<br/>Estate</b> | <b>Decide4action Inc</b> | <b>Joyce Featherstone</b> |
|------------------------------|---------------------------------------------------------------|--------------------------|---------------------------|

**PLAINTIFF(S)**

**DEFENDANT(S)**

**Submitted by:**

**Attorney for:** ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

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

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: See Page 2

**ORDER INFORMATION**

**This order** ☒ ends ☐ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

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

| <b>Judgment in Favor of<br/>(List name(s) below)</b> | <b>Judgment Against<br/>(List name(s) below)</b> | <b>Judgment Amount To be Enrolled<br/>(List amount(s) below)</b> |
|------------------------------------------------------|--------------------------------------------------|------------------------------------------------------------------|
| <b>William A L Sibley Jr Estate</b>                  | <b>Decide4Action, Inc.</b>                       | Distribution of Escrow Funds (\$440,000) plus accrued interest   |
|                                                      |                                                  |                                                                  |
|                                                      |                                                  |                                                                  |

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

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

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

(Judge Gravely's E-Signature Page to Follow)

**2755**

**7/28/2021**

**Circuit Court Judge**

**Judge Code**

**Date**

**For Clerk of Court Office Use Only**

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

**Gregory Jacobs English** PO Box 728 Greenville, SC 29602-0728

**Kimberly Truluck Thomason** 3 Boyce Avenue Greenville, SC 29601

---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

---

**Court Reporter**

---

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

---

**Court Reporter:**

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

---

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. A jury trial was held in this matter. After the Plaintiff's case, Plaintiff moved for a Motion in Limine to restrict the Defendant from introducing any evidence of damages, and said Motion was granted on the various grounds set forth on the record. At the conclusion of the Defendant's case, the Plaintiff moved for a directed verdict on the Defendant's counterclaims on numerous grounds. Since the Court had already ruled that the Defendant was foreclosed from presenting any evidence of damages, the Defendant was not able to establish all of the elements of its causes of action asserted in its counterclaims and the Court granted the Plaintiff's Motion for a Directed Verdict, dismissing all of Defendant's Counterclaims. During the Motions, the Defendant's consented to the dismissal of Joyce Featherstone as a Third Party Defendant. The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by United Community Bank ("UCB") under the Indemnity Escrow Agreement ("Escrow Agreement"). Since the Defendant's counterclaims had been dismissed and no claim for offset had been asserted, the Plaintiff was entitled to the escrow funds held pursuant to the Stock Purchase Agreement and Escrow Agreement and the Court granted Plaintiff's Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff. Defendant also moved for a directed verdict as to the Plaintiff's cause of action for Breach of Contract Accompanied by Fraudulent Act. The Court found that there was no credible evidence of fraud, even in light most favorable to the Plaintiff, and this Motion was granted and the Plaintiff's 2<sup>nd</sup> Cause of Action for Breach of Contract Accompanied by Fraudulent Act was dismissed. The Plaintiff asserted a claim for pre-judgment interest and the Court found that due to Defendant's viable claim under the Stock Purchase Agreement and the lack of such a provision in the Escrow Agreement, there was no basis for pre-judgment interest. In light of these rulings, no claims remained to be presented to the jury. The Court further instructed Plaintiff's counsel to submit a proposed Order directing UCB to release the escrow funds of \$440,000 including any accrued interest to the Plaintiff. Further, parties were granted 10 days for any post trial Motions with the deadline for such Motions being August 9, 2021. It is so Ordered.

---





## Greenville Common Pleas

**Case Caption:** Julia Sibley Jones Personal Representative, plaintiff, et al vs.  
Decide4action Inc , defendant, et al

**Case Number:** 2019CP2302032

**Type:** Order/Judgment and Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-07-28 12:22:44 page 4 of 4

**STATE OF SOUTH CAROLINA**

**COUNTY OF GREENVILLE**

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

**IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT**

**Case No. 2019-CP-23-02032**

**FINAL ORDER AND JUDGMENT  
REGARDING ESCROW FUND**

**THIS MATTER** came before the Court for a jury trial on claims and counterclaims for legal damages, which was conducted July 26-28, 2021. Plaintiff Julia Sibley-Jones, in her capacity as Personal Representative of the Estate of William A.L. Sibley, Jr. (“Plaintiff”), also sought an order and judgment directing delivery of certain funds, specifically \$440,000.00 plus accrued interest, being held in an escrow account in the name of William A. Sibley, Jr., by United Community Bank (“UCB”) Escrow Agent, account number 2405105749 (the “Escrow Account”).

At the conclusion of the evidence presented by Defendant Decide4action, Inc. (“Decide4action”), the Court granted directed verdict in favor of Plaintiff against Decide4action

on (1) Plaintiff's cause of action for breach of contract, and (2) all of Decide4action's counterclaims and third-party complaint, and in favor Decide4action on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act, all of which is the subject of a separate order dated July 28, 2021, and filed July 30, 2021.

The Court also finds and concludes that Decide4action has no "Pending Claims Amount" as set forth in the Indemnity Escrow Agreement dated October 16, 2017, among UCB, Decide4action, William A.L. Sibley, Jr., and the Sellers listed therein, Plaintiff's Exhibit 9 (the "Escrow Agreement").

Accordingly, pursuant to Section § 3(d) of the Escrow Agreement, UCB is directed to release and deliver all funds in the Escrow Account to Plaintiff Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr.

**IT IS SO ORDERED.**

**E-Signature of Judge Gravely to follow**



Greenville Common Pleas

**Case Caption:** William A L Sibley Jr , plaintiff, et al vs. Decide4action Inc ,  
defendant, et al

**Case Number:** 2019CP2302032

**Type:** Order/Judgment For Relief

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-08-04 15:50:25 page 3 of 3



STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

William A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**SUMMONS**

**(Jury Trial Requested)**

**TO THE DEFENDANT ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at 200 East Camperdown Way, P.O. Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, P.A.

s/ Gregory J. English

Gregory J. English (#65470)  
200 E. Camperdown Way  
Post Office Box 728  
Greenville, SC 29602-0728  
Telephone: 864-242-2800  
Telecopier: 864-235-8900

Date: April 11, 2019

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

William A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

## COMPLAINT

(Jury Trial Requested)

Plaintiff William A.L. Sibley, Jr. (“SIBLEY”), for his complaint against Defendant Decide4action, Inc. (“DECIDE4ACTION”), would respectfully show unto the Court as follows:

### PARTIES AND JURISDICTION

1. SIBLEY is an individual residing in Greenville County, South Carolina.
2. DECIDE4ACTION is a corporation organized under the laws of the State of Florida with a principal place of business in Greenville County, South Carolina.
3. This Court has jurisdiction over the parties to and the subject matter of this action.

### GENERAL ALLEGATIONS

4. On or about October 13, 2017, SIBLEY, Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, and Robert E. Leviner (collectively, the “Selling Shareholders”) and DECIDE4ACTION entered into a Stock Purchase Agreement (the “Purchase Agreement”) pursuant to which the Selling Shareholders agreed to sell, and DECIDE4ACTION agreed to buy, all of the Selling Shareholders’ shares of stock in Computer Control + Integration, Inc. (the “Company”).

5. DECIDE4ACTION purchased the stock of the Company from the Selling Shareholders pursuant to the Purchase Agreement at a closing that occurred on October 16, 2017 (the “Closing Date”).

6. As part of the closing, on or about October 16, 2017, the Selling Shareholders and DECIDE4ACTION entered into an Indemnity Escrow Agreement (the “Contract”), pursuant to which the Selling Shareholders agreed to place Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00) into an escrow account (the “Escrow Account”) at United Community Bank (the “Escrow Agent”) to satisfy indemnification obligations that the Selling Shareholders might have to DECIDE4ACTION pursuant to Section 8 of the Purchase Agreement within one year of the Closing Date, i.e., by 11:59 PM on October 16, 2018 (the “Indemnification Escrow Release Date”).

7. As of the Indemnification Escrow Release Date, DECIDE4ACTION had no valid, pending claims against the Selling Shareholders pursuant to the Purchase Agreement and therefore should have authorized the Escrow Agent to release the entire Escrow Fund to the Selling Shareholders.

8. Instead, on or about September 19, 2018, DECIDE4ACTION notified the Escrow Agent that it had pending claims against the Selling Shareholders in the amount of One Million Three Hundred Fourteen Thousand Thirty-Four and No/100 Dollars (\$1,314,034.00) (the “Claims”) and requested that Escrow Agent continue to hold the funds in the Escrow Account.

9. Specifically, DECIDE4ACTION’s Claims were that the Selling Shareholders allegedly breached the Purchase Agreement by:

- a. Paying employee bonuses prior to Closing, even though DECIDE4ACTION was not entitled to the cash that was paid as bonuses;

- b. Allegedly failing to disclose the foregoing bonuses to DECIDE4ACTION, even though such bonuses were disclosed to DECIDE4ACTION at or before Closing; and
- c. Increased one non-owner's salary, even though such increase was in the Ordinary Court of Business.

10. DECIDE4ACTION's Claims were and are baseless, groundless, and frivolous and were made in bad faith solely to attempt to extort the Selling Shareholders into relinquishing some or all of the Escrow Account to DECIDE4ACTION for no good reason.

11. On or about October 30, 2018, SIBLEY on behalf of all of the Selling Shareholders notified the Escrow Agent that DECIDE4ACTION had no valid basis for its Claims and that such Claims were invalid and demanded that DECIDE4ACTION authorize the release of the Escrow Account to the Selling Shareholders, but DECIDE4ACTION failed and refused to do so.

12. DECIDE4ACTION's assertion of the Claims, notification of same to the Escrow Agent, and refusal to release of the Escrow Account to the Selling Shareholders constitute a breach of the Contract.

13. DECIDE4ACTION's breach of the Contract has caused SIBLEY and the other Selling Shareholders actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees.

14. SIBLEY is the Selling Shareholders' Representative entitled to receive and disburse to the Selling Shareholders their respective shares of the Escrow Account pursuant to that certain Contribution and Indemnification Agreement dated October 16, 2017, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.

15. The funds in the Escrow Account should be paid to SIBLEY and applied to SIBLEY's and the other Selling Shareholders' damages.

**FOR A FIRST CAUSE OF ACTION**  
(Breach of Contract)

16. SIBLEY incorporates herein by reference the foregoing paragraphs of this Complaint.

17. The Contract constitutes a legally enforceable and binding contract.

18. SIBLEY and the other Selling Shareholders have satisfied all conditions of the Contract.

19. DECIDE4ACTION's assertion of the Claims, notification of same to the Escrow Agent, and refusal to release the funds in the Escrow Agreement constitute a breach of the Contract in that:

- a. DECIDE4ACTION's Claims were not and are not valid Pending Claims under the Contract or Purchase Agreement; and
- b. DECIDE4ACTION's assertion of the Claims was in bad faith and violated the implied covenant of good faith and fair dealing in the Contract.

20. DECIDE4ACTION's breach of the Contract has caused SIBLEY and the other Selling Shareholders actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees, which SIBLEY is entitled to recover from DECIDE4ACTION.

21. The Court should declare that, because of DECIDE4ACTION's breach of the Contract, the funds in the Escrow Account should be paid to SIBLEY and applied to SIBLEY's and the other Selling Shareholders' damages.

**FOR A SECOND CAUSE OF ACTION**

(Breach of Contract Accompanied by a Fraudulent Act)

22. SIBLEY incorporates herein by reference the foregoing paragraphs of this Complaint.

23. In addition to the breaches of the Contract by DECIDE4ACTION, the circumstances described herein accompanying the breach show a pattern of behavior and motive that demonstrate both a fraudulent intent relating to the breach and fraudulent acts accompanying the breach by DECIDE4ACTION.

24. The fraudulent acts of DECIDE4ACTION are characterized by dishonesty in fact, unfair dealing, and the attempted unlawful appropriation of the Escrow Account by design.

25. SIBLEY and the Selling Shareholders have been damaged by these breaches and are entitled to all damages flowing from these breaches as well as punitive damages, costs and attorneys' fees, and interest, which SIBLEY and the Selling Shareholders are entitled to recover from DECIDE4ACTION.

26. The conduct of DECIDE4ACTION has been and is willful and intentional, such that SIBLEY and the Selling Shareholders are entitled to recover from DECIDE4ACTION punitive damages for its breach of contract accompanied by a fraudulent act.

27. The Court should declare that, because of DECIDE4ACTION's breach of the Contract accompanied by a fraudulent act, the funds in the Escrow Account should be paid to SIBLEY and applied to SIBLEY's and the other Selling Shareholders' damages.

**WHEREFORE**, SIBLEY prays that he be granted judgment against DECIDE4ACTION (a) for actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees, (b) for punitive damages, (c) declaring that the funds in the Escrow Account should be paid to

SIBLEY and applied to SIBLEY's and the other Selling Shareholders' damages, and (d) for such other and further relief as may be just and proper.

Respectfully submitted,

WYCHE, P.A.

By: s/Gregory J. English  
Gregory J. English (SC #65470)

200 East Camperdown Way  
Post Office Box 728  
Greenville, SC 29602-0728  
(864) 242-8200

Attorneys for Plaintiff

April 11, 2019

**The Plaintiff respectfully requests a jury trial.**

# **EXHIBIT A**



## CONTRIBUTION AND INDEMNIFICATION AGREEMENT

This Contribution and Indemnification Agreement ("Agreement"), dated as of October 16, 2017, is entered into by and between William A.L. Sibley, Jr. ("Sibley"), Joyce Featherstone ("Featherstone"), James T. Clark ("Clark"), Frank T. Starrett, Jr. ("Starrett"), Scott W. Dozier ("Dozier") and Robert E. Leviner ("Leviner") (each a "Shareholder"; collectively the "Shareholders").

This Agreement is entered into in connection with that certain Stock Purchase Agreement (the "Purchase Agreement"), among Decide4action Inc., a Florida corporation ("Purchaser") and the Shareholders pursuant to which Purchaser is acquiring from the Shareholders all of the outstanding stock of Computer Control + Integration, Inc., a South Carolina Corporation ("Company"). All capitalized terms used and not defined herein are used herein as defined in the Purchase Agreement.

In connection with the execution of the Purchase Agreement, the Shareholders have agreed to provide indemnification to Purchaser in the event of breaches of representations, warranties and covenants by the Shareholders, as and to the extent set forth in the Purchase Agreement (the "Indemnification Obligations" or "Indemnification Obligation").

Under the circumstances, and subject to the limitations set forth herein, the Shareholders have agreed to indemnify and reimburse one another pro rata to the respective shareholding of each of the Shareholders immediately prior to the Closing, to the extent set forth in this Agreement, for payments that any Shareholder is required to make in their capacity as indemnitors to Purchaser.

The parties, intending to be legally bound, hereby agree as follows:

### 1. Contribution

(a) The Shareholders agree that, to the extent provided in and subject to the terms and conditions of this Agreement, each Shareholder shall have a right of contribution against the other Shareholders with respect to any payment such Shareholder is required to make as a result of the Indemnification Obligations.

(b) Subject to Sections 1(c) and (d) below; in the event that any Shareholder is required to make a payment as a result of actual or asserted Indemnification Obligations pursuant to the Purchase Agreement, each other Shareholder (other than Featherstone with respect to Indemnification Obligations resulting from an actual or alleged breach of representations and warranties not made by Featherstone) (a "Contributing Shareholder") shall pay an amount (a "Contribution Payment") to the first Shareholder equal to such Contributing Shareholder's respective Contribution Percentage multiplied by the amount of the payment made by the first Shareholder. A Shareholder's "Contribution Percentage" shall mean the Shareholder's Ownership Percentage with respect to any Indemnification Obligations for which Featherstone is a Contributing Shareholder and the Shareholder's Featherstone-Excluded Percentage with respect to any Indemnification Obligations for which Featherstone is not a Contributing Shareholder, in each case as such percentage is set forth on Schedule A. In addition, each Contributing Shareholder agrees to indemnify, reimburse, and hold harmless the first Shareholder for any and all costs, fees, and expenses (including, without limitation, court costs, expert fees and reasonable attorneys' fees) (collectively, the "Contribution Losses") reasonably incurred by such other Shareholder in the effort to collect a Contribution Payment due to such other Shareholder from the Contributing Shareholder. Further, if a Contributing Shareholder fails to make a Contribution Payment (a "Defaulting Shareholder"), the other Contributing Shareholders and the first Shareholder shall make-up such portion of the Contribution Payment failed to be made by the first Contributing Shareholder on a pro-rata basis based on their relative Contribution Percentages. For the avoidance of doubt, any Shareholder required to make a payment to make up for a

Contribution Payment not made by a Defaulting Shareholder shall have the right (a) to recover the amount of such payment from such Defaulting Shareholder and (b) to be indemnified, reimbursed and held harmless by the Defaulting Shareholder for all Contribution Losses reasonably incurred by the Shareholder in the effort to collect the amount of such payment from the Defaulting Shareholder. For the avoidance of doubt, no Shareholder shall be liable to make aggregate, cumulative Contribution Payments (including payments made to make up the Contribution Payments of any Defaulting Shareholders) to the extent that the sum of such Contribution Payments and any payments made by such Shareholder directly to Purchaser in satisfaction of Indemnification Obligations would exceed the limitations of liability for such Shareholder set forth in Section 8(b) of the Purchase Agreement.

(c) Notwithstanding any provision of the Purchase Agreement or any other provision of this Agreement, in the event of Indemnification Obligations resulting from an actual or alleged breach of representations or warranties not made by Featherstone, Featherstone shall nonetheless be liable as a Contributing Shareholder under Section 1(b) above if the breach resulted from the gross negligence or intentional misconduct of Ernest H. Featherstone and the Shareholders other than Featherstone had no actual knowledge of such gross negligence or intentional misconduct prior to the Closing.

(d) Notwithstanding any provision of the Purchase Agreement or any other provision of this Agreement, each Shareholder expressly agrees that the other Shareholders shall bear no liability whatsoever for the payment of any Indemnification Obligation (and a Shareholder shall not be entitled to any contribution hereunder in respect of an Indemnification Obligation) relating to, arising or resulting from or otherwise attributable to the breach of any representation and/or warranty made by a Shareholder under the Purchase Agreement with respect to such Shareholder (rather than as to the Company or its properties, assets, prospects and/or business).

## 2. Notice and Defense of Third-Party Claims

(a) Promptly after becoming aware of a Third-Party Claim pursuant to Section 8 of the Purchase Agreement or other claim that a Shareholder has reason to believe may result in a claim for contribution pursuant to this Agreement (and that the Shareholder does not reasonably believe that the other Shareholders have been notified of in writing), such Shareholder shall give notice thereof to each other Shareholder, setting forth in reasonable detail the claim (to the extent feasible based on the information available to such Shareholder at the time), including copies of any written correspondence relating thereto that such Shareholder has sent or received; provided, however, that the failure to provide such notice shall not be actionable by, or provide an affirmative defense in favor of, any party entitled to receive such notice, unless such failure actually prejudices such party.

(b) The Selling Parties Representative (defined in the following paragraph) shall assume and control the defense with respect to any such Indemnification Obligation or action with counsel to be chosen by the Selling Parties Representative. The Selling Parties Representative shall use reasonable efforts to keep the other Shareholders reasonably informed about the progress of any such defense from time to time and shall respond to requests for information from other Shareholders regarding the same. The Shareholders hereby constitute and appoint for such purpose the Selling Parties Representative as their representative and true and lawful attorney in fact, with full power to act in their respective names and on their respective behalves to take all measures, to do such acts and to execute such documents as may be necessary or desirable to give full and complete effect to the foregoing mandate with which the Selling Parties Representative is hereby charged. All acts and decisions of the Selling Parties Representative in respect of the defense as aforesaid of any such claim shall be final and binding upon the Shareholders; provided that, notwithstanding anything to the contrary herein, no Selling Parties Representative shall consent or agree to any equitable relief that is binding upon a Shareholder without such Shareholder's written consent. Any Shareholder shall be entitled to participate in such defense at their respective expense. The Selling Parties

Representative shall not be liable for any act done or omitted hereunder as Selling Parties Representative without bad faith and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of good faith.

(c) William A.L. Sibley, Jr. is hereby designated by the parties hereto as the "Selling Parties Representative." Shareholders representing a majority of the Ownership Percentage may appoint a replacement/successor Selling Parties Representative at any time, and such successor may either be one of the Shareholders or any other Person so appointed who shall agree in writing to accept such appointment in accordance with the terms hereof. Consent with respect to the appointment or a replacement/successor Selling Parties Representative shall be in writing (which shall be deemed to include email, facsimile or other form of electronic communication that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process). The selection of a successor Selling Parties Representative appointed in any manner permitted in this section shall be final and binding upon all of the Shareholders, and written notice of such selection and appointment shall be promptly provided to any Shareholder that did not consent to such selection and appointment.

(d) With respect to any Selling Parties Representative, the reasonable costs and expenses, including legal fees and disbursements, incurred in connection with such defense shall be allocated among and borne by the Shareholders based upon their respective Contribution Percentage but only if and to the extent that such costs and expenses (including legal fees and disbursements) have been approved (whether before or after they are incurred) by Shareholders representing a majority of the Ownership Percentages (with respect to any claims related to Indemnification Obligations for which Featherstone is a Contributing Shareholder) or two-thirds of the Featherstone-Excluded Percentages (with respect to any claims related to Indemnification Obligations for which Featherstone is not a Contributing Shareholder). With respect to any Selling Parties Representative, the Shareholders based on their respective Contribution Percentages shall indemnify the Selling Parties Representative and hold the Selling Parties Representative harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Selling Parties Representative and arising out of or in connection with the acceptance or administration of the Selling Parties Representative duties hereunder.

### 3. Notices

All notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt); (b) received by the addressee by registered mail, return receipt requested; or (c) received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as a party may designate by notice to the other parties):

William A.L. Sibley, Jr.  
143 West Seven Oaks Dr.  
Greenville, SC 29605

Joyce Featherstone  
109 Sanderling Dr.  
Greenville, SC 29607

James T. Clark  
917 J.C. Cooper Rd.  
Fountain Inn, SC 29644

Frank T. Starrett, Jr.  
106 Viewpoint Court  
Laurens, SC 29360

Scott W. Dozier  
409 Meadow Lake Trail  
Greer, SC 29650

Robert E. Leviner  
109 Timberidge Dr.  
Greer, SC 29650

Any party hereto may change his address for the purpose of notice by due notice hereunder to all of the other parties hereto.

#### **4. Waivers and Omissions**

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party hereto in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law:

(a) No claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by a party hereto, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other parties hereto;

(b) no waiver that may be given by a party hereto will be applicable except in the specific instance for which it is given; and

(c) no notice to or demand on one party hereto will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

#### **5. Exclusive Agreement and Modification**

This Agreement supersedes all prior agreements among the parties hereto with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties hereto with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by all of the Shareholders affected by the amendment.

#### **6. Fraud and Misrepresentation**

No Shareholder guilty of intentional fraud or misrepresentation shall be entitled to contribution from any other Shareholder who is not also guilty of such intentional fraud or misrepresentation.

## 7. No Third Party Beneficiaries

Notwithstanding any provision contained herein, nothing contained in this Agreement shall be deemed to confer any rights or benefits upon any third parties, including Purchaser.

## 8. Governing Law; Binding Effect; Severability; Counterparts

This Agreement shall be governed by the laws of the State of South Carolina without regard to conflicts of law principles. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. Without the prior written consent of the other parties, no party to this Agreement may assign their rights, duties or obligations hereunder to any other person or entity. In the event that any paragraph, section, or subsection of this Agreement shall be declared to be illegal, unenforceable, or otherwise invalid, then, nevertheless, all remaining provisions of this Agreement shall remain in full force and effect. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same instrument.

## 9. Further Action

Each of the parties hereby agrees to take or cause to be taken such further actions (including without limitation the execution, delivery and filing of additional documents and instruments) as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

## 10. Role of Law Firm; Conflict of Interest

The law firm of Wyche, P.A. (the "Law Firm") has represented the Company and not any Shareholder in the preparation of this Agreement. Each of the Shareholders acknowledges that such Shareholder:

(a) was advised by the Law Firm that a conflict may exist among their individual interests, and that they may secure separate independent legal counsel in connection with signing and making this Agreement and its effect upon each of them;

(b) has carefully read and understood the provisions of this Agreement;

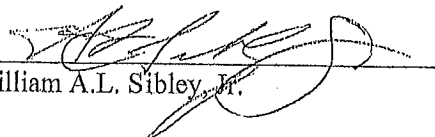
(c) has had the opportunity to seek the advice of independent legal counsel; and

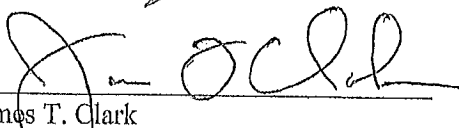
(d) is signing and making this Agreement voluntarily.

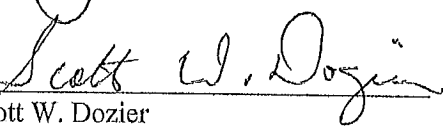
[SIGNATURES APPEAR ON FOLLOWING PAGE]

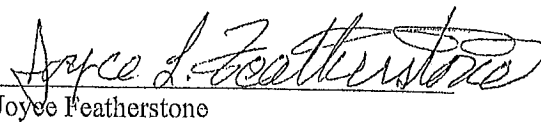


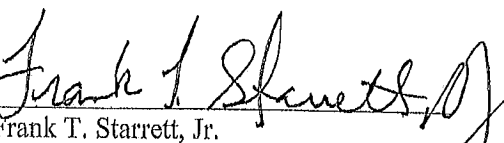
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

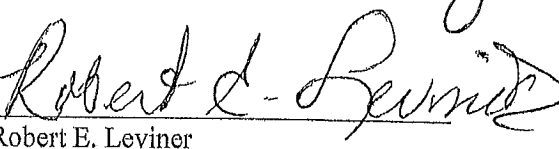
  
William A.L. Sibley, Jr.

  
James T. Clark

  
Scott W. Dozier

  
Joyce Featherstone

  
Frank T. Starrett, Jr.

  
Robert E. Leviner

*[Signature Page; Contribution and Indemnification Agreement]*

**CONTRIBUTION AND INDEMNIFICATION AGREEMENT**  
**SCHEDULE A**

| Name of Shareholder      | Number of Shares Held | Featherstone-Excluded Percentage | Ownership Percentage |
|--------------------------|-----------------------|----------------------------------|----------------------|
| William A.L. Sibley, Jr. | 4,600                 | 55.866%                          | 46.00%               |
| Joyce Featherstone       | 1,766                 | N/A                              | 17.66%               |
| James T. Clark           | 1,317                 | 15.995%                          | 13.17%               |
| Frank T. Starrett, Jr.   | 1,317                 | 15.995%                          | 13.17%               |
| Scott W. Dozier          | 500                   | 6.072%                           | 5.00%                |
| Robert E. Leviner        | 500                   | 6.072%                           | 5.00%                |
| <b>Total</b>             | <b>10,000</b>         | <b>100.00%</b>                   | <b>100.00%</b>       |

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

William A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**PLAINTIFF'S MOTION TO COMPEL  
DISCOVERY**

Plaintiff William A.L. Sibley, Jr. ("Plaintiff"), pursuant to Rule 37, SCRCF, hereby moves for an Order compelling Defendant Decide4action, Inc. ("Defendant") to respond fully to Plaintiff's discovery requests, including complete responses to Plaintiff's Second Interrogatories and Requests for Production of Documents to Defendant, in compliance with Rules 33 and 34, S.C.R.C.P., including, without limitation, signed verifications. This motion is made on the following grounds:

1. Plaintiff filed this action seeking recovery from the Defendant for an amount held in escrow from the sale by Plaintiff and other shareholders of their stock in Computer Control + Integration, Inc. (the "Corporation") to Defendant. *See* Complaint. Defendant answered and counterclaimed. *See* answer and counterclaims of Defendant.

2. On June 30, 2020, Plaintiff served Defendant with his Second Set of Interrogatories and Requests for Production of Documents, to which Defendant served its interrogatory answers as shown in **Exhibit A** attached hereto, and its responses to requests for production as shown in **Exhibit B** attached hereto, on November 3, 2020.



4. Defendant has failed and refused to produce the following information and documents requested by Plaintiff:

**Interrogatories**

25. Damages claimed. Plaintiff asked Defendant to set forth an itemized statement of damages, describing in detail the damages claimed and method of computation, including the amounts and period for which the loss is claimed. Defendant responded only that it would “rely on the valuations that have been produced,” without identifying them particularly, stating what amounts would be used, describing how the amounts in the valuations would be used together, or what the total damages claim is.

**Requests for Production of Documents**

23. Defendant’s and the Corporation’s financial statements and tax returns from July 1, 2016, to the present. All of Defendant’s and the Corporation’s financial statements and tax returns from 2016 to present are relevant to Defendants’ counterclaims for damages, as they will document whether the valuations’ assumptions are correct and the compensation Defendant has received from the Corporation. Moreover, Plaintiff seeks punitive damages from Defendant, and these documents are necessary to ascertain Defendant’s net worth, which is relevant to the issue of punitive damages.

5. Even though Defendant had the audacity to assert baseless counterclaims against Plaintiff, it refuses to identify specifically – by date, method, and amount – the bases for calculating damages sought in such counterclaims. Moreover, Defendant has failed and refused to produce the financial documents needed to confirm or rebut the projections on which such damage claims are based. Plaintiff needs the requested information and documents to prepare for trial.

6. Pursuant to S.C.R.C.P. 37(a)(2), the Court should compel Defendant to provide complete answers to Plaintiff’s Second Interrogatories and Requests for Production of Documents to Defendant in compliance with Rules 33 and 34, S.C.R.C.P., including, without limitation, interrogatory answers and documents as set forth above, and a verification signed by Defendant.

This motion is supported by the matters of record in this action. The undersigned affirms that he has communicated with opposing counsel and attempted in good faith to resolve the matter contained herein.

WYCHE, P.A.

By: s/Gregory J. English  
Gregory J. English (#65470)

200 East Camperdown Way  
Post Office Box 728  
Greenville, South Carolina 29602  
(864) 242-8200

Attorneys for Plaintiff

Dated: December 10, 2020

## **EXHIBIT A**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

William A.L. Sibley, Jr.,  
Plaintiff,

vs.

Decide4action, Inc.,  
Defendant.

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S SECOND SET OF  
INTERROGATORIES**

---

Decide4action, Inc.,  
Counterclaimant/Third Party Plaintiff,

vs.

William A.L. Sibley, Jr., and Joyce  
Featherstone  
Counterclaim Defendant/Third Party  
Defendant

**RESERVATION OF RIGHTS**

Plaintiff reserves the right to supplement these responses as additional information becomes available during the discovery process.

**SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

25. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, describing said damages and method of computation in detail, including but not limited to: the nature of the damage; the amount of lost wages, earnings or profits, if any; and the period for which loss is claimed.

**November 3, 2020 Response:**

Plaintiff will rely on the valuations that have been produced in response to Plaintiff's First and/or Second Requests for Production.

26. Identify and describe in detail all measures taken by the Defendant to mitigate its alleged damages.

**November 3, 2020 Response:**

Following discovery of Plaintiff's fraudulent conduct there were no measures that could be taken to mitigate Defendant's damages.

Respectfully Submitted,  
November 3, 2020

**TRULUCK THOMASON, LLC**

  
Devon Puriefoy  
SC Bar No. 102097  
[devon@truluckthomason.com](mailto:devon@truluckthomason.com)  
3 Boyce Avenue  
Greenville, SC 29601  
Phone: (864) 331-1751  
Fax: (864) 243-8115

*Attorney for Defendant*

## **EXHIBIT B**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

William A.L. Sibley, Jr.,  
Plaintiff,

vs.

Decide4action, Inc.,  
Defendant.

DEFENDANT'S ANSWER TO  
PLAINTIFF'S SECOND REQUEST FOR  
PRODUCTION

Decide4action, Inc.,  
Counterclaimant/Third Party Plaintiff,

vs.

William A.L. Sibley, Jr., and Joyce  
Featherstone

Counterclaim Defendant/Third Party

Defendant

**RESERVATION OF RIGHTS**

Plaintiff reserves the right to supplement these responses as additional information becomes available during the discovery process.

**ANSWERS TO REQUEST FOR PRODUCTION**

22. All documents concerning the damages claimed by Defendant in this case.

**November 3, 2020 Response:**

**Valuations produced in response to Plaintiff's First and/or Second Requests for Production.**

23. All financial statements and tax returns, including but not limited to W2s, K1s, and 1099s to shareholders, profit and loss statements, and balance sheets, of Computer Control + Integration, Inc. and Defendant from July 1, 2016 to the present.

**November 3, 2020 Response:**

**Objection:** Defendant objects to this Request for Production on the grounds that it is irrelevant to this suit and not reasonably anticipated to lead to the discovery of admissible evidence.

24. All valuations of Computer Control + Integration, Inc. and financial statements listing its or its stocks' value.

**November 3, 2020 Response:**

**Provided to Plaintiff on or before September 29, 2020.**

25. All agreements Defendant and/or Richard Bergeron has with James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, and/or Robert E. Leviner.

**November 3, 2020 Response:**

**Provided to Plaintiff on or before September 29, 2020.**

26. All records, documents or reports received pursuant to a subpoena or otherwise from any person or entity, including but not limited to any medical provider, employer, insurance company or governmental agency, relating to the subject matter of this or any other lawsuit involving the Plaintiffs or Defendant.

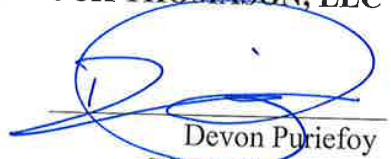
**November 3, 2020 Response:**



**None at this time, however, Defendants reserves the right to supplement this response up to the date of trial of this matter.**

Respectfully Submitted,  
November 3, 2020

**TRULUCK THOMASON, LLC**



Devon Puriefoy  
SC Bar No. 102097  
[devon@truluckthomason.com](mailto:devon@truluckthomason.com)

3 Boyce Avenue  
Greenville, SC 29601  
Phone: (864) 331-1751  
Fax: (864) 243-8115

*Attorney for Defendant*

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS**  
**THIRTEENTH JUDICIAL CIRCUIT**

**Case No. 2019-CP-23-02032**

Julia Sibley-Jones, as Personal  
 Representative of the Estate of William  
 A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**AMENDED COMPLAINT**

**(Jury Trial Requested)**

Plaintiff Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. ("SIBLEY"), for her amended complaint against Defendant Decide4action, Inc. ("DECIDE4ACTION"), would respectfully show unto the Court as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff is an individual residing in Greenville County, South Carolina, and has been appointed by the Greenville County Probate Court as the Personal Representative of the Estate of SIBLEY, who died on August 4, 2020.
2. DECIDE4ACTION is a corporation organized under the laws of the State of Florida with a principal place of business in Greenville County, South Carolina.
3. This Court has jurisdiction over the parties to and the subject matter of this action.

**GENERAL ALLEGATIONS**

4. On or about October 13, 2017, SIBLEY, Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, and Robert E. Leviner (collectively, the "Selling Shareholders") and DECIDE4ACTION entered into a Stock Purchase Agreement (the "Purchase Agreement") pursuant to which the Selling Shareholders agreed to sell, and DECIDE4ACTION agreed to buy,

all of the Selling Shareholders' shares of stock in Computer Control + Integration, Inc. (the "Company").

5. DECIDE4ACTION purchased the stock of the Company from the Selling Shareholders pursuant to the Purchase Agreement at a closing that occurred on October 16, 2017 (the "Closing Date").

6. As part of the closing, on or about October 16, 2017, the Selling Shareholders and DECIDE4ACTION entered into an Indemnity Escrow Agreement (the "Contract"), pursuant to which the Selling Shareholders agreed to place Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00) into an escrow account (the "Escrow Account") at United Community Bank (the "Escrow Agent") to satisfy indemnification obligations that the Selling Shareholders might have to DECIDE4ACTION pursuant to Section 8 of the Purchase Agreement within one year of the Closing Date, i.e., by 11:59 PM on October 16, 2018 (the "Indemnification Escrow Release Date").

7. As of the Indemnification Escrow Release Date, DECIDE4ACTION had no valid, pending claims against the Selling Shareholders pursuant to the Purchase Agreement and therefore should have authorized the Escrow Agent to release the entire Escrow Fund to the Selling Shareholders.

8. Instead, on or about September 19, 2018, DECIDE4ACTION notified the Escrow Agent that it had pending claims against the Selling Shareholders in the amount of One Million Three Hundred Fourteen Thousand Thirty-Four and No/100 Dollars (\$1,314,034.00) (the "Claims") and requested that Escrow Agent continue to hold the funds in the Escrow Account.

9. Specifically, DECIDE4ACTION's Claims were that the Selling Shareholders allegedly breached the Purchase Agreement by:

- a. Paying employee bonuses prior to Closing, even though DECIDE4ACTION was not entitled to the cash that was paid as bonuses;

- b. Allegedly failing to disclose the foregoing bonuses to DECIDE4ACTION, even though such bonuses were disclosed to DECIDE4ACTION at or before Closing; and
- c. Increased one non-owner's salary, even though such increase was in the Ordinary Court of Business.

10. DECIDE4ACTION's Claims were and are baseless, groundless, and frivolous and were made in bad faith solely to attempt to extort the Selling Shareholders into relinquishing some or all of the Escrow Account to DECIDE4ACTION for no good reason.

11. On or about October 30, 2018, SIBLEY on behalf of all of the Selling Shareholders notified the Escrow Agent that DECIDE4ACTION had no valid basis for its Claims and that such Claims were invalid and demanded that DECIDE4ACTION authorize the release of the Escrow Account to the Selling Shareholders, but DECIDE4ACTION failed and refused to do so.

12. DECIDE4ACTION's assertion of the Claims, notification of same to the Escrow Agent, and refusal to release of the Escrow Account to the Selling Shareholders constitute a breach of the Contract.

13. DECIDE4ACTION's breach of the Contract has caused SIBLEY and the other Selling Shareholders actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees.

14. Plaintiff is the Selling Shareholders' Representative entitled to receive and disburse to the Selling Shareholders their respective shares of the Escrow Account pursuant to that certain Contribution and Indemnification Agreement dated October 16, 2017, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.

15. The funds in the Escrow Account should be paid to Plaintiff and applied to SIBLEY's and the other Selling Shareholders' damages.

**FOR A FIRST CAUSE OF ACTION**  
(Breach of Contract)

16. Plaintiff incorporates herein by reference the foregoing paragraphs of this Complaint.

17. The Contract constitutes a legally enforceable and binding contract.

18. SIBLEY and the other Selling Shareholders have satisfied all conditions of the Contract.

19. DECIDE4ACTION's assertion of the Claims, notification of same to the Escrow Agent, and refusal to release the funds in the Escrow Agreement constitute a breach of the Contract in that:

- a. DECIDE4ACTION's Claims were not and are not valid Pending Claims under the Contract or Purchase Agreement; and
- b. DECIDE4ACTION's assertion of the Claims was in bad faith and violated the implied covenant of good faith and fair dealing in the Contract.

20. DECIDE4ACTION's breach of the Contract has caused SIBLEY and the other Selling Shareholders actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees, which SIBLEY is entitled to recover from DECIDE4ACTION.

21. The Court should declare that, because of DECIDE4ACTION's breach of the Contract, the funds in the Escrow Account should be paid to Plaintiff and applied to SIBLEY's and the other Selling Shareholders' damages.

**FOR A SECOND CAUSE OF ACTION**

(Breach of Contract Accompanied by a Fraudulent Act)

22. Plaintiff incorporates herein by reference the foregoing paragraphs of this Complaint.

23. In addition to the breaches of the Contract by DECIDE4ACTION, the circumstances described herein accompanying the breach show a pattern of behavior and motive that demonstrate both a fraudulent intent relating to the breach and fraudulent acts accompanying the breach by DECIDE4ACTION.

24. The fraudulent acts of DECIDE4ACTION are characterized by dishonesty in fact, unfair dealing, and the attempted unlawful appropriation of the Escrow Account by design.

25. SIBLEY and the Selling Shareholders have been damaged by these breaches and are entitled to all damages flowing from these breaches as well as punitive damages, costs and attorneys' fees, and interest, which Plaintiff and the Selling Shareholders are entitled to recover from DECIDE4ACTION.

26. The conduct of DECIDE4ACTION has been and is willful and intentional, such that SIBLEY and the Selling Shareholders are entitled to recover from DECIDE4ACTION punitive damages for its breach of contract accompanied by a fraudulent act.

27. The Court should declare that, because of DECIDE4ACTION's breach of the Contract accompanied by a fraudulent act, the funds in the Escrow Account should be paid to Plaintiff and applied to SIBLEY's and the other Selling Shareholders' damages.

**WHEREFORE**, Plaintiff prays that she be granted judgment against DECIDE4ACTION (a) for actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees, (b) for punitive damages, (c) declaring that the funds in the Escrow Account should be paid to

Plaintiff and applied to SIBLEY's and the other Selling Shareholders' damages, and (d) for such other and further relief as may be just and proper.

Respectfully submitted,

WYCHE, P.A.

By: s/Gregory J. English  
Gregory J. English (SC #65470)

200 East Camperdown Way  
Post Office Box 728  
Greenville, SC 29602-0728  
(864) 242-8200

Attorneys for Plaintiff

December 28, 2020

**The Plaintiff respectfully requests a jury trial.**

|                                       |   |                              |
|---------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS |
|                                       | ) |                              |
| COUNTY OF GREENVILLE                  | ) | C.A. No.: 2019-CP-23-02032   |
|                                       | ) |                              |
| Julia Sibley-Jones, as Personal       | ) |                              |
| Representative of the Estate of       | ) |                              |
| William A.L Sibley, Jr.               | ) |                              |
| Plaintiff,                            | ) |                              |
|                                       | ) |                              |
| vs.                                   | ) |                              |
|                                       | ) |                              |
| Decide4Action, Inc.                   | ) |                              |
| Defendant.                            | ) | <b>SUMMONS</b>               |
|                                       | ) |                              |
| Decide4Action, Inc.                   | ) |                              |
|                                       | ) |                              |
| Counterclaimant/Third-Party Plaintiff | ) |                              |
|                                       | ) |                              |
| vs.                                   | ) |                              |
|                                       | ) |                              |
| Julia Sibley-Jones, as Personal       | ) |                              |
| Representative of the Estate of       | ) |                              |
| William A.L Sibley, Jr. and Joyce     | ) |                              |
| Featherstone                          | ) |                              |
|                                       | ) |                              |
| Counterclaim Defendant/Third Party    | ) |                              |
| Defendant                             | ) |                              |
|                                       | ) |                              |

**TO THE PLAINTIFF/COUNTERCLAIM DEFENDANT AND THIRD-PARTY DEFENDANT ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED AND REQUIRED** to respond to the Defendant's **COUNTERCLAIMS/THIRD PARTY COMPLAINT** filed in the above action, a copy of which is herewith served upon you, and to serve a copy of your response upon the subscriber at his office located at 3 Boyce Avenue, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to appropriately respond hereto within that time period, the Defendant herein will apply to the Court for the relief demanded in the attached **COUNTERCLAIMS/THIRD PARTY COMPLAINT** and a Judgment by Default will be rendered against you for the relief demanded in the attached **COUNTERCLAIMS/THIRD PARTY COMPLAINT**.

Respectfully Submitted this 25th  
day of January, 2021

**TRULUCK THOMASON, LLC**



s/ Kimberly Thomason

Kimberly T. Thomason,  
Bar No. 79179

s/ Devon Puriefoy

Devon M. Puriefoy  
Bar No. 102097

3 Boyce Avenue  
Greenville, SC 29601

Phone: (864) 331-1751

Facsimile: (864) 243-8115

Email: kim@truluckthomason.com

*Attorneys for Defendant*

|                                       |   |                                      |
|---------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS         |
|                                       | ) |                                      |
| COUNTY OF GREENVILLE                  | ) | C.A. No.: 2019-CP-23-02032           |
|                                       | ) |                                      |
| Julia Sibley-Jones, as Personal       | ) |                                      |
| Representative of the Estate of       | ) |                                      |
| William A.L Sibley, Jr.               | ) |                                      |
| Plaintiff,                            | ) |                                      |
|                                       | ) |                                      |
| vs.                                   | ) |                                      |
|                                       | ) | <b>ANSWER TO AMENDED COMPLAINT,</b>  |
| Decide4Action, Inc.                   | ) | <b>COUNTERCLAIMS AND THIRD PARTY</b> |
| Defendant.                            | ) | <b>COMPLAINT</b>                     |
|                                       | ) |                                      |
| Decide4Action, Inc.                   | ) |                                      |
|                                       | ) |                                      |
| Counterclaimant/Third-Party Plaintiff | ) |                                      |
|                                       | ) |                                      |
| vs.                                   | ) |                                      |
|                                       | ) |                                      |
| Julia Sibley-Jones, as Personal       | ) |                                      |
| Representative of the Estate of       | ) |                                      |
| William A.L Sibley, Jr. and Joyce     | ) |                                      |
| Featherstone                          | ) |                                      |
|                                       | ) |                                      |
| Counterclaim Defendant/Third Party    | ) |                                      |
| Defendant                             | ) |                                      |
|                                       | ) |                                      |

**FOR A FIRST DEFENSE**

(General Denials)

1. All allegations not specifically and expressly admitted herein by Defendant Decide4Action, Inc. (*hereinafter* "Defendant"), are deemed to be denied.
2. Upon information and belief, Defendant admits the allegations contained in paragraph 1 of Plaintiff's Complaint.
3. Defendant admits the allegations contained in paragraph 2 of Plaintiff's Complaint.
4. Defendant admits the allegations contained in paragraph 3 of Plaintiff's Complaint.
5. Defendant admits the allegations contained in paragraph 4 of Plaintiff's Complaint.

6. Defendant admits the allegations contained in paragraph 5 of Plaintiff's Complaint.
7. Defendant admits the allegations contained in paragraph 6 of Plaintiff's Complaint.
8. Defendant denies the allegations contained in paragraph 7 of Plaintiff's Complaint and demand strict proof thereof.
9. Responding to paragraph 8 of Plaintiff's Complaint, Defendant admits it notified the Escrow agent of its valid claims against Plaintiff. Defendant denies the remaining allegations contained in paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.
10. Responding to paragraph 9 of Plaintiff's Complaint, Plaintiff breached the Purchase Agreement. Defendant denies the remaining allegations contained in paragraph 9 of Plaintiff's Complaint and demands strict proof thereof.
11. Defendant denies the allegations contained in paragraph 10 of Plaintiff's Complaint and demand strict proof thereof.
12. Responding to paragraph 11 of Plaintiff's Complaint, Defendant, upon information and belief, does not believe Plaintiff had, or has, the authority to act on any of the other Shareholders' behalf and therefore denies this allegation and demands strict proof thereof.
13. Defendant denies the allegations contained in paragraph 12 of Plaintiff's Complaint and demand strict proof thereof.
14. Defendant denies the allegations contained in paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.
15. The allegations contained in paragraph 14 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a

response is required, Defendant denies the allegations and demands strict proof of the same.

16. The allegations contained in paragraph 15 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

**FOR A FIRST CAUSE OF ACTION**  
(Breach of Contract)

17. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
18. No response is required to paragraph 16 of Plaintiff's Complaint. To the extent a response is required, Defendant denies the same and demands strict proof thereof.
19. Defendant admits the allegations contained in paragraph 17 of Plaintiff's Complaint.
20. Defendant denies the allegations contained in paragraph 18 of Plaintiff's Complaint and demands strict proof thereof.
21. Defendant denies the allegations contained in paragraph 19 of Plaintiff's Complaint and demands strict proof thereof.
22. Defendant denies the allegations contained in paragraph 20 of Plaintiff's Complaint and demands strict proof thereof.
23. The allegations contained in paragraph 21 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

**FOR A SECOND CAUSE OF ACTION**

(Breach of Contract Accompanied by a Fraudulent Act)

24. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
25. No response is required to paragraph 22 of Plaintiff's Complaint. To the extent a response is required, Defendant denies the same and demands strict proof thereof.
26. Defendant denies the allegations contained in paragraph 23 of Plaintiff's Complaint and demands strict proof thereof.
27. Defendant denies the allegations contained in paragraph 24 of Plaintiff's Complaint and demands strict proof thereof.
28. Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint and demands strict proof thereof.
29. Defendant denies the allegations contained in paragraph 26 of Plaintiff's Complaint and demands strict proof thereof.
30. The allegations contained in paragraph 27 of Plaintiff's Complaint constitute legal conclusions and/or requests for relief to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of the same.

**FOR SECOND DEFENSE**  
(Prior Breach)

31. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
32. Without admitting to a breach of the Purchase Agreement, or Escrow Agreement, Plaintiff's claim for breach of contract, and breach of contract accompanied by a fraudulent act, are barred by Plaintiff's prior breach of the same.

**FOR A THIRD DEFENSE**

(Fraud)

33. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
34. Plaintiff's Complaint is barred by the legal doctrine of fraud.

**FOR FOURTH DEFENSE**

(Misrepresentation)

35. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
36. Plaintiff's claims are barred by the legal doctrine of misrepresentation.

**FOR A FIFTH DEFENSE**

(Laches)

37. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.
38. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of laches.

**FOR AN SIXTH DEFENSE**

(Estoppel)

39. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.
40. Plaintiff's Complaint is barred, in whole or in part, by the equitable doctrine of Estoppel.

**DEFENDANT'S COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

**Parties, Jurisdiction, and Venue**

\_\_\_\_\_ Defendant, by way of his Counterclaims, would allege and show unto the Court the following:

41. Decide4Action, Inc. (“Defendant”) is a corporation organized under the laws of the State of Florida, and maintains its principal place of business in Greenville County, South Carolina.
42. Upon information and belief, William A.L. Sibley, Jr. (“Plaintiff”), (now deceased) is a citizen and resident of Greenville County, South Carolina.
43. Upon information and belief, Joyce Featherstone (“Featherstone”) is a citizen and resident of Greenville County, South Carolina.
44. The allegations and resulting damages complained of this in the Counterclaims and Third-Party Complaint occurred in Greenville County, South Carolina.
45. For the foregoing reasons the Court has personal jurisdiction over the named parties and venue is proper in Greenville County, South Carolina.

#### **Facts**

46. Richard Bergeron (“Bergeron”) began discussions with the shareholders/owners (the “Owners”) of Computer Control + Integration, Inc. (the “Company”) regarding a potential acquisition of 100% of the Company’s stock sometime around mid 2016.
47. The Company was a software development and systems integration firm offering services primarily to the beverage and textile industries.
48. The Company consisted of six (6) Owners, Plaintiff, Joyce Featherstone, James Clark, Frank Scarrett, Jr., Scott Dozier, and Robert Levnier. The Company also consisted of a number of key employees that were tasked with creating, maintaining, and developing existing and new iterations of the software that was used by the Company’s customers.

49. On or about October 20, 2016, Bergeron received an Offering Memorandum (“Offering”), drafted by Generational Equity, LLC (“GE”), an investment banking firm that acted as Seller’s broker in its search for a buyer of the Company.
50. For purposes of a historical analysis of the Company’s financial strength, Bergeron was to be provided financials for the three (3) preceding years (2013, 2014, 2015). Page 27 of the Offering indicated that the July 2015 to June 2016 fiscal year would serve as the valuation year for purposes of determining the Company’s worth.
51. According to GE, the 2016 earnings before interest, taxes, depreciation, and amortization (“EBITDA”) was approximately \$1.173 million, with a purchase price based on a multiple of 3.75.
52. On or about March 10, 2017 a Letter of Intent (“LOI”) was executed by and between all Owners of the Company, including Plaintiff, and Bergeron on behalf of Defendant. The LOI set forth a purchase price of approximately \$4.4 million with ninety percent (90%) paid in cash at closing, and the remaining ten percent (10%), or \$440,000.00, being held in an escrow account for a period of twelve (12) months, to indemnify Defendant from any alleged violation of Section 8 of the Stock Purchase Agreement (“SPA”).
53. Section 8 of the SPA, titled “Remedies for Breaches of this Agreement,” stated that, in the event any of the Sellers of the Company, including Plaintiff, breached any of the “...representations, warranties, covenants, or agreements...” contained therein, Buyer [Defendant] could elect to make an indemnification claim against one or more of the Sellers for violation thereof. Section 8 went on to read that any such liability associated



with a breach of Section 8 would limit Sellers' aggregate, cumulative liability to \$2.5 million.

54. The LOI established a ninety (90)<sup>1</sup> day due diligence period. In addition to Defendant's review of the Company's financial during the due diligence process, Defendant also scheduled a tentative site visit by Defendant on May 17, 2017. The purpose of the due diligence period was to ensure the accuracy of the October 10, 2016 Offering and in the name of transparency, GE created what is referred to as a "Virtual Room" which is a document sharing software that allows for the free flow of communication and requested document production between all parties involved in the transaction. Virtual Room was the manner in which Defendant would collect all required information regarding GE's valuation of the Company.
55. Defendant retained the services of Dan Calton, CPA ("Calton") of Lake Mary, Florida to assist in the due diligence process. Over the following weeks, GE representatives worked hand-in-hand with Calton to better assist him in making his determination as to the financial condition of the Company.
56. Naturally, Calton took particular interest in the salary and bonus structure of the Company to better understand at least one facet of the Company's fixed expenses.
57. Calton's review of the available documents, dating back to 2013, revealed that no non-owner bonuses were ever paid by the Company, with the exception of one year.
58. This exception was disclosed by Plaintiff via an email to Defendant on May 7, 2017. In the email Plaintiff discloses that in 2016, the Company paid non-employee special bonuses on 3 occasions for a total of \$35,000. Outside of these 3 special occasions,

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<sup>1</sup> Due diligence, with the agreement of all interested parties, was extended on two separate occasions.

paying bonuses was not considered within the ordinary course of business for the Company.

59. With Calton satisfied that GE's valuation metrics were accurate, Defendant then turned to Patton and Associates, LLC, an Indianapolis, Indiana based valuation firm to perform a more extensive valuation. Because the contemplated transaction was being funded by a Small Business Administration Loan ("SBA Loan"), PNC Bank required that a nationally recognized valuation firm assist in the due diligence phase, which gave rise to Patton & Associates, LLC's involvement.
60. With PNC Bank now satisfied with Patton & Associates, LLC's findings, Defendant elected to move forward with the purchase of 100% of the Company's stock.
61. On or about October 13, 2017 a SPA agreement was executed by and between all Owners of the Company and Defendant. The closing of the transaction was finalized on October 16, 2017.
62. At the time of the execution of the SPA by all of the Owners of the Company, including Plaintiff and Third-Party Defendant, Section 4, titled "Representations and Warranties Concerning Target," sets forth a number of representations and warranties that the Owners of the Company, including Plaintiff, were to be bound by and declare as accurate as of the date of the closing of the transaction.
63. The representations in Section 4 of the SPA read, in its pertinent parts:
  - a. *Events Subsequent to May 17, 2017.* "Except as set forth in §4(i) of the Disclosure Schedule, since May 17, 2017, there has not been any Material Adverse Change and Target has conducted its business in the Ordinary Course of Business. Without limiting the generality of the foregoing, since May 17, 2017:"
  - b. (xvi) "Target has not granted any increase in base compensation of any of its directors, officers, or employees outside the Ordinary Course of Business";

- c. (xvii) “Target has not adopted, amended, modified or terminated any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees (or taken any such action with respect to any other Employee Benefit Plan); and
  - d. (xviii) “Target has not made any other changes in employment terms for any of its directors, officers, or employees outside the Ordinary Course of Business.”;
- 64. The representations contained in Section 4 of the SPA were intended to assure Defendant that the specific representations set forth therein, were, in fact, true and accurate as of the date of the closing.
- 65. At the time of execution of the SPA by all Owners of the Company, including Plaintiff and Third-Party Defendant, Section 7(iv) of the SPA, titled “Conditions to Obligation to Close,” read: “Target shall not have suffered a Material Adverse Change between the Most recent Fiscal Month and the Closing.”
- 66. The representations contained in Section 7 were intended to assure Defendant that the Company had not suffered any Material Adverse Change or Effect (“MAC” or “MAE”) prior to the closing. The SPA defines MAC or MAE as any effect, change, circumstance, development, event, occurrence or state of facts that is materially adverse to the business, financially or otherwise.
- 67. Following the closing of the transaction, Defendant immediately began operating.
- 68. On or about November 15, 2017, Plaintiff, in a series of correspondence to Defendant, disclosed the following:
  - a. Prior to the closing of the transaction, and without disclosing the same to Defendant at the closing table, Plaintiff increased Kimberly French’s yearly salary by \$2,500.00 in addition to a \$10,000.00 bonus. Kimberly French was an employee of the Company at the time the increase occurred;

- b. In addition to this bonus, Plaintiff informed Defendant he had authorized the payment of six (6) more bonuses to employees of the Company prior to closing, totaling \$324,864.000.
69. Although the LOI and SPA specifically allowed the Owners to retain all cash from any checking or savings account as of the date of the closing, Section 4 of the SPA required the disclosure of certain exceptions to the express representations.
70. As noted above, Sections 4(i)(xvi) and (xviii) required that no changes to the employment terms of any employee, including increases in compensation, be made unless done in the ordinary course of business.
71. Despite this fact, Plaintiff unilaterally elected to increase one employee's salary by \$2,500.00, and failed to disclose the same at the closing.
72. As noted above, Section 4(i)(xvii) of the SPA specifically prevented the Owners of the Company, including the Plaintiff and Third-Party Defendant, from adopting, or amending the manner in which bonuses were paid.
73. Due diligence ended May 17, 2017 at which time the Company was to take no action outside the ordinary course of business, so as to ensure there was no material adverse change to the Company prior to the closing of the transaction. Although this extraordinary bonus would have been paid during the July 2016 to June 2017 fiscal year, the impact this payment would have had on the valuation of the Company is, for all intents and purposes, the same as if they had been paid during the 2015-2016 fiscal year.
74. Plaintiff and a select few of the other Owners of the Company, including Third-Party Defendant, held a meeting on or about June 15, 2017 to discuss the payment of the

- bonuses. At the time of the meeting, all of the Owners, except Plaintiff, questioned the legality of the payment without making a corresponding disclosure to Defendant. Plaintiff instructed the other Owners that the payment of bonuses was “in the regular course of business” and as such disclosing the same to Defendant was unnecessary.
75. Despite his direct knowledge that the SPA required disclosure of a payment of this nature, and his colleagues’ concerns regarding the legality of the payment on the whole, Plaintiff intentionally failed to disclose the payment of \$324,874.00 in bonuses to employees prior to closing. By comparison, this bonus distribution was approximately **9.3 times** the value of the only other non-owner distribution made in the history of the Company.
76. Upon information and belief, Plaintiff’s election to increase Ms. French’s yearly compensation, and the extraordinary bonuses came on the heels of Plaintiff’s realization that a number of key employees may be inclined to seek alternative employment opportunities as a result of the impending sale, which Plaintiff knew would likely result in Defendant’s offer to purchase the Company being pulled.
77. Upon discovery of this fact, Defendant invoked its indemnification rights under the SPA, and informed Plaintiff of the same. Contemporaneously therewith, Defendant instructed the escrow agent not to release the escrow funds as a dispute had arisen between the parties.
78. Over the coming months Plaintiff and Defendant attempted to reach a resolution on all of the complained upon issues, each time to no avail.

79. By June 2018, the end of the first fiscal year since the closing of the acquisition, three (3) of the four (4) software designers resigned within a one month period, indicating they had found alternative employment opportunities.
80. As a direct result, Defendant was required to hire new software designers with no prior knowledge of or experience with Defendant's software, costing valuable time and money.
81. A former employee of both the Company and the Defendant, Justin Pavatte, stated in a linkedin message, that he was informed by the Company's management team, that the large bonus amount was to compensate employees for the low salaries, creating an ongoing expectation for large year end bonuses. In fact, in support of this position, Mr. Pavatte also stated that Defendant's former employee, Joseph Taylor, would have stayed with Defendant if bonuses had been paid at the end of 2017.
82. These statements make clear the materiality of the undisclosed bonus payments during the due diligence phase and prior to closing.
83. Defendant once again engaged the valuation firm of Patterson & Associates, LLC to make a determination as to what the value of the Company would have been had the bonus payment been included in the valuation.
84. It was determined by Patton and Associates, LLC that had the bonus payment been factored into the valuation method, the value of the Company would have been significantly different. More specifically, Patton & Associates, LLC found that because of Plaintiff's misrepresentations, the cost attributable to employee compensation was artificially reduced, in turn inflating the EBITDA metric. As a result of the adjusted

EBITDA upon discovery of Plaintiff's action, the value of the Company was reduced by nearly \$1,300,000.00.

**FOR A SEVENTH DEFENSE AND**  
**BY WAY OF FIRST COUNTERCLAIM AND THIRD-PARTY CLAIM**  
*(Breach of Contract)*

85. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
86. On or about October 16, 2017 a SPA was executed by and between the Owners of the Company, including Plaintiff, and Defendant.
87. The terms of the SPA required certain representations and warranties be made by the Owners of the Company, including Plaintiff, and required that those representations be true and accurate as of the date of the closing of the transaction.
88. More specifically, Section 4(i)(xvi)(xvii) and (xviii) of the SPA required that no changes be made to the terms of employment for any employee of the Company, including changes in compensation, and that no change to the bonus structure of the Company be adopted, amended or modified.. Additionally, Section 7 of the SPA required representations to be made by the Owners of the Company, including Plaintiff, that no material adverse change had occurred prior to the closing.
89. Plaintiff's intentional failure to disclose the changes in the terms of Ms. French's compensation in accordance with Section 4 of the SPA, as well as his election to not

disclose the payment of \$324,874.00 in non-owner bonuses in accordance with Sections 4 and 7 of the SPA constitutes a material breach of the SPA.

90. As a direct result of Plaintiff's breach of contract, Defendant has suffered severe economic harm in the form of actual damages, including, but not limited to lost profits. Defendant is also entitled to specific performance of the SPA.

**FOR AN EIGHTH DEFENSE AND**  
**BY WAY OF SECOND COUNTERCLAIM AND THIRD-PARTY CLAIM**  
*(Breach of Contract Accompanied by Fraudulent Act)*

91. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.
92. At all times leading up to the sale of the Company, certain representations were made to Defendant by way of Plaintiff's execution of the SPA, representations Defendant relied upon.
93. The value of the Company, and in turn the purchase price of the Company, clearly reflects Defendant's reliance on these representations.
94. In addition to the breaches set forth more fully above, Plaintiff's conduct demonstrates fraudulent intent relating to the breach of the contract and not merely to its making, and both a fraudulent intent and fraudulent intent accompanying the breach.
95. As a direct result of Plaintiff's dishonest conduct, and attempt to get one or more of the remaining Owners of the Company to engage in the same unlawful conduct, Defendant has suffered extensive economic damages.



96. Defendant is entitled to recover actual and consequential, as well as attorney's fees as a result of Plaintiff's conduct. Additionally, Defendant, as a result of the fraudulent acts of Plaintiff, is entitled to an award of punitive damages in an amount to be determined by a jury should there be a trial in this matter.

**FOR A NINTH DEFENSE AND**  
**BY WAY OF THIRD COUNTERCLAIM AND THIRD-PARTY CLAIM**  
*(Fraud)*

97. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
98. On or about October 16, 2017 a SPA was executed by and between the Owners of the Company, including Plaintiff, and Defendant.
99. Contained in the SPA were representations by the Plaintiff that he would inform Defendant of any material changes to the Company prior to the closing of the anticipated transaction.
100. Plaintiff ordered the increased compensation of a Company employee and distributed \$324,874.00 in bonuses to Company employees. At the time of the increased compensation and bonus distribution, Plaintiff knew he was acting contrary to, and in violation of the SPA.
101. Specifically, knowingly withheld invaluable information from Defendant that would have likely altered the course of the still pending transaction. Plaintiff's conduct

- demonstrated an intent to fraudulently induce Defendant's into executing the SPA, with Plaintiff's direct knowledge that the representations contained therein were no accurate.
102. Despite this knowledge, Plaintiff allowed Defendant to rely on the SPA representations and, at the closing table, intentionally failed to disclose information that would have likely resulted in (1) a substantially reduced sales price; or (2) the termination of the purchase agreement.
103. In an attempt to ensure the closing of the transaction, and in turn, ensure a large financial windfall from his fraudulent conduct, Plaintiff made a conscious decision not to disclose what even his fellow co-owners deemed to be material information.
104. Defendant relied on Plaintiff's SPA representations, and but for the representations contained in the therein, Defendant would have never agreed to the purchase.
105. As a direct result of Plaintiff's fraudulent conduct, Defendant has suffered severe economic harm in the form of actual damages and consequential damages, including, but not limited to lost profits. Additionally, Defendant, as a result of the fraudulent acts of Plaintiff, is entitled to an award of punitive damages in an amount to be determined by a jury should there be a trial in this matter.

**FOR A TENTH DEFENSE AND**  
**BY WAY OF FOURTH COUNTERCLAIM AND THIRD-PARTY CLAIM**

*(Intentional Misrepresentation)*

106. Defendant re-allege all paragraphs above not inconsistent with this defense as if fully set forth herein.
107. On or about October 16, 2017 Plaintiff, via his execution of the SPA at the closing of this transaction, intentionally misrepresented material facts to Defendant. Specifically,

Plaintiff represented to Defendant that each and every representation contained in the executed SPA was true and accurate and no material adverse changes had occurred.

108. Plaintiff was fully aware that the representations contained in the SPA were inaccurate and misleading. Rather than disclose the material exceptions to the representations, Plaintiff allowed the SPA to be presented to Defendant for execution, ensuring the transaction closed and in turn ensuring a financial windfall, achieved under false pretenses, by Plaintiff.
109. In executing the SPA, it was clear Plaintiff intended that Defendant rely on the representations set forth therein.
110. Defendant was completely unaware of Plaintiff's misrepresentations and reasonably relied upon the same. .
111. Plaintiff's misrepresentations has resulted in severe economic harm to Defendant in the form of actual damages, including, but not limited to lost profits.

**FOR A FINAL DEFENSE**

*(Preservation of Right to Amend Answer)*

112. Defendant re-alleges all paragraphs above not inconsistent with this defense as if fully set forth herein.
113. Defendant may have other defenses against Plaintiff and, therefore, reserve the right to assert such defenses in a timely fashion after the facts to assert such defenses become known to them and to request amendments to these affirmative defenses to conform to the evidence.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests the following relief:

- a. The Court dismiss Plaintiff's Complaint in its entirety, with prejudice;

- b. Actual, incidental, consequential, special, compensatory, and punitive damages;
- c. Lost profits and future earnings;
- d. Attorney's fees and costs of court; and
- e. Such additional and appropriate relief to which Defendant are entitled.

Respectfully Submitted this 25th  
day of January, 2021

**TRULUCK THOMASON, LLC**

s/ Kimberly Thomason

Kimberly T. Thomason,  
Bar No. 79179

s/ Devon Puriefoy

Devon M. Puriefoy  
Bar No. 10209

3 Boyce Avenue

Greenville, SC 29601

Phone: (864) 331-1751

Email: kim@truluckthomason.com

devon@truluckthomason.com

*Attorneys for Defendant*

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS**  
**THIRTEENTH JUDICIAL CIRCUIT**

**Case No. 2019-CP-23-02032**

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**REPLY TO AMENDED COUNTERCLAIMS**  
**AND THIRD-PARTY COMPLAINT**  
**(JURY TRIAL REQUESTED)**

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

Plaintiff and Counterclaim Defendant Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. (“Sibley”) and Third Party Defendant Joyce Featherstone (“Featherstone”) (each of Sibley and Featherstone may be referred to collectively as “Seller”), replying to the Amended Counterclaims and Third-Party Complaint (the “Counterclaims”) of Defendant, would respectfully show unto the Court as follows:

**FOR A FIRST DEFENSE**

1. Seller incorporates herein by reference the allegations of the Amended Complaint in this action.

2. Seller denies each and every allegation of the Counterclaims except to the extent specifically and expressly admitted herein.

3. Seller admits the allegations of paragraphs 41, 42, 43, 44, and 45 of the Counterclaims.

4. In response to paragraph 46 of the Counterclaims, Seller admits that Sibley had discussions with Bergeron regarding his potential acquisition of the Company sometime in 2016 that culminated in the Stock Purchase Agreement (the "SPA").

5. Seller admits paragraph 47 of the Counterclaims.

6. Seller admits that the company had the six shareholders listed. Seller denies the remaining allegations of paragraph 48 of the Counterclaims.

7. In response to paragraph 49 of the Counterclaims, Seller is without knowledge or information sufficient to form a belief as to when Bergeron received an offering memorandum drafted by Generational Equity, LLC.

8. In response to paragraphs 50 and 51 of the Counterclaims, Seller states that the offering memorandum speaks for itself, and denies all allegations of those paragraphs to the extent inconsistent therewith.

9. In response to paragraph 52 of the Counterclaims, Seller states that the LOI speaks for itself, and denies all allegations of paragraph 52 to the extent inconsistent therewith.

10. In response to paragraph 53 of the Counterclaims, Seller states that the SPA speaks for itself, and denies all allegations of paragraph 53 to the extent inconsistent therewith.

11. Seller denies the allegations of paragraphs 54, 55, 56, 57, 58, 59, and 60 of the Counterclaims.

12. In response to paragraphs 61, 62, 63, 64, 65, and 66 of the Counterclaims, Seller states the SPA speaks for itself, and denies all allegations of those paragraphs to the extent inconsistent therewith.

13. Seller admits paragraph 67 of the Counterclaims.

14. In response to paragraph 68 of the Counterclaims, Seller states that the correspondence Sibley had with Defendant speaks for itself, and denies all allegations of paragraph 68 of the Counterclaims to the extent inconsistent therewith.

15. In response to paragraph 69 of the Counterclaims, Seller admits that the LOI and SPA allowed the owners to retain all cash from any company checking or savings accounts as of the date of closing. Seller states that the SPA speaks for itself, and denies all allegations of paragraph 69 of the Counterclaims to the extent inconsistent therewith.

16. In response to paragraph 70 of the Counterclaims, Seller states that the SPA speaks for itself, and denies all allegations of paragraph 68 of the Counterclaims to the extent inconsistent therewith.

17. Seller denies paragraph 71 of the Counterclaims.

18. In response to paragraph 72 of the Counterclaims, Seller states that the SPA speaks for itself and denies all allegations of paragraph 72 of the Counterclaims to the extent inconsistent therewith.

19. Seller denies the allegations of paragraphs 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 84 of the Counterclaims.

20. In response to paragraph 85 of the Counterclaims, Seller incorporates herein by reference the foregoing paragraphs of this Reply.

21. In response to paragraphs 86, 87, and 88 of the Counterclaims, Seller states that those paragraphs of the SPA speak for themselves and denies all allegations of those paragraphs to the extent inconsistent therewith.

22. Seller denies paragraphs 89 and 90 of the Counterclaims.

23. In response to paragraph 91 of the Counterclaims, Seller incorporates herein by reference the foregoing paragraphs of this Reply.

24. Seller denies the allegations of paragraphs 92, 93, 94, 95, and 96 of the Counterclaims.

25. In response to paragraph 97 of the Counterclaims, Seller incorporates herein by reference the foregoing paragraphs of this Reply.

26. In response to paragraphs 98 and 99 of the Counterclaims, Seller states that the SPA speaks for itself, and denies all allegations of those paragraphs to the extent inconsistent therewith.

27. Seller denies the allegations of paragraphs 100, 101, 102, 103, 104, and 105 of the Counterclaims.

28. In response to paragraph 106 of the Counterclaims, Seller incorporates herein by reference the foregoing paragraphs of this Reply.

29. Seller denies the allegations of paragraphs 107, 108, 109, 110, and 111 of the Counterclaims.

30. In response to paragraph 112 of the Counterclaims, Seller incorporates herein by reference the foregoing paragraphs of this Reply.



31. Seller denies paragraph 113 of the Counterclaims.

32. Seller denies liability to Defendant and that Defendant is entitled to any relief and prays that the Counterclaims be dismissed, with costs and attorney fees to Seller.

**FOR A SECOND DEFENSE**

33. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

34. The Counterclaims, in whole or in part, fail to state facts sufficient to constitute a cause of action, and therefore should be dismissed, in whole or in part.

**FOR A THIRD DEFENSE**

35. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

36. The Counterclaims are barred by Defendant's failure to mitigate any damages it incurred, which are denied and referenced solely for purpose of this defense.

**FOR A FOURTH DEFENSE**

37. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

38. The Counterclaims seek special damages that are not stated with sufficient specificity and therefore should be dismissed.

**FOR A FIFTH DEFENSE**

39. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

40. The Counterclaims are barred by the fact that any damages Defendant incurred, which damages are denied and acknowledged solely for purposes of this defense, were caused by third parties over whom Seller had no control.

**FOR A SIXTH DEFENSE**

41. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

42. The Counterclaims are barred by the applicable statutes of limitations and/or the doctrine of laches.

**FOR A SEVENTH DEFENSE**

43. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

44. To the extent Defendant is relying on contracts other than those that are written, its claims are barred by the statute of frauds and should be dismissed.

**FOR AN EIGHTH DEFENSE**

45. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

46. The Counterclaims are barred by the doctrines of waiver and/or estoppel, and therefore should be dismissed.

**FOR A NINTH DEFENSE**

47. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

48. The Counterclaims for fraud and misrepresentation should be dismissed because Plaintiff fails to state the circumstances constituting the alleged fraud with sufficient particularity.

**FOR A TENTH DEFENSE**

49. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

50. The Counterclaims are barred by the parol evidence rule.

**FOR AN ELEVENTH DEFENSE**

51. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

52. The Counterclaims, including but not limited to those for punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity, or diminution of value or any damages based on any type of multiple, are barred by Section 8(b) of the Stock Purchase Agreement dated October 13, 2017.

**FOR A TWELFTH DEFENSE**

53. Seller incorporates herein by reference the foregoing paragraphs of the Reply to the extent consistent with this defense.

54. An award of punitive damages or penalties against Seller would be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments and the excessive fines and punishment clauses of the Eighth Amendment of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, including but not limited to Article I, Section 3, because:

- (a) The standards or tests for the imposition of liability for the determination of the amount of punitive damages and penalties in this case are void for vagueness;
- (b) Insofar as punitive damages and penalties are not measured against actual injury to a person and are left to the discretion of the court, there is no objective standard that limits the amount of such damages or penalties that may be awarded, so that the amount of punitive damages or penalties that may be awarded is indeterminate at the time of Seller's alleged conduct;
- (c) Insofar as punitive damages and penalties are not measured against the degree of culpability of Seller's alleged conduct, they are excessive, cruel, and unusual; and
- (d) Punitive damages are expressly waived by the Stock Purchase Agreement dated October 13, 2017.

**WHEREFORE**, Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr., and Joyce Featherstone pray that the Counterclaims, including the Third Party Complaint, be dismissed, with costs and attorneys' fees to them, that they be granted the relief demanded in the Amended Complaint in this action, and for such other and further relief as may be just and warranted.

Respectfully submitted,

WYCHE, P.A.

By: s/Gregory J. English  
 Gregory J. English (SC #65470)  
 200 East Camperdown Way  
 Post Office Box 728  
 Greenville, SC 29602-0728  
 (864) 242-8200

Attorneys for Plaintiff and Third Party Defendant  
 Julia Sibley-Jones, as Personal Representative of the Estate  
 of William A.L. Sibley, Jr. and Joyce Featherstone

February 1, 2021

**The Plaintiff respectfully requests a jury trial of this case.**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

William A.L. Sibley, Jr

Plaintiff,

vs.

Decide4Action, Inc.

Defendant.

**Defendants' Witness List**

(Not in order of entry)

(Identification only)

C.A. No.: 2019-CP-23-02032

Decide4Action, Inc.

Counterclaimant/Third-Party Plaintiff,

vs.

William A. L. Sibley, Jr; and Joyce Featherstone,

Counterclaim Defendant/Third Party Defendant.

**DEFENDANTS' PROPOSED WITNESS LIST**

**(Anticipated order witnesses will be called)**

1. Deposition Designations of William Sibley
2. Justin Pavatte
3. Richard Bergeron

Very Respectfully,

**TRULUCK THOMASON, LLC**

Kimberly Thomason, Esq.

Devon Puriefoy, Esq.

*Attorneys for Defendant*

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**PLAINTIFF'S AND  
THIRD-PARTY DEFENDANT'S  
MOTION IN LIMINE TO EXCLUDE  
EVIDENCE REGARDING ANY DAMAGES  
CLAIMED BY DEFENDANT**

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

Plaintiff and Counterclaim Defendant, Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. ("Sibley"), and Third Party Defendant Joyce Featherstone ("Featherstone"), (Sibley and Featherstone may be referred to collectively as "Sellers"), hereby move in limine, pursuant to Rule 43(a), S.C.R.C.P., to exclude undisclosed and impermissible evidence of damages at trial in the action.

1. **Because the counterclaims fail to state any items of special damages with specificity, Decide4action should not be allowed to seek special damages such as lost profits or diminution of value of the Company.**

Decide4action's claims for lost profits and/or diminution of value of Computer Control + Integration, Inc. (the "Company") are special damages, not general damages such as additional wages Decide4action paid to employees pursuant to employment contracts or bonus plans entered the by Company. *South Carolina Federal Sav. Bank v. Thornton-Crosby Development Co., Inc.*, 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990), *aff'd*, 310 S.C. 232, 423 S.E.2d 114 (1992) ("In addition to general damages ... [the Master] awarded the following as special damages for the breach: Lost profits").

In order to recover items of special damages, "they shall be specifically stated" in the pleadings. Rule 9(g), SCRCF. "When a plaintiff seeks special damages ..., he must plead and prove both the fact of damage and the amount of damage with a reasonable degree of certainty. *South Carolina Federal Sav. Bank, supra*, citing *Jackson v. Midlands Human Resources Center*, 296 S.C. 526, 374 S.E.2d 505 (Ct.App.1988).

The reason for such a pleading requirement is to give a party due notice of the amounts sought. As explained by *Norwest Props., LLC v. Strebler*, 424 S.C. 617, 819 S.E.2d 154 (Ct. App. 2018):

General damages are those the law infers because they are the proximate and necessary result of the wrong. Special damages do not necessarily arise from the wrong, but from facts unique to the case. **'Damages for losses that are the natural and proximate, but not the necessary, result of the injury may be recovered only when such special damages are sufficiently stated and claimed.'** .... Unlike general contract damages—those every contracting party knows are likely to ensue in the event of a breach—special damages are recoverable only if, when the contract was formed, the breaching party had reason to foresee (or was clearly warned of) their probable consequence.... Because foreseeability is the key condition of their recovery, special damages must be specifically pled to alert the breaching party that something more than generic breach of contract damages are in play.

*Id.*, 424 S.C. at 623-24, 819 S.E.2d at 158 (emphasis added; citations omitted).

Here, Decide4action seeks special damages in the form of lost profits and diminution of value of the Company. Such damages are special and should have been specifically stated in the Counterclaims. Because they were not, Decide4action may not recover them.

**2. Decide4action should not be allowed to present evidence of damages because it disclosed no damages in discovery.**

Likewise, Decide4action failed to disclose any damages during discovery. Plaintiff served a standard interrogatory requiring Defendant Decide4action (“Decide4action”) to “[s]et forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, describing said damages and method of computation in detail, including but not limited to, the nature of the damage; the amount of lost wages, earnings or profits, if any; and the period for which loss is claimed.” (Exhibit A hereto, Interrogatory No. 25.) After failing to adequately respond to this interrogatory, Decide4action consented to a court order requiring it to “[f]ully answer Plaintiff’s Interrogatory 25, setting forth an itemized statement of all damages claimed, describing in detail the damages claimed and method of computation, including the amounts and period for which the loss is claimed, how the amounts in the subject valuations will be used at trial, and what the total damages claim is.” (Exhibit B) Yet Decide4action failed to provide any further response to the interrogatory, even after Plaintiff’s counsel repeatedly asked it to do so by. (Exhibit C)

“Disclosure of information between the parties before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing.” *Reed v. Clark*, 277 S.C. 310, 316, 286 S.E.2d 384, 388 (1982). A party’s “failure to ascertain and inform [the opposing party] of his damage claims prior to trial clearly undermines the policy that every party should have the opportunity to fully prepare and develop his case for trial.” *Morgan v. Carolina Door Prod., Inc.*, 281 S.C. 423, 426, 315 S.E.2d 119, 120 (1984). For that reason, a party’s proof of



damages at trial is limited to the damages the party specified in discovery. *See id.* (holding that trial court's failure to limit proof of damages to the amount specified in party's interrogatories was an abuse of discretion).

3. **Because the subject contract prohibits them, Decide4action should not be allowed to claim damages based upon diminution of value of the Company or any type of multiple.**

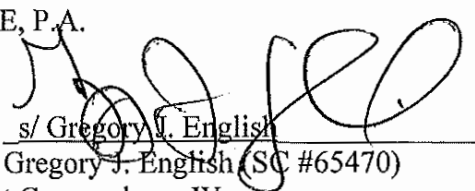
The Stock Purchase Agreement under which Decide4action brings its counterclaims provides in relevant part that:

**in no event shall any Seller be liable to Buyer for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.**

(Plaintiff's Exhibit 8, at 21, sub-section 8(b)) This language is absolute and applies to bar any damages in favor of Decide4action based upon diminution of value of the Company or any type of multiple. Accordingly, evidence of such diminution and multiples should not be allowed.

Respectfully submitted,

WYCHE, P.A.

By:   
s/ Gregory J. English  
Gregory J. English (SC #65470)

200 East Camperdown Way  
Post Office Box 728  
Greenville, SC 29602-0728  
(864) 242-8200

Attorneys for Plaintiff and Third Party Defendant  
Julia Sibley-Jones, as Personal Representative of the Estate  
of William A.L. Sibley, Jr. and Joyce Featherstone

July 26, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

William A.L. Sibley, Jr.,  
Plaintiff,

vs.

Decide4action, Inc.,  
Defendant.

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S SECOND SET OF  
INTERROGATORIES**

---

Decide4action, Inc.,  
Counterclaimant/Third Party Plaintiff,

vs.

William A.L. Sibley, Jr., and Joyce

Featherstone

Counterclaim Defendant/Third Party

Defendant

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**RESERVATION OF RIGHTS**

Plaintiff reserves the right to supplement these responses as additional information becomes available during the discovery process.

**SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

25. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, describing said damages and method of computation in detail, including but not limited to: the nature of the damage; the amount of lost wages, earnings or profits, if any; and the period for which loss is claimed.

**November 3, 2020 Response:**

Plaintiff will rely on the valuations that have been produced in response to Plaintiff's First and/or Second Requests for Production.

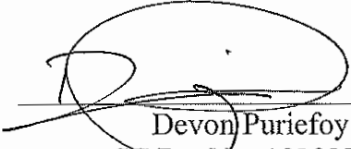
26. Identify and describe in detail all measures taken by the Defendant to mitigate its alleged damages.

**November 3, 2020 Response:**

Following discovery of Plaintiff's fraudulent conduct there were no measures that could be taken to mitigate Defendant's damages.

Respectfully Submitted,  
November 3, 2020

**TRULUCK THOMASON, LLC**

  
Devon Puriefoy  
SC Bar No. 102097  
[devon@truluckthomason.com](mailto:devon@truluckthomason.com)  
3 Boyce Avenue  
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Phone: (864) 331-1751  
Fax: (864) 243-8115

*Attorney for Defendant*

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**CONSENT ORDER COMPELLING  
DISCOVERY**

**THIS MATTER** comes before the Court upon the Motion to Compel Discovery of Plaintiff Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. ("Plaintiff"), pursuant to Rule 37, SCRPC. Before the hearing, the Court was advised that the parties had resolved Plaintiff's motion by Defendant Decide4action, Inc.'s ("Defendant") agreeing to respond fully to Plaintiff's Second Interrogatories and Requests for Production of Documents to Defendant, in compliance with Rules 33 and 34, S.C.R.C.P., including, without limitation, a signed verification, as set forth herein.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT**, on or before January 18, 2021, Defendant shall:

1. Fully answer Plaintiff's Interrogatory 25, setting forth an itemized statement of all damages claimed, describing in detail the damages claimed and method of computation, including the amounts and period for which the loss is claimed, how the amounts in the subject valuations will be used at trial, and what the total damages claim is.

2. Produce all documents responsive to Plaintiff's Request for Production of Documents 23, including Defendant's and CC+I's financial statements and tax returns from July 1, 2016, to the present. Such documents include the following:

- a. CC+I P&L – 7/1/2017-6/30/2018
- b. CC+I P&L – 7/1/2018-7/30/2019
- c. CC+I P&L – 7/1/2019-6/30/2020
- d. CC+I Tax Return - Year Ended June 30, 2020
- e. Decide4action Tax Return – Year Ended June 30, 2019
- f. Decide4action Tax Return – Year Ended June 30, 2018
- g. Decide4action Balance Sheets as of 6/30/18, 6/30/19, 6/30/20, and 12/31/20; and
- h. W2s, K1s, and 1099s to shareholders of CC+I and Decide4action from July 1, 2017 to the present.

**IT IS SO ORDERED.**

**WE CONSENT:**

WYCHE, P.A.

By: s/Gregory J. English  
Gregory J. English (#65470)

200 East Camperdown Way  
Post Office Box 728  
Greenville, South Carolina 29602  
(864) 242-8200

Attorneys for Plaintiff

TRULUCK THOMASON, LLC

By: s/ Devon Puriefoy  
Devon Puriefoy  
Kimberly Thomason

1011 East Washington Street  
Greenville, SC 29601

Attorneys for Defendant

*Judge Gravely's Signature Page to Follow*



Greenville Common Pleas

**Case Caption:** Julia Sibley Jones Personal Representative, plaintiff, et al vs.  
Decide4action Inc , defendant, et al  
**Case Number:** 2019CP2302032  
**Type:** Order/Consent Order

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-01-08 09:44:05 page 4 of 4

## Greg English

---

**From:** Greg English  
**Sent:** Monday, February 8, 2021 4:27 PM  
**To:** Devon Puriefoy; Brandi Larobardiere  
**Cc:** Kimberly Thomason; John-Paul Baum; Greg English  
**Subject:** RE: Sibley v Decide4action

Devon,

Please let me know when to expect this.

Thanks, Greg



### Gregory English | Wyche

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard

A Lex Mundi Member Firm

**From:** Devon Puriefoy [mailto:[devon@truluckthomason.com](mailto:devon@truluckthomason.com)]  
**Sent:** Tuesday, February 2, 2021 4:57 PM  
**To:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>  
& Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>; Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Subject:** Re: Sibley v Decide4action

I will.

Get Outlook for iOS

---

**From:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Sent:** Tuesday, February 2, 2021 11:14:07 AM  
**To:** Devon Puriefoy <[devon@truluckthomason.com](mailto:devon@truluckthomason.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>  
**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>; Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Subject:** RE: Sibley v Decide4action

Devon,

We received your documents, but did not receive Plaintiff's supplemental answer to Interrogatory 25, as required by paragraph 1 of the Order. Please advise whether Defendant intends to provide that.

Thanks, Greg



### Gregory English | Wyche

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard



**From:** Devon Puriefoy [mailto:devon@truluckthomason.com]  
**Sent:** Monday, February 1, 2021 10:34 AM  
**To:** Greg English <genglish@wyche.com>; Brandi Larobardiere <brandi@truluckthomason.com>  
**Cc:** Kimberly Thomason <kim@truluckthomason.com>; John-Paul Baum <johnpaul@truluckthomason.com>  
**Subject:** Re: Sibley v Decide4action

It is being hand delivered today.

Thanks

---

**From:** Greg English <genglish@wyche.com>  
**Date:** Wednesday, January 27, 2021 at 4:37 PM  
**To:** Devon Puriefoy <devon@truluckthomason.com>, Brandi Larobardiere <brandi@truluckthomason.com>  
**Cc:** Kimberly Thomason <kim@truluckthomason.com>, John-Paul Baum <johnpaul@truluckthomason.com>, Greg English <genglish@wyche.com>  
**Subject:** RE: Sibley v Decide4action

Devon,

Actually, we did get your package dated January 5, which contained the following documents:

1. Decide4action P&L – 10/18/2017-6/30/2018
2. Decide4action P&L – July 2018-June 2019
3. Decide4action P&L – July 2019-June 2020
4. Decide4action Tax Return - Year Ended June 30, 2020
5. CC+I Tax Return – Year Ended June 30, 2019
6. CC+I Tax Return – Year Ended June 30, 2018

The following discovery that was the subject of the Order still has not been produced:

1. CC+I P&L – 7/1/2017-6/30/2018
2. CC+I P&L – 7/1/2018-7/30/2019
3. CC+I P&L – 7/1/2019-6/30/2020
4. CC+I Tax Return - Year Ended June 30, 2020
5. Decide4action Tax Return – Year Ended June 30, 2019
6. Decide4action Tax Return – Year Ended June 30, 2018
7. Decide4action Balance Sheets – as of 6/30/18, 6/30/19, 6/30/20, and 12/31/20
8. W2s, K1s, and 1099s to shareholders of CC+I and Decide4action from July 1, 2017 to the present
9. Formal answer to Interrogatory No. 25.

Do please send these things tomorrow.

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972

Phone: (864) 242-8247 | Fax: (864) 235-8900

[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard

A Lex Mundi Member Firm

**From:** Devon Puriefoy [mailto:devon@truluckthomason.com]  
**Sent:** Wednesday, January 27, 2021 4:31 PM  
**To:** Greg English <genglish@wyche.com>; Brandi Larobardiere <brandi@truluckthomason.com>  
**Cc:** Kimberly Thomason <kim@truluckthomason.com>; John-Paul Baum <johnpaul@truluckthomason.com>  
**Subject:** Re: Sibley v Decide4action

That may be correct, my apologies. Our outgoing letter may just contain a typo. Again, just let me know if you do not have it and we will produce it first thing in the morning as the documents are in our possession.

---

**From:** Greg English <genglish@wyche.com>  
**Date:** Wednesday, January 27, 2021 at 4:22 PM  
**To:** Devon Puriefoy <devon@truluckthomason.com>, Brandi Larobardiere <brandi@truluckthomason.com>  
**Cc:** Kimberly Thomason <kim@truluckthomason.com>, John-Paul Baum <johnpaul@truluckthomason.com>, Greg English <genglish@wyche.com>  
**Subject:** RE: Sibley v Decide4action

Devon,

We did not submit the Order until January 6 and it was not entered until January 8. Do you mean they were delivered January 15?

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
genglish@wyche.com | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard  
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**From:** Devon Puriefoy [mailto:devon@truluckthomason.com]  
**Sent:** Wednesday, January 27, 2021 4:01 PM  
**To:** Greg English <genglish@wyche.com>; Brandi Larobardiere <brandi@truluckthomason.com>  
**Cc:** Kimberly Thomason <kim@truluckthomason.com>; John-Paul Baum <johnpaul@truluckthomason.com>  
**Subject:** Re: Sibley v Decide4action

Greg,

Our office records indicate these documents were hand delivered to your office on January 5. Please double check and let me know if you did not receive. If not, I will resend.

---

**From:** Greg English <genglish@wyche.com>  
**Date:** Wednesday, January 27, 2021 at 3:55 PM  
**To:** Devon Puriefoy <devon@truluckthomason.com>, Brandi Larobardiere <brandi@truluckthomason.com>  
**Cc:** Kimberly Thomason <kim@truluckthomason.com>, John-Paul Baum <johnpaul@truluckthomason.com>, Greg English <genglish@wyche.com>  
**Subject:** RE: Sibley v Decide4action

Devon,

We have not received the supplemental discovery as required by the Order. Please have it to us by Monday, Feb. 1; otherwise, we will file a second motion to compel and for summary judgment dismissing the counterclaims.

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard

**A Lex Mundi Member Firm**

**From:** Devon Puriefoy [<mailto:devon@truluckthomason.com>]  
**Sent:** Wednesday, January 6, 2021 4:12 PM  
**To:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>  
**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>  
**Subject:** Re: Sibley v Decide4action

I consent.

---

**From:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Date:** Wednesday, January 6, 2021 at 4:09 PM  
**To:** Devon Puriefoy <[devon@truluckthomason.com](mailto:devon@truluckthomason.com)>, Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>  
**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>, John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>, Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Subject:** RE: Sibley v Decide4action

Devon,

Understood – if he looks but certifies neither he nor his current or former CPA has the 2017 W2s, K1s, or 1099s, or July 1, 2017-June 30, 2018 P&Ls, we will not move for contempt on those items.

With this understand, is it OK for me to file this Consent Order with your e-signature?

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard

**A Lex Mundi Member Firm**

**From:** Devon Puriefoy [<mailto:devon@truluckthomason.com>]  
**Sent:** Wednesday, January 6, 2021 4:03 PM  
**To:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>  
**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>  
**Subject:** Re: Sibley v Decide4action

g,

I have discussed with my client and I can confirm we will be producing the requested documents. Please note, however, my client is unsure if he possesses shareholder W2s, K1s, or 1099s for 2017 and July 2017-June 18 P&Ls. I just do not want to consent to this order and later determine my client does not possess that information only for him to be held in contempt. Beyond those items, all other documents can be produced.

---

**From:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>

**Date:** Wednesday, January 6, 2021 at 1:04 PM

**To:** Devon Puriefoy <[devon@truluckthomason.com](mailto:devon@truluckthomason.com)>, Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>

**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>, John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>, Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>

**Subject:** RE: Sibley v Decide4action

Devon,

Thank you. Please let me know if I have your consent to file the attached Consent Order with your e-signature or if you have any changes.

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972

Phone: (864) 242-8247 | Fax: (864) 235-8900

[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard

A Lex Mundi Member Firm

**From:** Devon Puriefoy [<mailto:devon@truluckthomason.com>]

**Sent:** Wednesday, January 6, 2021 12:38 PM

**To:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>

**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>

**Subject:** Re: Sibley v Decide4action

The hearing will be unnecessary. All requested documents will be produced.

Respectfully,

---

**From:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>

**Date:** Tuesday, January 5, 2021 at 4:19 PM

**To:** Devon Puriefoy <[devon@truluckthomason.com](mailto:devon@truluckthomason.com)>, Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>

**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>, John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>, Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>

**Subject:** RE: Sibley v Decide4action

Devon,

The package arrived with the following documents:

1. Decide4action P&L – 10/18/2017-6/30/2018
2. Decide4action P&L – July 2018-June 2019
3. Decide4action P&L – July 2019-June 2020
4. Decide4action Tax Return - Year Ended June 30, 2020

5. CC+I Tax Return – Year Ended June 30, 2019
6. CC+I Tax Return – Year Ended June 30, 2018

Accordingly, it appears the following discovery still has not been produced:

1. CC+I P&L – 7/1/2017-6/30/2018
2. CC+I P&L – 7/1/2018-7/30/2019
3. CC+I P&L – 7/1/2019-6/30/2020
4. CC+I Tax Return - Year Ended June 30, 2020
5. Decide4action Tax Return – Year Ended June 30, 2019
6. Decide4action Tax Return – Year Ended June 30, 2018
7. Decide4action Balance Sheets – as of 6/30/18, 6/30/19, 6/30/20, and 12/31/20
8. W2s, K1s, and 1099s to shareholders of CC+I and Decide4action from July 1, 2017 to the present
9. Formal answer to Interrogatory No. 25.

We do need the formal damages calculation in answer to Interrogatory 25 to make sure we are preparing to defend the correct number at trial. Also, because it sounds like you will be relying upon some difference between the Patton valuations of CC+I, which are based upon projections from 2018-2027, we need CC+I's P&L's, tax returns, W2s, K1s, and 1099s to examine those projections. Finally, we need Decide4actions balance sheets to confirm its net worth for purposes of punitive damages.

Please let me know if Decide4action will agree to provide the balance of this discovery or if we need to go forward with the contested hearing Thursday morning.

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972

Phone: (864) 242-8247 | Fax: (864) 235-8900

[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard

**A Lex Mundi Member Firm**

**From:** Devon Puriefoy [<mailto:devon@truluckthomason.com>]

**Sent:** Tuesday, January 5, 2021 1:58 PM

**To:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>

**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>

**Subject:** Re: Sibley v Decide4action

Greg,

As for the interrogatory response: We are comfortable at this juncture using the Patton and Associates valuation differences as our damage calculation. I can provide this in a formal discovery response if you would like.

Are you in receipt of the financials and tax returns that should have been dropped of this morning? If so, please let me know your thoughts on removing the motion to compel from the docket.

Very Respectfully,

**From:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>

**Date:** Tuesday, January 5, 2021 at 10:18 AM

**To:** Devon Puriefoy <[devon@truluckthomason.com](mailto:devon@truluckthomason.com)>, Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>

**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>, John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>, Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Subject:** RE: Sibley v Decide4action

Thanks – are you also updating the damages interrogatory?

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard  
**A Lex Mundi Member Firm**

**From:** Devon Puriefoy [<mailto:devon@truluckthomason.com>]  
**Sent:** Tuesday, January 5, 2021 10:15 AM  
**To:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>; Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>  
**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>; John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>  
**Subject:** Re: Sibley v Decide4action

My office is hand delivering CC+I financials and tax returns today.

---

**From:** Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Date:** Wednesday, November 25, 2020 at 4:50 PM  
**To:** Brandi Larobardiere <[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)>, Devon Puriefoy <[devon@truluckthomason.com](mailto:devon@truluckthomason.com)>  
**Cc:** Kimberly Thomason <[kim@truluckthomason.com](mailto:kim@truluckthomason.com)>, John-Paul Baum <[johnpaul@truluckthomason.com](mailto:johnpaul@truluckthomason.com)>, Greg English <[genglish@wyche.com](mailto:genglish@wyche.com)>  
**Subject:** RE: Sibley v Decide4action

Devon,

We have Decide4action's answers to Plaintiff's Second Set of Interrogatories and Requests for Production dated November 3, 2020. Its answer to interrogatory #25 is not responsive; Defendant needs to tell us what amount of damages it claims and how it calculates such damages. Moreover, its refusal to produce its and CC+I's financial statements and tax returns since 2016 in response to request #23 is unreasonable in light of its claim that CC+I has lost value.

Please let us know by December 1 if Decide4action will supplement its answer to interrogatory #25 and withdraw its objection and produce the documents requested in #23. Otherwise, we will move forward with a motion to compel.

Thanks, Greg



**Gregory English | Wyche**

200 East Camperdown Way | Greenville, SC 29601-2972  
Phone: (864) 242-8247 | Fax: (864) 235-8900  
[genglish@wyche.com](mailto:genglish@wyche.com) | [www.wyche.com/genglish](http://www.wyche.com/genglish) | vCard  
**A Lex Mundi Member Firm**

**From:** Brandi Larobardiere [<mailto:brandi@truluckthomason.com>]  
**Sent:** Friday, October 30, 2020 1:05 PM

**To:** Greg English <genglish@wyche.com>

**Cc:** Kimberly Thomason <kim@truluckthomason.com>; Devon Puriefoy <devon@truluckthomason.com>; John-Paul Baum <johnpaul@truluckthomason.com>

**Subject:** Sibley v Decide4action

Good afternoon,

Please see attached response to Request to Admit and Interrogatories. The hard copy of the same is in the mail.

Very respectfully,

Brandi Larobardiere



Brandi Larobardiere  
Legal Assistant  
Truluck Thomason LLC  
3 Boyce Avenue  
Greenville, SC 29601  
[www.truluckthomason.com](http://www.truluckthomason.com)  
Ph: (864) 331-1751  
Fax: (864) 243-8115

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Thank you.  
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No privilege is waived by inadvertent transmission.  
-----

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

**PLAINTIFF'S AND  
THIRD-PARTY DEFENDANT'S  
MOTION IN LIMINE TO EXCLUDE  
DEFENDANT'S UNDISCLOSED AND  
INADMISSIBLE EXPERT OPINIONS**

Plaintiff and Counterclaim Defendant, Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. ("Sibley"), and Third Party Defendant, Joyce Featherstone ("Featherstone") (Sibley and Featherstone may be referred to collectively as "Sellers"), hereby move in limine, pursuant to Rule 43(a), S.C.R.C.P., to exclude undisclosed and inadmissible expert opinions from being introduced in evidence at trial on the following grounds:



**1. The Court should exclude expert opinion testimony from any witness called by Defendant because no expert witnesses have been disclosed by Defendant.**

Early in discovery in this case, Sibley propounded a standard discovery request asking Defendant Decide4action, Inc. ("Decide4action") to "[l]ist the names, addresses, and telephone numbers of any expert witnesses whom the party proposes to use as a witness at the trial of the opinions and the basis for his or her opinion." (Exhibit A hereto, Interrogatory # 4.) In response, Decide4action stated that, "[a]t this time, the Plaintiff [sic] has not retained any expert witness for the purpose of trial, but reserves the right to do so." (*Id.*) Decide4action never supplemented this response.

Because Decide4action never identified an expert witness, it is barred from proffering expert opinions from witnesses at trial. "Disclosure of information between the parties before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing." *Reed v. Clark*, 277 S.C. 310, 316, 286 S.E.2d 384, 388 (1982); *Bensch v. Davidson*, 354 S.C. 173, 182, 580 S.E.2d 128, 133 (2003) (affirming trial court decision to exclude expert witness when party failed to list expert as a witness in its answers to interrogatories).

**2. Bergeron should not be qualified as an expert because he admitted in his deposition that he is not qualified to calculate the value of the Company.**

Bergeron admitted in his deposition that:

- the only way to value a company is with a valuation expert (Bergeron Dep. 80, lines 8-9);
- the reason he hired valuation experts to work for him is because he does not understand the process (Bergeron Dep. 84, lines 15-23);
- he does not have an opinion on what the right valuation number is (Bergeron Dep. 84, lines 24 through Bergeron Dep. 85, line 4);
- there is a reason why the valuation experts do not take his word for a professional valuation (Bergeron Dep. 88, lines 15-18); and
- it is experts' opinions, not his opinion, about valuation that count (Bergeron Dep. 88, lines 19-21)

**CONCLUSION**

For the foregoing reasons, the Court should exclude all expert opinions offered by Defendants, and specifically should not allow the Bergeron calculations to be admitted as evidence of damages.

Respectfully submitted,

WYCHE, P.A.

By:

  
s/ Gregory J. English

Gregory J. English (SC #65470)

200 East Camperdown Way

Post Office Box 728

Greenville, SC 29602-0728

(864) 242-8200

Attorneys for Plaintiff and Third Party Defendant  
Julia Sibley-Jones, as Personal Representative of the Estate  
of William A.L. Sibley, Jr. and Joyce Featherstone

July 27, 2021

## EXHIBIT A

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-23-02032

Plaintiff,

VS.

Defendant.

**DEFENDANT'S RESPONSES TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

Counterclaimant/Third-Party Plaintiff

Vs.

Counterclaim Defendant/Third Party  
Defendant

## INTERROGATORIES

RESPONSE:

Philippe Bergeron  
205 Rosebank Way  
Greenville, SC 29615

James T. Clark  
917 J.C. Cooper Rd.  
Fountain Inn, SC 29644

Frank T. Starrett, Jr.  
106 Viewpoint Court  
Laurens, SC 29360

Scoot W. Dozier  
409 Meadow Lake Trail  
Greer, SC 29650

Robert E. Leviner  
109 Timberidge Dr.  
Greer, SC 29650

2. For each person known to the parties or counsel to be witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, and provide a copy of any written or recorded statements taken from such witness.

**RESPONSE:**

Each individual named in Defendant's response to Interrogatory number 1, was either directly, or indirectly, involved in the purchase of CC+1 by Decide4Action, Inc. Each of the above-named individuals will be able to testify about their respective role during the due diligence process, the valuation process, and the closing.

3. Set forth a list of photographs, videos, electronic data, sketches, notes, checklists or other documents of any type in possession of the party that relates to the claim or defense in the case.

**RESPONSE:**

See Defendant's responses to Plaintiff's First set of Requests for Production submitted contemporaneously herewith.

4. List the names, addresses, and telephone numbers of any expert witnesses whom the party proposes to use as a witness at the trial of the case and for each state in detail their qualifications to testify and the substance of his or her opinions and the basis for his or her opinion.

**RESPONSE:**

At this time, the Plaintiff has not retained any expert witness for the purpose of trial, but reserves the right to do so. The Plaintiff also reserves the right to elicit opinion testimony, where appropriate.

5. As to each expert witness identified, please provide:

- a. A complete statement of all opinions the witness will express and the basis and reasons for them;
- b. The data and other information considered by the witness in forming the Opinions;
- c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided in response to Requests for Production);
- d. The witness's qualifications, including a list of all publications authored in the previous ten years;
- e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;
- f. A statement of the compensation to be paid for the study and testimony in the case.

**RESPONSE:**

Please see Defendant's response to Interrogatory number 4.

6. Describe each conversation and any correspondence between the Plaintiff and Defendant regarding this case. In lieu of a transcription, please provide an adequate description including date, time, content, and recollection of statements and agreements made. (If Defendant prefers, it is acceptable to provide documents responsive to this Interrogatory in response to the corresponding request for production submitted contemporaneously herewith.)

**RESPONSE:**

Please see all documents produced by Defendant in response to Plaintiff's First Set of Requests for Production.

7. Describe the contents of any correspondence, oral communications, emails, letters, or other notations involving Defendant that were received or sent by Plaintiff regarding the facts that are the subject of this action as alleged in Plaintiff's Complaint and Defendant's Answer and Counterclaims.

**RESPONSE:**

Plaintiff and Defendant sent a number of correspondences during the initial negotiations regarding the purchase of CC+I, the due diligence process, and the closing of the transaction. Plaintiff made material misrepresentations throughout the course of those discussions which ultimately caused Defendant to suffer extensive economic damages. Please see Defendant's responses to Plaintiff's First Set of Requests for Production and the documents submitted therewith for the exact nature of the correspondence.

8. Please describe the contents of any correspondence, oral communications, emails, letters, or other notations, including but not limited to text message correspondences, by and between Plaintiff or Defendant and Justin Pavatte related directly or indirectly to the following:

- a. Employment with CC+ I;
- b. Any bonus paid by CC+ I to Mr. Pavatte;
- c. Communications concerning the attempted informal mediation between Plaintiff and Defendant; and
- d. Any and all communications concerning the facts and allegations that form the basis of Plaintiff's Complaint and Defendant's Counterclaims.

**RESPONSE:**

Defendant is not in possession of any correspondence between Plaintiff and Mr. Pavatte, but have requested copies of the same be produced through its own formal discovery requests. Additionally, Defendant has but a single threatening email from Mr. Pavatte that gave rise to the filing of the restraining order, which was ultimately granted. A copy of the same is being produced with Defendant's responses to Plaintiff's First Set of Requests for Production.

9. Please describe the contents of any correspondence, oral communications, emails, letters, or other notations, including but not limited to text message correspondence, that Plaintiff or Defendant had with Justin Pavatte or any third parties related directly or indirectly to the following:

- a. Spartanburg case number 2019-A-42-10200199 for Stalking
- b. Greenville case number 2019 A-23-30200864 for Telephone/Unlawful Communication;
- c. Greenville case number 2019-A-23-30200865 for Telephone/Unlawful Communication;
- d. Gantt Summary Court case number 2018-OR-23-11000073 for a Restraining Order.

**RESPONSE:**

Defendant was seeking the restraining order and was therefore intentionally attempting to avoid all communication with Mr. Pavatte regarding the aforementioned legal matters. Therefore, Defendant is not in possession of any correspondence with Mr. Pavatte regarding the same.

10. Has Defendant or Richard Bergeron been a party to any other actions in the last ten (10) years? If so, please provide the following information:

- a. The date a complaint was filed;
- b. The case number(s) of the action(s);
- c. The facts that were subject to the action(s);
- d. The court in which the proceeding(s) against Defendant or Richard Bergeron was held; and
- e. The disposition of each case.

**RESPONSE:**

See Defendant's document production in response to the corresponding Request for Production.

11. What was the valuation of Computer Control + Integration, Inc. for the fiscal year of July 2015 to June 2016? In responding to this Interrogatory, please provide the name of the party formulating said valuation.

**RESPONSE:**

CC+I was valued by Generational Equity during the due diligence phase of the purchase. The value was calculated at \$4.4 million using 3.75 times EBIDTA multiplier.

12. What was the valuation of Computer Control+ Integration, Inc. for the fiscal year of July 2016 to June 2017? In responding to this Interrogatory, please provide the name of the party formulating said valuation.

**RESPONSE:**

CC+I was valued, during this time period, at \$3,086,966.00. The valuation was conducted using the same 3.75 times EBIDTA multiplier. The difference in the two valuations was the valuation between July 2016 and June 2017 took into consideration the bonuses paid prior to the sale of the company. This valuation was conducted by Patton and Associates.

13. Provide a complete list of all documents produced by any of the sellers in the document sharing virtual room created by Generational Equity, LLC.

**RESPONSE:**

Sellers made all these documents available and are presumably still in possession of the same. Moreover, the Sellers still have access to the virtual room that was created. Therefore, production of any such documents would be duplicative and unnecessary.

14. How many employees, if any, were awarded salary increases between 2012 and May 17, 2017?

a. With regard to these salary increases, please identify the names and positions of the employees given them, the reason for awarding them with respect to each person, the fiscal year they were given, and the amount of each one.

b. What effect did these salary increases have on the valuation of Computer Control + Integration, Inc.?

c. Were all of these salary increases disclosed to Defendant? If yes, how, when, and by whom were they disclosed?



**RESPONSE:**

Defendant did not purchase CC+I until October of 2017. Therefore, any salary increased between 2012 and May 17, 2017 would have been at the direction of Plaintiff and/or other former owners of CC+I.

15. Were any salary increases awarded subsequent to May 17, 2017? If so:

a. Please identify the names and positions of the employees given them, the reasons for awarding them with respect to each person, the fiscal year they were given, and the amount of each one.

b. What effect did these salary increases have on the valuation of Computer Control + Integration, Inc.?

c. Were all of these salary increases disclosed to Defendant? If yes, how, when, and by whom were they disclosed.

**RESPONSE:**

**Objection:** Defendant objects to this Interrogatory on the grounds that it is irrelevant to this action and likely to lead to the discovery of admissible evidence.

16. How many bonuses, if any, were awarded to employees between 2012 and May 17, 2017?

a. With regard to these bonuses, please identify the names and positions of the employees given bonuses, the reason for awarding them with respect to each person, the fiscal year they were given, and the amount of each one.

b. What effect did these bonuses have on the valuation of Computer Control + Integration, Inc.?

c. Were any of these bonuses disclosed to Defendant? If yes, how, when, and by whom were they disclosed?

**RESPONSE:**

See Defendant's response to Interrogatory number 14.

17. Were any bonuses awarded subsequent to May 17, 2017? If so:

a. Please identify the names and positions of the employees given them, the reasons for awarding them with respect to each person, the fiscal year they were given, and the amount of each one.

b. What effect did these bonuses have on the valuation of Computer Control + Integration, Inc.?

c. Were any of these bonuses disclosed to Defendant? If yes, how, when, and by whom were they disclosed?

**RESPONSE:**

**Objection:** Defendant objects to this Interrogatory on the grounds that it is irrelevant to this action and likely to lead to the discovery of admissible evidence.

18. Do you or have you ever employed anyone by the name of Kimberly French? If so:
- When was Ms. French hired?
  - Does Ms. French still work for Computer Control+ Integration, Inc.? If not, when did she stop working there and for what reason is she no longer employed there?
  - What is or was Ms. French's position at Computer Control + Integration, Inc.?
  - What was Ms. French's salary for the fiscal year of July 2015 to June 2016 and what was her salary the following fiscal year?
  - Has or did Ms. French ever receive any bonuses while under your employment?

**RESPONSE:**

- Ms. French was hired by Plaintiff and will better be able to answer this interrogatory subsection.
- Yes.
- Administrative Manager.
- Plaintiff would better be able to answer this question, as Ms. French was under his employment at the time in question.
- Ms. French was required to be paid a bonus in order to keep her with the company in January of 2018 in the amount of \$5,000.00 and in July of 2019 in the amount of \$2,500.00

19. In the history of Computer Control+ Integration, Inc., what is the largest salary increase that has been given to an employee?

**RESPONSE:**

Defendant is only aware of a single salary increase, which was not disclosed until after the closing of this transaction. Specifically, it was disclosed after the closing of the transaction that Kimberly French received a \$2,500.00 salary increase prior to the sale of the company to Defendant, in direct violation of the terms of the Stock Purchase Agreement. As for any other salary increases, Plaintiff would be in possession of any such information.

20. In the history of Computer Control+ Integration, Inc., what is the largest bonus that has been given to an employee?

**RESPONSE:**

On May 17, 2017 Plaintiff informed Defendant via email that in 2016, three (3) special bonuses were paid out to employees of CC+I totaling \$35,000.00. It was not until November 15, 2017 that Plaintiff disclosed to Defendant the bonuses that were paid out to employees prior to the closing of the transaction. Upon information and belief, the \$324,864.000 paid as employee bonuses to six (6) employees was the largest bonus in company history.

21. On average, how many software designers at Computer Control + Integration, Inc. resigned per year between the years of 2015 and present.

**RESPONSE:**

Question not applicable to Defendant.

22. Did any owner ever tell, formally or informally, any employee of Computer Control + Integration, Inc. that employees would receive year-end bonuses at the end of the same year Defendant purchased Computer Control + Integration, Inc.'s stock? If so, was Defendant made aware of all statements of this nature made to employees?

**RESPONSE:**

Question not applicable to Defendant.

23. At the time the Agreement was presented to Defendant, were all of the provisions of the Agreement accurate and current as to the closing date? If you answer "no," identify each and every provision that was inaccurate and/or not current and each and every way in which such provision was inaccurate and/or not current.

**RESPONSE:**

No. Defendant refers Plaintiff to paragraph 63 of Defendants Amended Answer and Counterclaims.

24. Identify the person or persons responding to these Interrogatories on behalf of Defendant, and identify each person who has provided information in connection with these Interrogatories.

**RESPONSE:**

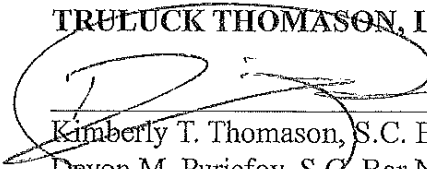
Devon Puriefoy

Kimberly Thomason

Richard Bergeron

Respectfully Submitted this 25th  
day of October, 2019

**TRULUCK THOMASON, LLC**

  
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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

**PLAINTIFF'S AND  
THIRD-PARTY DEFENDANT'S  
MOTION FOR DIRECTED VERDICT**

Plaintiff Julia Sibley-Jones and Third-Party Defendant Joyce Featherstone (collectively, "Sellers") hereby move the Court for directed verdict on Defendant Decide4action Inc.'s counterclaims and third-party claims (collectively, "counterclaims") on the following grounds:

- 1. Sellers are both entitled to a directed verdict on all of Decide4action's counterclaims because Decide4action has not satisfied its burden to prove non-speculative damages.**
  - a. Decide4action's damages claims are not supported by sufficient evidence.**

All of Decide4action's claims require proof of damages, but Decide4action has failed to provide admissible evidence of damages. The only argument it made involved an alleged but unexplained diminution of value of the Company based on the bonuses paid by the Company to certain employees nearly four (4) months prior to the sale to Decide4action. Decide4action did

not and could not show that it had any obligation to continue to pay such bonuses or that it did, in fact, continue to pay such bonuses. Instead, Decide4action only offered the inadequate opinions of Bergeron to support its claims, but those are insufficient.

**1. Bergeron admitted in his deposition that he is not qualified to calculate the value of the Company.**

Bergeron admitted in his deposition that:

- the only way to value a company is with a valuation expert (Bergeron Dep. 80, lines 8-9);
- the reason he hired valuation experts to work for him is because he does not understand the process (Bergeron Dep. 84, lines 15-23);
- he does not have an opinion on what the right valuation number is (Bergeron Dep. 84, lines 24 through Bergeron Dep. 85, line 4);
- there is a reason why the valuation experts do not take his word for a professional valuation (Bergeron Dep. 88, lines 15-18); and
- it is experts' opinions, not his opinion, about valuation that count (Bergeron Dep. 88, lines 19-21)

**2. The Bergeron calculations do not follow the required South Carolina methodology for valuing businesses.**

South Carolina has specific rules for valuing businesses. In *Santee Oil*, the Supreme Court stated that “‘fair value’ does not restrict the appraising court to the use of any one method of valuation. ‘Market value undoubtedly is a pertinent consideration. So is net asset value. Neither, however, deserves necessarily to be accepted as exclusive.’” *Santee Oil Co. v. Cox.*, 265 S.C. 270, 273, 217 S.E.2d 789, 791 (1975) (quoting *Chicago Corp. v. Munds*, 20 Del. Ch. 142, 172 A. 452,

457 (1934). Instead, “the three major factors to be considered are: (1) net asset value; (2) market value; and (3) the earnings or investment value of the ... stock.” *Id.* at 274.

After these factors have been considered and determined, “they should then be weighed as to their relative bearing upon the ultimate question of the fair value of the ... stock.” *Id.* In *Santee Oil*, the Supreme Court held that the lower court erred where it had proof of market value, asset value, and earnings and dividends, yet gave only asset value any direct weight. *Id.* at 270. Lower courts have applied *Santee’s* analysis to a variety of cases. See *Reid v. Reid*, 280 S.C. 367, 312 S.E.2d 724 (Ct. App. 1984) (division of marital assets).

The Bergeron calculations consider only one of the three methodologies required by *Santee*— the earnings/income approach. But considering only the income approach values the corporation based solely on its expected future earnings. The Bergeron calculations’ reliance solely on the income approach is especially inappropriate because they assume – with no evidentiary basis -- that Decide4action will continue to pay the bonuses that the Company paid in 2017. South Carolina forbids such a methodology.

The Bergeron calculations give no consideration of the net asset value or market value. The market approach generally involves market pricing from business sales transactions, public stock prices, or both. The South Carolina Supreme Court has also noted that “if there is no reliable established market value for the shares **a reconstructed market, if one can be made, must be given consideration.**” *Santee Oil Co.* 265 S.C. at 273 (emphasis added). The Bergeron calculations show no attempt to make or consider a market or reconstructed market.

Because Decide4action has failed to provide any admissible evidence permitting the jury to calculate damages on any of the counterclaims, Sellers are entitled to a directed verdict as a matter of law on all claims. *Collins Ent., Inc. v. White*, 363 S.C. 546, 559–60, 611 S.E.2d 262,

269 (Ct. App. 2005) (holding “the trial court properly granted the directed verdict motion” because the only evidence of damages “was properly excluded from evidence and none of the testimony presented provided any evidence of an amount of damages attributable to any breach of contract”).

**b. Decide4action’s claims that Sellers are the proximate cause of any damages to it are speculative, not reasonably certain.**

A directed verdict on all of Decide4action’s counterclaims is also necessary because it has failed to prove the fact and amount of its alleged damages with reasonable certainty. “Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While proof with mathematical certainty is not required, “neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation.” *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). In this case, all that Decide4action has provided to support its claims for damages is conjecture, guess, and speculation.

Specifically, Decide4action has counterclaimed for lost profits from Sellers. Lost profits, however, may be recovered only when they:

- (1) Are a natural consequence of the breach of contract or duty;
- (2) Were foreseeable, or reasonably within the contemplation of the parties at the time of the contract; and
- (3) Can be established with reasonable certainty.

*Drews Co., Inc. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 213, 371 S.E.2d 532, 536 (1988); *S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 310 S.C. 232, 234-35, 423 S.E.2d 114, 115 (1992); *Moore v. Moore*, 360 S.C. 241, 253-54, 599 S.E.2d 467, 473-74 (2004).

To establish lost profits with reasonable certainty, there must be a certain standard or fixed method by which the loss may be estimated with a fair degree of accuracy. *S.C. Fin. Corp.*

*v. West Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E.2d 329, 336 (1960) (quotations and citation omitted). “Although the law does not require absolute certainty of proof upon which lost profits are to be estimated, it does require such reasonable certainty that damages may not be based wholly upon speculation and conjecture.” *Collins Music Co. v. Ingram*, 292 S.C. 537, 542, 357 S.E.2d 484, 486 (1987). “The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn.” *Drews*, 296 S.C. at 213 (citing 22 Am. Jur. 2d Damages § 641); *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 242, 421 S.E.2d 402, 405 (1992).

“Owner’s expectations, unsupported by any particular standard or fixed method for establishing **net profits**, [are] wholly insufficient to provide ... a basis for calculating profits lost with reasonable certainty.” *Drews*, 296 S.C. at 214, 371 S.E.2d at 536 (emphasis added). Likewise, evidence of gross receipts alone provide inadequate proof of lost profits. *Collins Music*, 292 S.C. at 542, 357 S.E.2d at 486.

Here, Decide4action has no evidence that Seller did anything to cause it to lose profits or diminished its value. These claims fall far short of a “particular standard or fixed method for establishing net profits” required by the law.

**c. The SPA bars Sellers’ liability for damages based upon diminution in value of the Company or any type of multiple.**

Decide4action is also not entitled to an award of damages because it is seeking relief under a contract that bars damages based upon diminution in value of Computer Control + Integration, Inc. (the “Company”) or any type of multiple. The Stock Purchase Agreement (“SPA”) under which Decide4action brings its counterclaims provides that:



**in no event shall any Seller be liable to Buyer for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.**

(Plaintiff's Exhibit 8, p. 21, Section 8(b)) (emphasis added) This language is absolute and applies to bar any award of damages in favor of Decide4action based upon diminution in value of the Company or any type of multiple, which are the only type of damages Decide4action has argued.

**2. Sellers are entitled to directed verdict on Decide4action's counterclaim for breach of contract because there is no evidence the SPA was breached.**

Nothing in the SPA or any other document prohibited the Company from paying bonuses to non-owner employees. Indeed, the SPA was not even executed until four (4) months after the subject bonuses were paid.

Further, the payment of bonuses was not a "Material Adverse Change" for which disclosure was required by the SPA. Nevertheless, Sellers disclosed that bonuses were paid in Schedule 4(i), Section 3, of the SPA and in financial documents and tax returns given to Decide4action before signing of the SPA and closing of the sale.

In sum, there is no evidence that Sellers breached the SPA.

**3. Third-Party Defendant Joyce Featherstone is entitled to a directed verdict on all of Decide4action's third-party claims because Decide4action has not satisfied its burden to prove she is liable for anything.**

The only evidence is that Ms. Featherstone was merely a passive shareholder who inherited her stock in the Company. There is no evidence that she knew about, much less authorized or paid, any bonuses, and therefore no evidence that she:

- a. breached any contract,
- b. committed any fraudulent act,
- c. committed any fraud, or

d. made any intentional misrepresentation.

Moreover, Decide4action's third-party complaint does not even plead causes of action against Ms. Featherstone for breach of contract accompanied by a fraudulent act, fraud, or intentional misrepresentation.

Accordingly, Ms. Featherstone is entitled to directed verdict on all of Decide4action's third-party claims against her, and certainly on the claims of breach of contract accompanied by a fraudulent act, fraud, and intentional misrepresentation.

**4. Sellers are entitled to a directed verdict on Decide4action's claim for "intentional misrepresentation" because there is no such claim under South Carolina law and the claim is merely a restatement of the fraud claim.**

Decide4action's fourth counterclaim is for "intentional misrepresentation." (Am. Counterclaims ¶¶ 106-111.) There is no claim under South Carolina law for "intentional misrepresentation." Rather, the making of a representation that is false are among the elements of a fraud claim. *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). Decide4action's "intentional misrepresentation" claim alleges that Plaintiff made "inaccurate and misleading" representations in the SPA. (Am. Counterclaims ¶ 108.) Decide4action's third counterclaim for fraud is based on the exact same representations in the SPA. (Am. Counterclaims ¶ 99, "Contained in the SPA were representations by the Plaintiff that he would inform Defendant of any material changes to the Company prior to the closing of the anticipated transaction."). Thus, the "intentional misrepresentation" claim is duplicative of the fraud claim and a directed verdict should be issued in favor of Sellers on it.

**5. Sellers are entitled to directed verdict on Decide4action's counterclaim for breach of contract accompanied by fraudulent act because there is no evidence of an independent fraudulent act which accompanied the breach.**

"In order to recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish: (1) a breach of contract; (2) that the breach was accomplished with a fraudulent intention,

and (3) that the breach was accompanied by a fraudulent act.” *Minter v. GOCT, Inc.*, 322 S.C. 525, 529–30, 473 S.E.2d 67, 70–71 (Ct. App. 1996). “Th[e] fraudulent act, although separate and distinct from the act(s) constituting the breach, must accompany the breach and not be too remote in either time or character.” *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980).

In this case, the only allegedly fraudulent act for which Decide4action has presented evidence is that Mr. Sibley did not disclose bonuses paid to certain non-owner employees prior to closing. This is the exact same act which Decide4action claims is the breach of the SPA. Decide4action has presented no evidence of an independent fraudulent act accompanying the alleged breach of contract that would support a breach of contract accompanied by a fraudulent act counterclaim. Thus, a directed verdict is appropriate on the breach of contract accompanied by a fraudulent act counterclaim. *Minter v. GOCT, Inc.*, 322 S.C. 525, 529–30 (Ct. App. 1996) (affirming grant of a directed verdict when there was no “evidence of an independent fraudulent act which accompanied the breach”).

**6. Sellers are entitled to a directed verdict on Decide4action’s claim for punitive damages.**

Decide4action has requested an award of punitive damages under its claims of breach of contract accompanied by fraudulent act and fraud. (Am. Counterclaims ¶¶ 96, 105.) For two independent reasons, Decide4action is not entitled to an award of punitive damages as a matter of law.

**a. The SPA bars Sellers’ liability for punitive damages.**

First, Decide4action is not entitled to an award of punitive damages because it is seeking relief under a contract that bars punitive damages. The Stock Purchase Agreement under which Decide4action brings its counterclaims provides that

in no event shall any Seller be liable to Buyer for any punitive, incidental, consequential, special or indirect damages ....

(Plaintiff's Exhibit 8, p. 21, Section 8(b)) This language is absolute and applies to bar any award of punitive damages in favor of Decide4action in this case.

**b. Decide4action has failed to meet its high burden to justify an award of punitive damages.**

A directed verdict on Decide4action's claim for punitive damages is also warranted because Decide4action has failed to produce clear and convincing evidence supporting a claim for punitive damages. The purpose of punitive damages is to "punish the wrongdoer in order to deter [wrongful] conduct." *Nesbitt v. Lewis*, 335 S.C. 441, 448, 517 S.E.2d 11, 15 (Ct. App. 1999). "In order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Id.* (internal quotations omitted). Such evidence must be clear and convincing. *Id.* (citing S.C. Code Ann. § 15-33-135). "A tort is characterized as reckless, willful, or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." *Id.* at 448-49, 517 S.E.2d at 15.

There is no clear and convincing evidence that Mr. Sibley's or Ms. Featherstone's conduct was willful, wanton, or reckless or that it was committed such that they objectively would have been conscious of it as an invasion of Decide4action's rights. Accordingly, Decide4action's claim for punitive damages must fail as a matter of law.

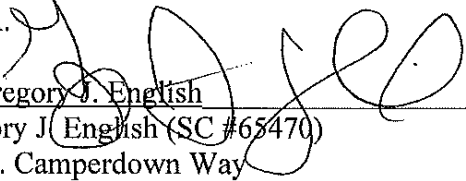
**7. Plaintiff is entitled to directed verdict on her breach of contract claim.**

The Indemnity Escrow Agreement, Plaintiff's Exhibit 9, at p. 2, § 3(d), requires that Decide4action prove a "Pending Claims Amount," i.e., damages, in order recover any amount from the Escrow Fund. Because Plaintiff is entitled to directed verdict on Decide4action's counterclaims, those counterclaims have been resolved in Plaintiff's favor and Decide4action's

"Pending Claims Amount" is zero (\$0). Accordingly, Plaintiff is entitled to directed verdict on her breach of contract claim, providing for all of the Escrow Fund to be paid to her.

Respectfully submitted,

WYCHE, P.A.

By:   
s/ Gregory J. English  
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Attorneys for Plaintiff and Third Party Defendant  
Julia Sibley-Jones, as Personal Representative of the Estate  
of William A.L. Sibley, Jr. and Joyce Featherstone

July 28, 2021

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE  
02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of  
William A.L Sibley, Jr.

Plaintiff,

vs.

Decide4Action, Inc.

Defendant.

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Decide4Action, Inc.

Counterclaimant/Third-Party Plaintiff )

vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of  
William A.L Sibley, Jr. and Joyce  
Featherstone

Counterclaim Defendant/Third Party  
Defendant

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IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-23-

**MOTION TO RECONSIDER**

**To: Gregory J. English, Attorney for Plaintiff:**

Decide4Action, Inc (hereinafter referred to as “Decide4action”) by and through its undersigned counsel, hereby file this Motion to Reconsider pursuant to the South Carolina Rules of Civil Procedure, for the Court to reconsider its July 27, 2021, ruling on Julia Sibley-Jones, as Personal Representative of the Estate of William A.L Sibley, Jr. and Joyce Featherstone (hereinafter referred to as “Plaintiff”) Motion in Limine to exclude evidence regarding any damages claimed by Decide4Action.

**I. Decide4Action is allowed to testify as to actual and punitive damages.**

Plaintiff has taken the position that because Decide4Action has failed to fully respond to Plaintiff's Interrogatory 25, Decide4Action shall not be permitted to present any evidence as it relates to damages. (emphasis added). Plaintiff relies heavily upon the ruling in *Morgan v. Carolina Door Prod., Inc.*, 281 S.C. 423, 315 S.E.2d 119 (1984) to exclude all damages Decide4Action will present in its case in chief. However, *Morgan v. Carolina Door Prod., Inc.*, rules contrary to Plaintiff's position. In *Morgan v. Carolina Door Prod., Inc.*, the court stated that the disclosure of information between the parties before trial is designed to avoid surprise and to promote decisions on the merits of the case. The plaintiff in *Morgan v. Carolina Door Prod., Inc.* stated in its answer to defendant's interrogatories that it incurred \$ 2,527.50 in damages. *Id.* Plaintiff had an ongoing duty to supplement this calculation up until the time of trial. *Id.* The court held that because plaintiff listed only \$ 2,527.50 in damages, it was not entitled to any damage above that amount because there was no evidence upon which a higher verdict could be supported from its discovery response. *Id.* Furthermore, the court relied upon Circuit Rule 90(c) which today has been amended to South Carolina Rule of Civil Procedure 33(b)(5). This rule requires an itemized statement of all special damages exclusive of pain and suffering. SCRCP 33(b)(5) cmt. (emphasis added).

In this case, Plaintiff's interrogatory asked Decided4Action to respond to following interrogatory,

“Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, describing said damages and method of computation in detail, including but not limited to:

the nature of the damage; the amount of lost wages, earnings or profits, if any; and the period for which loss is claimed.”

Decided4Action responded to this request stating, “Plaintiff will rely on the valuations that have been produced in response to Plaintiff’s First and/or Second Requests for Production.” Decided4Action stated in its valuation that was produced to opposing counsel that its damages total One Million Three Hundred Thousand Dollars (\$ 1,300,000.00) (Exhibit A). The parties then entered into a consent order stating that Decided4Action will fully answer Interrogatory 25. (emphasis added) (Exhibit B). However, Decided4Action never fully supplemented its discovery request.

Plaintiff has now taken the position that because Decided4Action failed to supplement its original answer, Decided4Action has not answered Interrogatory 25 at all. This is an incorrect analysis of the holding in *Morgan v. Carolina Door Prod., Inc.* The holding in *Morgan v. Carolina Door Prod., Inc.*, clearly stated that because the party did not supplement its answer, it was held to the original damage of \$2,527.50. Similar to this case, Decided4Action stated that it was relying upon the valuations that have been produced in response to Plaintiff’s first and/or second request for production totaling One Million Three Hundred Thousand Dollars (\$ 1,300,000.00) Thus, under the *Morgan v. Carolina Door Prod., Inc.* analysis, Decided4Action is held at the number it originally answered with which totals One Million Three Hundred Thousand Dollars (\$ 1,300,000.00). Furthermore, South Carolina Rule of Civil Procedure 33(b)(5) requires an itemized statement of all special damages exclusive of pain and suffering. Thus, actual and punitive damages do not need to be stated in this discovery response. (emphasis added).

## **II. Evidence that has been admitted by the Plaintiff into evidence show damages.**



“It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence.” *State v. Page*, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008). A party who opens the door to evidence cannot complain of prejudice from its admission. *State v. Robinson*, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991).

Plaintiff has already introduced evidence that speak to Decide4Action damages. Plaintiff has introduced a letter into evidence stating that Decide4Action has pending claims against the Plaintiff in the amount of at least One Million Three Hundred Fourteen Thousand Thirty-Four Dollars and No/100 (\$ 1,314,034.00). (Exhibit C). In an attachment to that letter, is a complete breakdown of the of the monies that Decide4Action has suffered. Under our Supreme Court analysis, Plaintiff can now not complain of prejudice of the admission of this evidence as Plaintiff is the party who admitted this into evidence. Thus, even with this Court excluding Decide4Action damages, the evidence of its damages is in evidence because Plaintiff opened the door to this evidence. Therefore, because Plaintiff has introduced Decide4Action damages, Decide4Action is properly allowed to question witnesses about these damages.

### **III. Discovery sanctions are warranted against Decide4Action for its failure to fully responded to Interrogatory 25, not the exclusion of damages.**

The question of what sanctions, if any, are to be imposed by the failure to respond to SCRCP 33(b)(5) is left largely to the discretion of the trial judge. *Moran v. Jones*, 281 S.C. 270, 276, 315 S.E.2d 136, 139 (Ct. App. 1984). “The appropriateness of a sanction is determined by such factors as the precise nature of the interrogatories and discovery posture of the case, willfulness, and degree of prejudice.” *Id.* The sanction the court imposes against a party should be aimed at the specific misconduct of the party sanctioned. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154–55, 399 S.E.2d 439, 440 (Ct. App. 1990). “In other words, the sanction should be a rifle-shot, not a shotgun blast.” *Id.* In *Balloon Plantation, Inc. v. Head*

*Balloons* the court stated that the sanction imposed by the trial judge was not a rifle shot but was a hydrogen bomb. The court considered this sanction a hydrogen bomb because defendants were denied the opportunity to present a defense. *Id.* Therefore, the trial court abused its discretion by denying the party to present its case for failure to comply with a discovery order.

In this case Decide4Action responded to Plaintiff's interrogatory request number 25. However, Plaintiff found this information insufficient. Decide4Action then hand delivered additional documents to Plaintiff and presumed these answers to be sufficient. Plaintiff never brought a rule to show cause to show Decide4Action violated this Court's order. However, Plaintiff waited until trial to bring up the fact that Decide4Action did not fully respond to its request. Decide4Action actions were not willful because Plaintiff never asked this Court for further clarification of the responses. The court should take a rifle shot approach as to the sanctions that should be awarded against Decide4Action because its failure to respond does not amount to willful conduct, but simply negligence. Therefore, because Decide4Action's conduct was not willful, the court should allow Decide4Action to present damages as this would be considered a "hydrogen bomb."

#### **IV. General damages can be inferred without showing any number calculation.**

General damages are those the law infers because they are the proximate and necessary result of the wrong. *Norwest Properties, LLC v. Strebler*, 424 S.C. 617, 623, 819 S.E.2d 154, 158 (Ct. App. 2018). Stated a different way, general damages are those which arise by inference of law and need not be proved by evidence. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 526, 506 S.E.2d 497, 510 (1998).

In this instance, Decide4Action has put forth numerous facts throughout the trial that show that Decide4Action has been harmed by Plaintiff's failure to disclosure material facts in the asset purchase agreement and misappropriation of the company's bonuses. These facts are the proximate

and necessary result of the harm to Decide4Action and are considered general damages. Therefore, Decide4Action does not need to prove any damages because the law infers it as the proximate and necessary result of the wrong.

**V. Punitive damages should be instructed to the jury.**

In order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 525, 506 S.E.2d 497, 509 (1998). “A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights.” *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). “A conscious failure to exercise due care constitutes willfulness.” *Id.*

In this case, Decide4Action has put forth evidence that Plaintiff willfully failed to disclose to Decide4Action that it paid bonuses to its employees. The testimony has shown that the stock purchase agreement did not contain the disclosure of company bonuses as it required. At the time Plaintiff committed did not disclose these representations, Plaintiff knew it was acting contrary to and in violation of the stock purchase agreement. Decide4Action relied upon these representations to its determinate. Therefore, because Plaintiff willfully failed to disclose employee bonuses to Decide4Action, punitive damages should be allowed into evidence because this demonstrates willful conduct.

**WHEREFORE**, Decide4Action respectfully moves the Court to rehear, reconsider, alter, or amend its exclusion of Decide4Action's damages.

Respectfully Submitted

**TRULUCK THOMASON, LLC**

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*Attorney for Defendant/  
Third-Party Plaintiff*

Conclusion of Value

for



as of March 31, 2017

prepared by



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## 1. PURPOSE AND APPROACH

Computer Control + Integration Inc. ("CCI" or the "Company") has engaged Patton & Associates, LLC to provide business valuation services by expressing an opinion of the Fair Market Value of a 100% controlling interest of the Company.

### Purpose

This study was undertaken at the request of Richard Bergeron, potential buyer of Computer Control + Integration Inc., to establish the Fair Market Value of a 100% controlling interest in the Company as of March 31, 2017. The valuation is to assist the principals in establishing Fair Market Value in connection with a potential sale and bank financing.

### Standard of Value

The standard of value applied in this case is Fair Market Value. For this purpose, Fair Market Value is defined as:

*"...the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts."*

This definition is derived from IRS Revenue Ruling 59-60 and is nearly universally accepted as the basic standard by which virtually all IRS-related valuations and most other valuations are conducted. It should be noted that the "willing buyer" and the "willing seller" are generally taken to be "typical" financial investors, with no external synergistic expectations or benefits. Also incorporated into the general definition of Fair Market Value is an assumption that the interest under consideration can be transferred, and the reported value is in terms of cash or cash equivalents.

### Premise of Value

In general, a business can be valued under at least four common premises of value:

- 1 Going Concern
- 2 Asset Sale, or Assemblage of Assets, or Asset Value
- 3 Orderly Disposition (Orderly Liquidation)
- 4 Forced Liquidation

Similar to the preceding discussion concerning the Standard of Value, selection of the premise of value can and often does have a substantial effect on the appraised value. For purposes of this engagement, we have treated the Company as a going concern.

### Approach and Scope of Work

Our objective is to determine a value which would provide a fair and reasonable return on investment to an investor/owner, the "willing buyer" as well as the "willing seller," in view of the facts available to us as of the effective date of the valuation.

Value has been defined as the "present worth of future benefits." Accordingly, we are concerned with the earnings and cash flow that are expected to be realized in the future, as those appear from the vantage point of the "as of" date of the valuation. We are also concerned with the risks facing the business, and their possible effect on those future benefits.

We obtained extensive information pertaining to the Company:

- Federal Tax Returns 12/31/2012 - 12/31/2016
- Internal Financials 12/31/2012 - 3/31/2017
- Detailed Revenue 2014-2016
- Offering Memorandum
- Management Interview conducted by Kurt Tobin, CVA
- Management Statements and Projections

Historical earnings and financial condition are considered because they generally are indicative of the expected future income, although that is not always true. Adjustments are usually necessary to recast the historical financials so that they more fairly represent the likely pattern of future income and financial condition. We gave special attention to the current and anticipated cash flow of the Company.

Both internal and external factors which influence the value of the Company were reviewed, analyzed and interpreted. Internal factors include the Company's financial condition, results of operations and the size and marketability of the interest being valued. External factors include, among other things, the status of the industry and the position of the Company relative to others in the industry.

Having reviewed the Company's condition and situation, we next sought to determine the pricing parameters to be applied. We generally rely on market pricing from business sales transactions, or public stock prices, or both. It should be noted that it is often difficult or impossible to find market transactions or public companies that are strictly comparable to the business under consideration. When this is true, we generally find market data that provides the best available evidence, and use that as a starting point for our analysis of market pricing patterns.

RR 59-60 advocates the use of public companies that are the same as or similar to the subject company; where "similar" has been interpreted to allow wide latitude in guideline company selection. For example, in "Estate of Gallo v Commissioner," there were no good public winemaker comparables, so experts on both sides used brewers, distillers, soft drink bottlers, and a brand name recognition consumer food packager. The object is to find companies that have similar risk characteristics, similar modes of operation, similar financial structure, and similar size and profitability to the greatest extent possible.

In this case we were unable to find useful market transactions involving sales of businesses similar to the Company. Private market transactions reflect sales of marketable, controlling interests.

We generally use as many methods as are meaningful, and then average the results, or take a weighted average based on our opinion as to which methods are the most appropriate. The reason for this is that no single valuation method utilizing a few mathematical variables can possibly capture the value of a complex, operating business. Historical methods assume that the future will be much like the past, although with allowances for anticipated changes. Future earnings and cash flow methods rely on projections that are often speculative and sometimes self-serving. Each method provides for a different perspective on value, and it is our opinion that the "true" value of the business is better revealed when it has been considered from as many perspectives as can reasonably be developed.

After the value was determined, we performed a "Cash Flow Coverage" calculation, to see if a leveraged purchase of the business at that price could realistically be supported by the cash flow. This analysis is critical, because most businesses are sold in a leveraged transaction in which the cash flow of the business is used to pay down the debt. Consequently, the cash flow available to the purchaser imposes an upper limit on the value that can be achieved in the marketplace, unless there is some other alternate source of financing available, such as a private placement or IPO.

#### **Representations**

##### *Conduct of the Engagement*

This report was prepared by Patton & Associates, LLC, under the direction of Troy Patton, CPA/ABV. Professional assistance was provided by Kurt Tobin, CVA.

This report was completed on June 08, 2017

##### *Obligation to Update the Report*

Under the terms of our engagement letter with the Company, we are not obligated to update this report unless prior arrangements have been made with the analyst regarding an additional engagement.

##### *Subsequent Events*

There were no events subsequent to the date of the valuation which affected the analysis of value other than to confirm the estimates made based on information available prior to the valuation date.



## 2. CONCLUSION OF VALUE

Based on our review of the information available to us, it is our opinion that as of March 31, 2017, the Fair Market Value of a 100% controlling interest in Computer Control + Integration Inc. was (rounded):

| Fair Market Value of CC+<br>as of March 31, 2017                                   |              |
|------------------------------------------------------------------------------------|--------------|
| Net Value of 100% Ownership Interest<br>Non-Marketable, controlling interest basis | \$ 7,324,193 |

Proposed Acquisition Structure: Asset Purchase

| CC + I Purchased Balance Sheet                                         |              |
|------------------------------------------------------------------------|--------------|
| <b>Assets Purchased</b>                                                |              |
| Current Assets Purchased                                               |              |
| Cash                                                                   | \$0          |
| Accounts Receivable                                                    | \$0          |
| Inventory                                                              | \$0          |
| Other Current Assets                                                   | \$0          |
| Total Current Assets Purchased                                         | \$0          |
| Hard Assets                                                            |              |
| Total Hard Assets Purchased                                            | \$0          |
| Intangible Assets                                                      |              |
| Intangible Assets (Software, Brand Name, Customer Relationships, etc.) | \$7,324,193  |
| Total Intangible Assets Purchased                                      | \$7,324,193  |
| Total Assets Purchased                                                 | \$7,324,193  |
| <b>Liabilities Assumed</b>                                             |              |
| Accounts Payable                                                       | \$0          |
| Short Term Debt                                                        | \$0          |
| Other Current Liabilities                                              | \$0          |
| Long Term Debt                                                         | \$0          |
| Total Liabilities Assumed                                              | \$0          |
| Total Purchase Price                                                   | \$ 7,324,193 |

It is our opinion that an investor could realize a reasonable return on investment at the value above, commensurate with the risks involved, assuming that the business is operated prudently and that there are no unforeseen adverse changes in the economic conditions affecting the business, the market, or the industry.

This valuation does not guarantee a willing buyer would pay the amount found in this valuation or any amount proposed with this valuation.

Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation. We have complied with the standards of the American Institute of Certified Public Accountants' Statement of Standards for Valuations Services.

### 3. COMPANY DESCRIPTION

According to CC+I website "Computer Control + Integration, Inc. (CC+I) was founded in July 1988 by a group of design engineers and top management personnel, following the acquisition of J.P. Stevens & Co., Inc. by WestPoint Peppercorn. The group had worked together for eight years with this large multi-billion dollar textile company in designing, developing and successfully implementing computer integrated manufacturing systems throughout the Stevens corporation. This same technology was later adapted to other industries.

#### Products and Services:

CC+I specializes in state-of-the-art factory automation and data management related custom software solutions. CC+I has been delivering and supporting these systems since 1988 in a wide range of process industries including Food, Beverage, Textiles, Plastics, Rubber, Printing and other related manufacturing environments.

With over 25 years of experience in the beverage manufacturing industry, the Company has extensive knowledge about the production manufacturing process and quality assurance aspects of these businesses and how they could apply multiple industries. The Company has developed software to address multiple aspects of beverage production facilities including real time process monitoring and control, laboratory information management systems, batch verification, inventory management, SQF (safe quality food) and ISO related data collection and reporting, together with custom auditing tools. The systems can collect and assimilate data in real-time, providing monitoring, control and reporting.

In addition to software related activities, CCI has extensive knowledge and expertise in machine sensor interfacing through the use of embedded microprocessors, Programmable Logic Controllers and a variety of custom communication interfaces. The Company also has years of experience designing and building factory floor workstations and PLC based electrical panels. CCI also has experience interfacing with enterprise ERP systems including SAP.

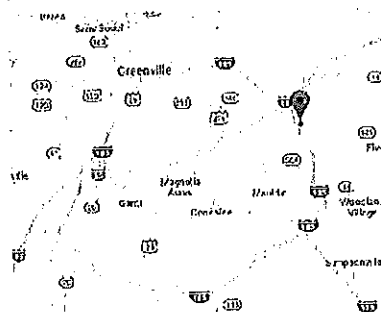
The vast majority of systems provided by CCI are Microsoft Windows based applications utilizing Microsoft SQL Server relational databases combined with standard, off-the-shelf hardware employing standard networking technology. Many of the most recent systems supplied by CCI were developed as HTML5 Web Applications running under modern web browsers for Windows, Linux, IOS and Android operating systems targeting the latest mobile devices including tablets and smart phones.

334110

Development, Sales, and service of computer systems

#### Facilities

The Company operates out of a leased space located at 1200 Woodruff Road, Greenville, SC 29607. The building consists of 3,000 square feet of office space. The Company currently pays fair market rent and the facility is said to be in excellent condition.



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#### Market

The company's primary market is the beverage bottling industry (97% of 2015 revenue). CCI also works with customers in the textile industry and has worked in various other industries in prior years. CCI provides its services to customers in the US (99%) and Mexico (1%).

#### Competition

The Company operates in a competitive industry where participants compete on the basis of quality of service and price. CCI has established a reputation as a leader in process monitoring and control software and integration for the beverage bottling industry. The Company is well-known in the industry and has over a 26-year track record of successfully completed projects. This reputation was instrumental in the Company's past success, and will be a primary driver in its future growth.

#### Employees and Management

The Company's personnel consist of one part-time and eight full-time employees. CCI's team includes programmers, engineers, software developers, managers, and administrators. Overall, CCI's team has a diverse professional background, multiple credentials, depth-of-experience, and an unwavering commitment to excellent client service. The employee turnover rate is considered very low by industry standards, which implies a good degree of employee satisfaction and potentially lower costs of recruitment and training. There is no unionization among the employees. Management depth is strong.

#### Ownership Structure

| Owner             | % Owned |
|-------------------|---------|
| WILLIAM SIBLEY    | 46.00%  |
| ERNE FEATHERSTONE | 17.60%  |
| TIM CLARK         | 13.17%  |
| TERRY STARRETT    | 13.17%  |
| SCOTT DOZIER      | 5.00%   |
| ROBERT LEVINER    | 5.00%   |
| ROUNDING          | 0.06%   |
| Total             | 100%    |

#### 4. INCOME STATEMENT

The purpose of this and the upcoming sections is to provide a financial analysis of the Company. We will examine the financial condition and performance of the Company in order to gain insight into trends affecting future earnings capacity, as well as to analyze various financial risks. Knowledge gained from these sections, as well as other factors impacting the business are used in valuing the Company.

Income statement profitability is a function of sales, the gross profit margin on those sales, and expenses. Following is historical income statement and adjusted EBITDA and EBT. For the profitability analysis based on income statement ratios, see Section 7.

| Source:<br>Basis:                              | Internal<br>Cash<br>12 mos<br>Jun-2013 | Internal<br>Cash<br>12 mos<br>Jun-2014 | Internal<br>Cash<br>12 mos<br>Jun-2015 | Internal<br>Cash<br>12 mos<br>Jun-2016 | Internal<br>Cash<br>9 mos<br>Mar-2017 |
|------------------------------------------------|----------------------------------------|----------------------------------------|----------------------------------------|----------------------------------------|---------------------------------------|
| (\$)                                           |                                        |                                        |                                        |                                        |                                       |
| <b>REVENUE</b>                                 | <b>\$ 864,000</b>                      | <b>\$ 916,000</b>                      | <b>\$ 2,080,000</b>                    | <b>\$ 2,361,000</b>                    | <b>\$ 3,179,400</b>                   |
| <b>Cost of Sales, excl depreciation</b>        |                                        |                                        |                                        |                                        |                                       |
| Inventory Cost                                 | 12,000                                 | 76,000                                 | 236,000                                | 360,500                                | 328,000                               |
| Labor                                          | -                                      | -                                      | -                                      | -                                      | 86,000                                |
| Other Costs                                    | -                                      | -                                      | -                                      | -                                      | -                                     |
| Depreciation in COS                            | -                                      | -                                      | -                                      | -                                      | -                                     |
| <b>Total COGS</b>                              | <b>12,000</b>                          | <b>76,000</b>                          | <b>236,000</b>                         | <b>360,500</b>                         | <b>412,000</b>                        |
| <b>Gross Profit</b>                            | <b>642,000</b>                         | <b>840,000</b>                         | <b>1,844,000</b>                       | <b>2,000,500</b>                       | <b>2,767,400</b>                      |
| Gross Margin (% Sales)                         | 98%                                    | 92%                                    | 89%                                    | 85%                                    | 87%                                   |
| Industry Gross Margin (RMA)                    |                                        |                                        |                                        |                                        | 32%                                   |
| <b>Operating Expenses (excl dep, interest)</b> |                                        |                                        |                                        |                                        |                                       |
| Rent                                           | 25,000                                 | 29,000                                 | 27,000                                 | 27,000                                 | 28,900                                |
| Payroll (excluding owners)                     | 14,000                                 | 35,000                                 | 116,000                                | 120,000                                | 223,630                               |
| Employee Benefits                              | 25,000                                 | 30,000                                 | 37,000                                 | 68,000                                 | 92,612                                |
| Payroll Taxes                                  | 37,000                                 | 42,000                                 | 64,000                                 | -                                      | -                                     |
| Advertising & Marketing                        | 2,000                                  | 2,000                                  | 7,000                                  | 4,000                                  | 4,792                                 |
| Travel and Entertainment                       | 6,000                                  | 9,000                                  | 17,000                                 | 5,000                                  | -                                     |
| Merchant Fees                                  | -                                      | -                                      | -                                      | -                                      | -                                     |
| Insurance                                      | 7,000                                  | 10,000                                 | 8,000                                  | 5,000                                  | 3,900                                 |
| Legal & Professional                           | 4,000                                  | 13,000                                 | 41,000                                 | 3,400                                  | 5,870                                 |
| Office Expense                                 | 37,000                                 | 31,000                                 | 45,000                                 | 42,600                                 | 40,000                                |
| Other Expenses                                 | 19,000                                 | 21,000                                 | 51,000                                 | 17,400                                 | 151,601                               |
| <b>Owners Compensation</b>                     | <b>458,000</b>                         | <b>519,000</b>                         | <b>886,000</b>                         | <b>1,169,000</b>                       | <b>632,000</b>                        |
| <b>Total Operating Expenses</b>                | <b>634,000</b>                         | <b>741,000</b>                         | <b>1,299,000</b>                       | <b>1,481,400</b>                       | <b>1,176,000</b>                      |
| Total Operating Expenses as a % Sales          | 96.9%                                  | 80.9%                                  | 62.5%                                  | 61.9%                                  | 37.0%                                 |
| <b>Operating EBITDA</b>                        | <b>\$ 8,000</b>                        | <b>\$ 99,000</b>                       | <b>\$ 545,000</b>                      | <b>\$ 539,100</b>                      | <b>\$ 1,691,400</b>                   |
| Depreciation                                   | 0                                      | (2,000)                                | 0                                      | 0                                      | 0                                     |
| Amortization                                   | 0                                      | 0                                      | 0                                      | 0                                      | 0                                     |
| Interest Expense                               | (9,000)                                | (9,000)                                | (7,000)                                | 0                                      | 0                                     |
| Interest Income                                | 0                                      | 0                                      | 0                                      | 0                                      | 1,000                                 |
| Other Income (Expense)                         | 1,000                                  | 1,000                                  | 0                                      | 0                                      | 30,000                                |
| <b>NET INCOME BEFORE TAX</b>                   | <b>\$ -</b>                            | <b>\$ 89,000</b>                       | <b>\$ 538,000</b>                      | <b>\$ 539,100</b>                      | <b>\$ 1,622,400</b>                   |
| <b>Adjustments:</b>                            |                                        |                                        |                                        |                                        |                                       |
| 1. Comparable compensation                     | (460,000)                              | (460,000)                              | (610,000)                              | (610,000)                              | (467,500)                             |
| 2. Owners' compensation                        | 458,000                                | 519,000                                | 886,000                                | 1,169,000                              | 632,000                               |
| 3. Depreciation/Amortization                   | -                                      | 2,000                                  | -                                      | -                                      | -                                     |
| 4. Interest expense                            | 9,000                                  | 9,000                                  | 7,000                                  | -                                      | (1,000)                               |
| 5. Non-operating/One-time expenses             | 7,000                                  | 16,000                                 | 46,000                                 | 44,000                                 | 2,706.07                              |
| 6. Annualized earnings                         | -                                      | -                                      | -                                      | -                                      | 599,535                               |
| <b>Adjusted EBITDA</b>                         | <b>\$ 14,000</b>                       | <b>\$ 175,000</b>                      | <b>\$ 867,000</b>                      | <b>\$ 1,142,100</b>                    | <b>\$ 2,388,141</b>                   |
| Revenue                                        | 864,000                                | 916,000                                | 2,080,000                              | 2,361,000                              | 3,179,400                             |
| Revenue Adjustments                            | -                                      | -                                      | -                                      | -                                      | 1,059,800                             |
| <b>Adjusted Revenue</b>                        | <b>864,000</b>                         | <b>916,000</b>                         | <b>2,080,000</b>                       | <b>2,361,000</b>                       | <b>4,239,200</b>                      |
| Adj. EBITDA as a % of Revenue                  | 2.1%                                   | 19.1%                                  | 41.7%                                  | 48.4%                                  | 56.6%                                 |

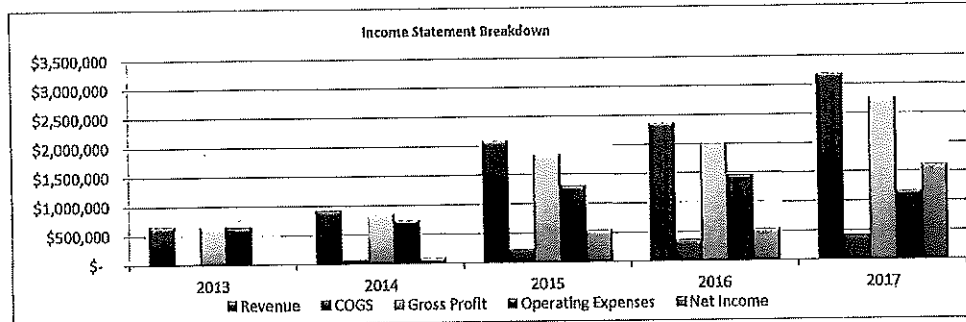
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Adjusted EBT

|                  | Jun-2013 | Jun-2014 | Jun-2015 | Jun-2016  | Projected Jun-2017 |
|------------------|----------|----------|----------|-----------|--------------------|
| Adjusted EBITDA  | 14,000   | 175,000  | 867,000  | 1,142,100 | 2,398,141          |
| Depreciation     | -        | (2,000)  | -        | -         | -                  |
| Amortization     | -        | -        | -        | -         | 1,000              |
| Interest expense | (9,000)  | (9,000)  | (7,000)  | -         | 1,000              |
| Adjusted EBT     | 5,000    | 164,000  | 860,000  | 1,142,100 | 2,400,141          |



| (\$)                                           | Jun-2013 | Jun-2014 | Jun-2015 | Jun-2016 | Jun-2017 |
|------------------------------------------------|----------|----------|----------|----------|----------|
| <b>REVENUE</b>                                 | 100%     | 100%     | 100%     | 100%     | 100%     |
| <b>Cost of Sales, excl depreciation</b>        |          |          |          |          |          |
| Inventory Cost                                 | 1.8%     | 8.3%     | 11.3%    | 15.3%    | 10.3%    |
| Labor                                          | 0.0%     | 0.0%     | 0.0%     | 0.0%     | 0.0%     |
| Other Costs                                    | 0.0%     | 0.0%     | 0.0%     | 0.0%     | 2.7%     |
| Depreciation in COS                            | 0.0%     | 0.0%     | 0.0%     | 0.0%     | 0.0%     |
| <b>Total COGS</b>                              | 1.8%     | 8.3%     | 11.3%    | 15.3%    | 13.0%    |
| <b>Gross Profit</b>                            | 98%      | 91.7%    | 88.7%    | 84.7%    | 87.0%    |
| <b>Operating Expenses (excl dep, interest)</b> |          |          |          |          |          |
| Rent                                           | 3.8%     | 3.2%     | 1.3%     | 1.1%     | 0.9%     |
| Payroll (excluding owners)                     | 2.1%     | 3.8%     | 5.6%     | 5.1%     | -0.2%    |
| Employee Benefits                              | 3.8%     | 3.3%     | 1.8%     | 2.9%     | 3.0%     |
| Payroll Taxes                                  | 5.7%     | 4.6%     | 3.1%     | 0.0%     | 0.0%     |
| Advertising & Marketing                        | 0.3%     | 0.2%     | 0.3%     | 0.2%     | 0.2%     |
| Travel and Entertainment                       | 0.9%     | 1.0%     | 0.8%     | 0.2%     | 0.0%     |
| Merchant Fees                                  | 0.0%     | 0.0%     | 0.0%     | 0.0%     | 0.0%     |
| Insurance                                      | 1.1%     | 1.1%     | 0.4%     | 0.2%     | 0.1%     |
| Legal & Professional                           | 0.6%     | 1.4%     | 2.0%     | 0.1%     | 0.2%     |
| Office Expense                                 | 5.7%     | 3.4%     | 2.2%     | 1.8%     | 1.3%     |
| Other Expenses                                 | 2.9%     | 2.3%     | 2.5%     | 0.7%     | 11.7%    |
| <b>Owners Compensation</b>                     | 70.0%    | 66.7%    | 42.6%    | 49.5%    | 19.9%    |
| <b>Total Operating Expenses</b>                | 96.9%    | 80.9%    | 62.5%    | 61.9%    | 37.0%    |
| <b>Operating EBITDA</b>                        | 1.2%     | 10.8%    | 26.2%    | 22.8%    | 50.1%    |
| Depreciation (-)                               | 0.0%     | -0.2%    | 0.0%     | 0.0%     | 0.0%     |
| Amortization (-)                               | 0.0%     | 0.0%     | 0.0%     | 0.0%     | 0.0%     |
| Interest Expense (-)                           | -1.4%    | -1.0%    | -0.3%    | 0.0%     | 0.0%     |
| Interest Income (+)                            | 0.0%     | 0.0%     | 0.0%     | 0.0%     | 0.0%     |
| Interest Expense                               | 0.2%     | 0.1%     | 0.0%     | 0.0%     | 0.9%     |
| <b>NET INCOME BEFORE TAX</b>                   | 0.0%     | 9.7%     | 25.9%    | 22.8%    | 51.0%    |
| <b>Adjusted EBITDA</b>                         | 2.1%     | 19.1%    | 41.7%    | 48.4%    | 75.4%    |

6/8/2017

Patton & Associates, LLC

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#### **Notes to Financial Statements**

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##### **Revenues**

Computer Control + Integrations has achieved tremendous growth over the past 5 years. Revenues have averaged 65% growth year over year. COTT beverages and Coca-Cola account for > 75% of their revenues and a large reason for the tremendous growth that has been experienced over the past 5 years.

##### **COGS**

On average, COGS accounts for 10% of the revenues. However, in recent years COGS as a % of sales has been increasing. The main component within COGS is inventory costs. Given the level of revenues, The Company has done an excellent job of minimizing their COGS and have figured out a process that allows them to experience strong profit margins. Moving forward the Company projects COGS to continue to slowly increase as revenues continue to grow.

##### **Expenses**

Operating expenses as a % of sales have averaged roughly 75% over the past 5 years. The main driver within the operating expenses are the Owner's Compensation. Throughout the last 5 years, there have been 8 owners drawing a salary. The Company has been able to continue to grow revenues with few expenses outside of paying their owner's and employees. The employees/owners within the Company are highly skilled and are the main assets that drive revenues.

# **NOTES TO INCOME STATEMENT ADJUSTMENTS:**

- 1,2 Executive shareholder compensation is adjusted to reflect the normal economic cost of management. Adjusted compensation is based on data obtained from management as well as The Bureau of Labor Statistics (www.bls.gov) which monitors compensation data nationwide. Data is adjusted for type of business, geographic region, size of business, and date of valuation.

Per discussion with management and our analysis, it was determined that the Company has been paying a fair market wage to its Owners for their role in the Company.

| Actual officer compensation recap |                |                |                |                  | 9 months       |
|-----------------------------------|----------------|----------------|----------------|------------------|----------------|
|                                   | Jun-2013       | Jun-2014       | Jun-2015       | Jun-2016         | Mar-2017       |
| WILLIAM SIBLEY                    | 58,000         | 162,000        | 215,000        | 230,000          | NA             |
| ERNIE FEATHERSTONE                | 91,000         | 24,000         | 24,000         | 24,000           | NA             |
| TIM CLARK                         | 97,000         | 104,000        | 224,000        | 250,000          | NA             |
| TERRY STARRETT                    | 77,000         | 84,000         | 138,000        | 137,321          | NA             |
| SCOTT DOZIER                      | 71,000         | 75,000         | 175,000        | 203,888          | NA             |
| ROBERT LEVINER                    | 64,000         | 70,000         | 110,000        | 80,141           | NA             |
| <b>Total reported on F/S</b>      | <b>458,000</b> | <b>519,000</b> | <b>886,000</b> | <b>1,169,000</b> | <b>632,000</b> |

| Normalized officer compensation recap |                |                |                |                |                |
|---------------------------------------|----------------|----------------|----------------|----------------|----------------|
|                                       | Jun-2013       | Jun-2014       | Jun-2015       | Jun-2016       | Mar-2017       |
| WILLIAM SIBLEY                        | 100,000        | 100,000        | 150,000        | 150,000        | 112,500        |
| ERNIE FEATHERSTONE                    | -              | -              | -              | -              | -              |
| TIM CLARK                             | 100,000        | 100,000        | 150,000        | 150,000        | 112,500        |
| TERRY STARRETT                        | 85,000         | 85,000         | 85,000         | 85,000         | 63,750         |
| SCOTT DOZIER                          | 100,000        | 100,000        | 150,000        | 150,000        | 112,500        |
| ROBERT LEVINER                        | 75,000         | 75,000         | 75,000         | 75,000         | 56,250         |
| <b>Total Normalized Comp.</b>         | <b>460,000</b> | <b>460,000</b> | <b>610,000</b> | <b>610,000</b> | <b>457,500</b> |

- 3 Depreciation expense is added back to arrive at EBITDA.
- 4 Interest expense is added back to arrive at EBITDA.
- 5 It is necessary to add back all expenses that would not be incurred by a new buyer. These expenses would be considered the non-operating and non-recurring once the owners transfer the business. Below are a break out of these expenses:

|                             | Jun-2013     | Jun-2014      | Jun-2015      | Jun-2016      | Mar-2017      |
|-----------------------------|--------------|---------------|---------------|---------------|---------------|
| owners dues & subscriptions | 7,000        | 7,000         | 9,000         | 7,000         | 5,074         |
| one time consulting fee     | -            | -             | 37,000        | -             | -             |
| one time recruitment fee    | -            | 9,000         | -             | -             | -             |
| key man life insurance      | -            | -             | -             | 37,000        | 27,632        |
| <b>Total</b>                | <b>7,000</b> | <b>16,000</b> | <b>46,000</b> | <b>44,000</b> | <b>32,706</b> |

- 6 We annualized earnings to reflect that through march 31, 2017 is only 9 months of the year.

No other income statement adjustments were considered necessary.

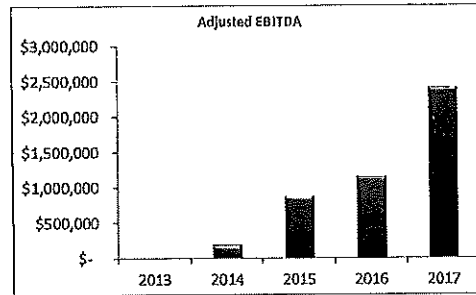
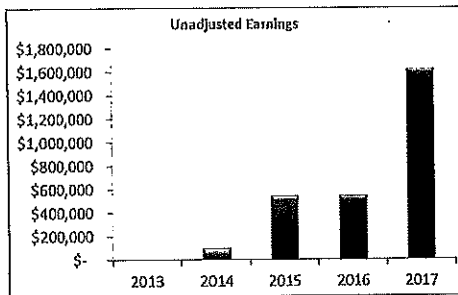
## WEIGHTED AVERAGES

The results of each year are usually weighted to reflect the expected relevance of each year toward the future sustainable results of the Company. The objective of this exercise is to arrive at reasonable estimates of what level of revenue and earnings the Company is likely to be able to sustain in the near future. A commonly used pattern is to weight the oldest year least, and the most recent year highest, in the belief that the near-term future will most closely resemble the Company's most recent experience. In this case, the Company has experience strong growth over the past 5 years and is expected to continue on this growth trajectory. We have utilized 2015, 2016, and 2017 (extrapolated) earnings margin below. However we go into more detail on expected future revenues and earnings margins in Section 6.

In this case, the year weights were set as follows:

|                                                         | 12 mos<br>Jun-2013 | 12 mos<br>Jun-2014 | 12 mos<br>Jun-2015 | 12 mos<br>Jun-2016 | Projected<br>12 Mos<br>Jun-2017 |
|---------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|---------------------------------|
| <b>Year Weights:</b>                                    | 0                  | 0                  | 0                  | 0                  | 1                               |
| Company Revenue                                         | 654,000            | 916,000            | 2,080,000          | 2,381,000          | 4,239,200                       |
| Company EBITDA                                          | 14,000             | 175,000            | 867,000            | 1,142,100          | 2,398,141                       |
| Company Return on Sales                                 | 2.14%              | 19.10%             | 41.68%             | 48.37%             | 56.57%                          |
| <b>WEIGHTED AVERAGE ADJUSTED EBITDA</b>                 |                    |                    |                    |                    | <b>2,398,141</b>                |
| <b>WEIGHTED AVERAGE ADJUSTED EBT</b>                    |                    |                    |                    |                    | <b>2,400,141</b>                |
| <b>WEIGHTED AVERAGE REVENUE</b>                         |                    |                    |                    |                    | <b>4,239,200</b>                |
| Weighted Average Adj. EBITDA as percent of Avg. Revenue |                    |                    |                    |                    | <b>56.6%</b>                    |
| Weighted Average Gross Profit Margin                    |                    |                    |                    |                    | <b>65%</b>                      |
| <b>WEIGHTED AVERAGE SDCF</b>                            |                    |                    |                    |                    | <b>2,855,641</b>                |

Earnings basis is control EBITDA, earnings before interest, taxes, depreciation and amortization.  
SDCF is sellers discretionary cash flow and is earnings available before owner is paid.



The above graphs are based on the income statement and provide a brief comparison between the net income before tax versus the EBITDA after adjustments. Further analysis of the Income statement can be found in Section 7.



## 5. BALANCE SHEET

The balance sheet analysis will evaluate the financial strength of the Company, including trends and standing as compared to industry peers. When further analysis is done, we will be able to analyze the liquidity and working capital factors that are indicative of its ability to meet obligations and support operations. Following is a summary of the assets and liabilities of the Company for the periods shown:

| Source:<br>As Reported<br>(\$)           | Internal<br>Jun-2013 | Internal<br>Jun-2014 | Internal<br>Jun-2015 | Internal<br>Jun-2016 | Internal<br>Jun-2017 |
|------------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| <b>ASSETS</b>                            |                      |                      |                      |                      |                      |
| Cash                                     | 9,000                | 10,000               | 175,000              | 632,000              | 1,850,000            |
| Accounts Receivable                      | -                    | -                    | -                    | -                    | 26,000               |
| Inventory                                | -                    | -                    | -                    | -                    | -                    |
| Other Receivables                        | -                    | -                    | -                    | -                    | -                    |
| Other Current Assets                     | -                    | -                    | -                    | -                    | -                    |
| <b>Total Current Assets</b>              | <b>9,000</b>         | <b>10,000</b>        | <b>175,000</b>       | <b>632,000</b>       | <b>1,876,000</b>     |
| Land                                     | -                    | -                    | -                    | -                    | -                    |
| Plant and Equipment                      | 67,000               | 69,000               | 69,000               | 69,000               | -                    |
| Accumulated Depreciation (-)             | (67,000)             | (69,000)             | (69,000)             | (69,000)             | -                    |
| <b>Net Plant and Equipment</b>           | <b>-</b>             | <b>-</b>             | <b>-</b>             | <b>-</b>             | <b>-</b>             |
| Other Long Term Assets                   | -                    | -                    | -                    | -                    | -                    |
| Intangibles                              | -                    | -                    | -                    | -                    | -                    |
| <b>Total Assets</b>                      | <b>9,000</b>         | <b>10,000</b>        | <b>175,000</b>       | <b>632,000</b>       | <b>1,876,000</b>     |
| <b>LIABILITIES</b>                       |                      |                      |                      |                      |                      |
| Accounts Payable                         | -                    | -                    | -                    | -                    | 10,000               |
| Short Term Debt                          | -                    | -                    | -                    | -                    | 131,000              |
| Accrued Expenses                         | -                    | -                    | -                    | -                    | -                    |
| Taxes Payable                            | -                    | -                    | -                    | 15,000               | 313,000              |
| Other Current Liabilities                | -                    | -                    | -                    | 15,000               | 454,000              |
| <b>Total Current Liabilities</b>         | <b>-</b>             | <b>-</b>             | <b>-</b>             | <b>15,000</b>        | <b>454,000</b>       |
| Long Term Debt                           | 339,000              | 300,000              | -                    | -                    | -                    |
| Shareholder Loans                        | 45,000               | 32,000               | -                    | -                    | -                    |
| Other Long Term Liabilities              | -                    | -                    | -                    | -                    | -                    |
| <b>Total Long Term Liabilities</b>       | <b>384,000</b>       | <b>332,000</b>       | <b>-</b>             | <b>-</b>             | <b>-</b>             |
| <b>Total Liabilities</b>                 | <b>384,000</b>       | <b>332,000</b>       | <b>-</b>             | <b>15,000</b>        | <b>454,000</b>       |
| <b>NET WORTH</b>                         |                      |                      |                      |                      |                      |
| Common Stock                             | 10,000               | 10,000               | 10,000               | 10,000               | -                    |
| Retained Earnings                        | (407,000)            | (355,000)            | 142,000              | 607,000              | 1,422,000            |
| Other Equity                             | 22,000               | 23,000               | 23,000               | -                    | -                    |
| Balancing Adjustment                     | -                    | -                    | -                    | -                    | -                    |
| <b>Net Worth</b>                         | <b>(375,000)</b>     | <b>(322,000)</b>     | <b>175,000</b>       | <b>617,000</b>       | <b>1,422,000</b>     |
| <b>Total Liabilities &amp; Net Worth</b> | <b>9,000</b>         | <b>10,000</b>        | <b>175,000</b>       | <b>632,000</b>       | <b>1,876,000</b>     |

# **COMMON SIZE BALANCE SHEET**

The common size balance sheet provides a comparison against the average industry ratios provided by the RMA Annual Statement Studies.

|                                   | Jun-2014         | Jun-2015       | Jun-2016       | Jun-2017       | RMA           |
|-----------------------------------|------------------|----------------|----------------|----------------|---------------|
| <b>ASSETS</b>                     |                  |                |                |                |               |
| Cash                              | 100.00%          | 100.00%        | 100.00%        | 98.81%         | 7%            |
| Accounts Receivable               | 0.00%            | 0.00%          | 0.00%          | 1.39%          | 5.10%         |
| Inventory                         | 0.00%            | 0.00%          | 0.00%          | 0.00%          | 19.20%        |
| All Other Current Assets          | 0.00%            | 0.00%          | 0.00%          | 0.00%          | 5.30%         |
| <b>Total Current Assets</b>       | <b>100.00%</b>   | <b>100.00%</b> | <b>100.00%</b> | <b>100.00%</b> | <b>38.20%</b> |
| <b>Net Fixed Assets</b>           | <b>0.00%</b>     | <b>0.00%</b>   | <b>0.00%</b>   | <b>0.00%</b>   | <b>48.70%</b> |
| Other Long Term Assets            | 0.00%            | 0.00%          | 0.00%          | 0.00%          | 11.20%        |
| Intangibles                       | 0.00%            | 0.00%          | 0.00%          | 0.00%          | 3.80%         |
| <b>Total Assets</b>               | <b>100%</b>      | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>   |
| <b>LIABILITIES</b>                |                  |                |                |                |               |
| Accounts Payable                  | 0.00%            | 0.00%          | 0.00%          | 0.53%          | 20.10%        |
| Short Term Debt                   | 0.00%            | 0.00%          | 0.00%          | 6.98%          | 6.00%         |
| Accrued Expenses                  | 0.00%            | 0.00%          | 0.00%          | 0.00%          | n/a           |
| Taxes Payable                     | 0.00%            | 0.00%          | 0.00%          | 0.00%          | n/a           |
| Other Current Liabilities         | 0.00%            | 0.00%          | 2.37%          | 16.68%         | 3.50%         |
| <b>Total Current Liabilities</b>  | <b>0.00%</b>     | <b>0.00%</b>   | <b>2.37%</b>   | <b>24.20%</b>  | <b>29.60%</b> |
| Long Term Debt                    | 3000.00%         | 0.00%          | 0.00%          | 0.00%          | 21.20%        |
| Other Long Term Liabilities       | 0.00%            | 0.00%          | 0.00%          | 0.00%          | 5.60%         |
| <b>Total Liabilities</b>          | <b>3320.00%</b>  | <b>0.00%</b>   | <b>2.37%</b>   | <b>24.20%</b>  | <b>56.30%</b> |
| <b>NET WORTH</b>                  |                  |                |                |                |               |
| Common Stock                      | 100.00%          | 5.71%          | 1.58%          | 0.00%          | 0             |
| Retained Earnings                 | -3550.00%        | 81.14%         | 98.04%         | 75.80%         | n/a           |
| Other Equity                      | 230.00%          | 13.14%         | 0.00%          | 0.00%          | n/a           |
| <b>Net Worth</b>                  | <b>-3220.00%</b> | <b>100.00%</b> | <b>97.63%</b>  | <b>75.80%</b>  | <b>44%</b>    |
| <b>Total Liab &amp; Net Worth</b> | <b>100%</b>      | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>   |

\* Founded in 1914, The Risk Management Association (RMA) is a not-for-profit, member-driven professional association whose sole purpose is to advance the use of sound risk principles in the financial services industry. RMA helps banking and nonbanking institutions identify and manage the impacts of credit risk, operational risk, and market risk on their businesses and customers. The RMA Annual Statement Studies are a source of detailed industry financial data for comparing businesses to industry in valuation reports, company/ industry ratio analyses and credit decisions.

### Working Capital Analysis

Below we analyze historical working capital needs of the Company. Our objective is to determine a level of working capital that should be transferred in the sale. This is known as pegging working capital. Any dollar amount of working capital above the pegged amount will be an increase in purchase price. Any dollar amount below the pegged working capital will be a decrease in purchase price.

|                                         | Jun-2013 | Jun-2014 | Jun-2015 | Jun-2016 | Jun-2017  |
|-----------------------------------------|----------|----------|----------|----------|-----------|
| Weight                                  | 0        | 0        | 0        | 0        | 1         |
| Historical Working Capital              | 9,000    | 10,000   | 175,000  | 617,000  | 1,422,000 |
| Adj Working Capital (excl. Cash, Debt)* | -        | -        | -        | (15,000) | (297,000) |
| as % of Sales                           | 0.0%     | 0.0%     | 0.0%     | -0.6%    | -7.0%     |
| Historical W/C % of sales               |          |          |          |          | -7.0%     |
| Weighted Avg. Revenue                   |          |          |          |          | 4,239,200 |
| Pegged Working Capital                  |          |          |          |          | -         |

### Depreciation/Capital Spending

|                          |      |       |       |       |       |
|--------------------------|------|-------|-------|-------|-------|
| Depreciation             | -    | 2,000 | -     | -     | -     |
| as % of Sales            | 0.0% | 0.2%  | 0.0%  | 0.0%  | 0.0%  |
| Weighted Avg. % of Sales |      |       |       |       | 0.0%  |
| Est Capital Spending     | NA   | 2,000 | -     | -     | -     |
| as % of Sales            | NA   | 0%    | 0.00% | 0.00% | 0.00% |
| Weighted Avg. % of Sales |      |       |       |       | -     |

### Weighted Averages

| Year Weights:                                 | Jun-2013 | Jun-2014 | Jun-2015 | Jun-2016  | Jun-2017 |
|-----------------------------------------------|----------|----------|----------|-----------|----------|
|                                               | 0        | 0        | 0        | 0         | 1        |
| WEIGHTED AVERAGE ADJUSTED NET WORTH           |          |          |          | 1,422,000 |          |
| WEIGHTED AVERAGE INVESTED CAPITAL             |          |          |          | 1,422,000 |          |
| Weighted Average Return on Adjusted Net Worth |          |          |          | 168.6%    |          |
| Weighted Average Return on Invested Capital   |          |          |          | 168.6%    |          |

## 6. PROJECTED CASH FLOW

In this Section we use projected cash flows to equity shareholders, also known as Free Cash Flow to Equity (FCFE), to calculate the amount of cash that would be available for distribution to the equity shareholders after reinvestment needs of the Company have been met and debt holders have been paid. For the purpose of valuing the Company, it was determined that net income after tax resembles the cash flow of the Company.

### PROJECTED CASH FLOW

|                                        | Mar-2018     | Mar-2019     | Mar-2020     | Mar-2021     | Mar-2022     |
|----------------------------------------|--------------|--------------|--------------|--------------|--------------|
| Revenue Growth Rate                    | 27.4%        | 23.1%        | 10.0%        | 5.0%         | 5.0%         |
| Depreciation (% Sales)                 | 0.00%        | 0.00%        | 0.00%        | 0.00%        | 0.00%        |
| Growth in Operating expense            | 3.00%        | 3.00%        | 3.00%        | 3.00%        | 3.00%        |
| Projected Revenue                      | 3,077,881    | 3,789,273    | 4,168,200    | 4,376,610    | 4,595,441    |
| COGS                                   | 543,926      | 705,648      | 939,099      | 986,054      | 1,035,357    |
| COGS (% of sales)                      | 17.7%        | 18.6%        | 22.5%        | 22.5%        | 22.5%        |
| Gross Profit                           | 2,533,955    | 3,083,625    | 3,229,101    | 3,390,556    | 3,560,084    |
|                                        | 82.3%        | 81.4%        | 77.5%        | 77.5%        | 77.5%        |
| Operating Expenses                     |              |              |              |              |              |
| Rent                                   | 29,767       | 30,660       | 31,580       | 32,527       | 33,503       |
| Payroll (excluding owners)             | 331,000      | 334,310      | 337,653      | 341,030      | 344,440      |
| Employee Benefits                      | 91,967       | 94,726       | 97,567       | 100,494      | 103,509      |
| Payroll Taxes                          | 78,103       | 79,897       | 81,739       | 83,630       | 85,573       |
| Advertising & Marketing                | 4,936        | 5,840        | 6,424        | 6,745        | 7,082        |
| Travel and Entertainment               | 5,150        | 5,305        | 5,484        | 5,628        | 5,796        |
| Insurance                              | 5,150        | 5,305        | 5,484        | 5,628        | 5,796        |
| Legal & Professional                   | 6,046        | 6,227        | 6,414        | 6,607        | 6,805        |
| Office Expense                         | 41,200       | 42,436       | 43,709       | 45,020       | 46,371       |
| Other Expenses                         | 17,922       | 18,460       | 19,013       | 19,584       | 20,171       |
| Owners Compensation                    | 610,000      | 628,300      | 647,149      | 666,563      | 686,660      |
| Total Operating Expenses               | 1,221,241    | 1,251,464    | 1,282,176    | 1,313,456    | 1,345,608    |
| Total Operating Expenses as % of Sales | 40%          | 33%          | 31%          | 30%          | 29%          |
| Operating EBITDA                       | \$ 1,312,714 | \$ 1,832,161 | \$ 1,946,925 | \$ 2,077,100 | \$ 2,214,476 |
| Operating EBITDA as % of Sales         | 43%          | 48%          | 47%          | 47%          | 48%          |
| Less: Interest Expense                 | -            | -            | -            | -            | -            |
| Less: On Going Depreciation            | -            | -            | -            | -            | -            |
| Projected Adj EBT                      | 1,312,714    | 1,832,161    | 1,946,925    | 2,077,100    | 2,214,476    |
| Income Taxes 35%                       | (459,460)    | (641,256)    | (681,424)    | (726,985)    | (775,067)    |
| Projected Earnings after Tax           | 853,254      | 1,190,904    | 1,265,502    | 1,350,115    | 1,439,410    |

The projections above were prepared by the appraiser based on information provided by the client.

|                |                                                                                                                                                                                                                                                                                                         |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Revenue growth | The compound annual growth rate over the past 4 years was 65% per year. Growth has been driven by their increased sales tied to two customers. Management has a good idea of their projected projects and revenue going forward. We have used their projections to estimate near future revenue growth. |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|      |                                                                                                                                                                     |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COGS | COGS as a % of revenue has been growing over the past three years. We utilized this trend in margins and took into account management's projections of future COGS. |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|      |                                                                                                                                                                |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rent | Management stated that current facility has the capacity to handle future projected growth of the operations. We assumed rent to grow at an annual rate of 3%. |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|

|         |                                                                                                                                                                                                                                                                                                                                                           |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Payroll | As the Company has experienced significant growth, they have had to hire new employees to support the growth. The Company has hired three new employees in the last 12 months. We have used the Company's estimated payroll figures for 2017, extrapolated them to represent a full year, and grew them by 1% to account for inflation and pay increases. |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                    |         |
|--------------------|---------|
| Richard            | 150,000 |
| Tim Clark          | 150,000 |
| Terry              | 85,000  |
| Scott              | 150,000 |
| Rob                | 75,000  |
| Total compensation | 610,000 |

|                   |                                                                                                                                                              |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Employee benefits | We kept employee benefits consistent with 2016 employee benefits as a % of employee salaries. We believe this most closely reflects expenses moving forward. |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                         |                                                                                                                         |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Advertising & Marketing | We grew advertising & marketing expense by 3% from 2017. We believe this most closely reflects expenses moving forward. |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------|

|                        |                                                                              |
|------------------------|------------------------------------------------------------------------------|
| Travel & Entertainment | We estimate travel and entertainment to grow at 3% per annum from 2017 cost. |
|------------------------|------------------------------------------------------------------------------|

|           |                                                               |
|-----------|---------------------------------------------------------------|
| Insurance | We estimate insurance to grow at 3% per annum from 2016 cost. |
|-----------|---------------------------------------------------------------|

|                      |                                                               |
|----------------------|---------------------------------------------------------------|
| Legal & Professional | We Grew Legal & Professional fees at 3% per annum. from 2016. |
|----------------------|---------------------------------------------------------------|

|                        |                                                                            |
|------------------------|----------------------------------------------------------------------------|
| Office & Other expense | We estimate office & other expense to grow at 3% per annum from 2016 cost. |
|------------------------|----------------------------------------------------------------------------|

|          |                                                                            |
|----------|----------------------------------------------------------------------------|
| Interest | We are deriving a pre-debt cash flow thus we do not subtract any interest. |
|----------|----------------------------------------------------------------------------|

|              |                                                                                                                                                                                                    |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Depreciation | Although historically the Company has not needed to invest into hard assets and equipment, we have estimated future depreciation using .1% of revenues to provide support to foster future growth. |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|          |                    |
|----------|--------------------|
| Tax rate | Estimate tax rate. |
|----------|--------------------|

|                      |                                                                                                               |
|----------------------|---------------------------------------------------------------------------------------------------------------|
| Net Income after tax | It was determined that net income after tax closely resembles cash flow available to the equity shareholders. |
|----------------------|---------------------------------------------------------------------------------------------------------------|

The financial projections presented in this report are included solely to assist in the development of the value conclusion presented in this report. These presentations do not include all disclosures required by the guidelines established by the AICPA for the presentation of financial projections. The actual results may vary from the projections, and the variations may be material.

## 7. RISK ASSESSMENT, COMPARATIVE ANALYSIS

The risk assessment and comparative analysis section is used to assist in generating a company specific risk premium that will be used in the capitalization rate buildup method. In order to better understand the risks facing the Company and its owners, it is necessary to consider how the Company's performance and operating characteristics compare to those of similar companies in the same industry.

The Company's activities are best classified in NAICS code:

334110

Development, Sales, and service of computer systems

### RISK ASSESSMENT TABLE

The following table summarizes the appraiser's assessment of the degree of risk inherent in this business, including consideration of its current financial condition. See also the Company Description.

| Risk factors             | Current status       | Risk Category | Risk Profile |
|--------------------------|----------------------|---------------|--------------|
| Years in business        | Well Established     | Low           | +            |
| Proprietary content      | High Content         | Low           | +            |
| Industry life cycle      | Growing              | Medium        | +++          |
| Industry stability       | Stable               | Low           | +            |
| Customer concentration   | > 75% to top clients | High          | +++++        |
| Relative product quality | Excellent            | Low           | +            |
| Product differentiation  | Highly Unique        | Low           | +            |
| Strength of the market   | Strong/Growing       | Low           | +            |
| Size of the market       | Moderate             | Medium        | +++          |
| Price competition        | Little/None          | Low           | +            |
| Employee turnover        | Very Low             | Low           | +            |
| Unionization             | No Union             | Low           | +            |
| Management depth         | Excellent            | Low           | +            |
| Condition of facilities  | Excellent            | Low           | +            |
| Ease of market entry     | Very Difficult       | Low           | +            |
| Ease of market exit      | Moderate             | Low           | +            |

# **ANALYSIS OF COMPANY COMPARED TO INDUSTRY NORMS**

The following table shows how the Company compares against selected industry financial measures.

| (Ratios based on<br>adjusted statements)             | Company  | Industry Rates |       |                | Risk<br>Level |
|------------------------------------------------------|----------|----------------|-------|----------------|---------------|
|                                                      | Wtd Avg  | HiQtile        | Med   | LoQtile        |               |
| Company ratios historical avg:                       |          |                |       |                |               |
| Revenue Growth Rates                                 | 65.0%    |                | 2.6%  | → Industry Avg | Low           |
| Profit Before Taxes                                  | 56.6%    | 11.0%          | 2.9%  | -1.5%          | Low           |
| Operating Expenses                                   | 37.0%    | 44.4%          | 25.9% | 15.2%          | Low           |
| Gross Profit Margin                                  | 87.0%    | 51.5%          | 28.7% | 16.6%          | Low           |
| Company ratios based on latest<br>period financials: |          |                |       |                |               |
|                                                      | Jun-2017 |                |       |                |               |
| Current Ratio                                        | 4.1      | 3.3            | 1.3   | 0.8            | Low           |
| Quick Ratio                                          | 4.1      | 1.0            | 0.3   | 0.1            | Low           |
| Debt/Equity Ratio                                    | 0.0      | NA             | 1.1   | 4.2            | Low           |
| Sales/Receivables                                    | 163      | n/c            | 26.80 | 8.00           | Low           |
| Cost of Sales / Payables                             | 0.91     | n/c            | 23.70 | 5.10           | Low           |
| Sales/Total Assets                                   | 2.26     | 1.1            | 0.7   | 0.4            | Low           |
| Sales/Working Capital                                | 2.98     | 2.1            | 6.3   | (18.7)         | Low           |
| EBIT / Interest                                      | NA       | 4.9            | 1.8   | 0.6            | Low           |

Industry sources: Unless otherwise noted, industry ratios are from RMA (Risk Management Association)

## **RECAP OF RISK FACTORS:**

|                                 | Low | Med | High |
|---------------------------------|-----|-----|------|
| Weights based on risk factors   | 13  | 2   | 1    |
| Weights based on industry norms | 12  | 0   | 0    |
| Totals                          | 25  | 2   | 1    |

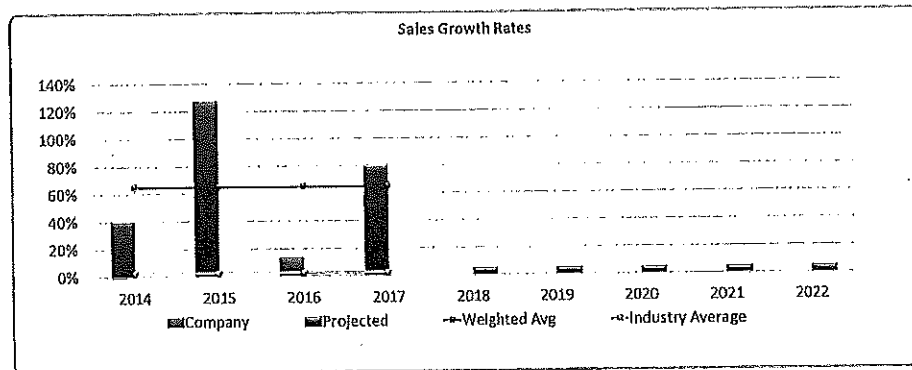
Our analysis suggests that the general risk in this business is low compared to the industry. Considering the above, the Company appears to be in above average financial condition.

## COMPARATIVE ANALYSIS

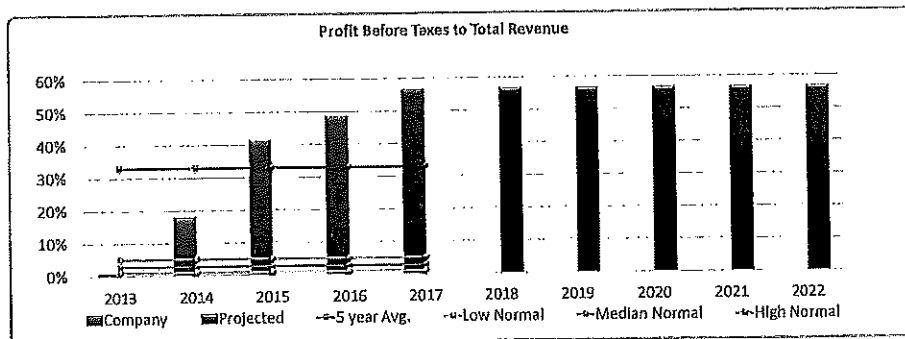
The following discussion of the Company's financial condition relative to the industry makes reference to the financial ratios presented above and in the preceding sections. We analyzed the company using financial ratios in relation to profitability, liquidity, and asset efficiency. Income statement profitability analysis evaluates trends in the Company's revenues, expenses, and profits compared to industry peers, and balance sheet analysis evaluates the financial strength of the Company including trends and standing in comparison to peers.

### PROFITABILITY AND OPERATING RATIOS

Profitability and operating ratios are derived from income statement profitability analysis and are designed to assist in the evaluation of management performance.

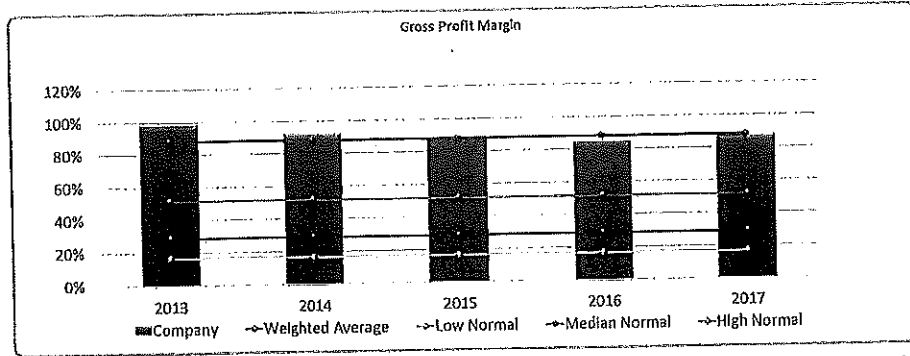


The sales growth rate of the company over the last five periods is shown above along with the projected sustainable growth rate and industry revenue growth. Over the past 4 years, the Company's sales growth has been phenomenal with a compound average growth rate of 65%. The Company has been able to utilize their strong relationships with key customers to gain business through their processes. We show projected growth over the next 5 years above.

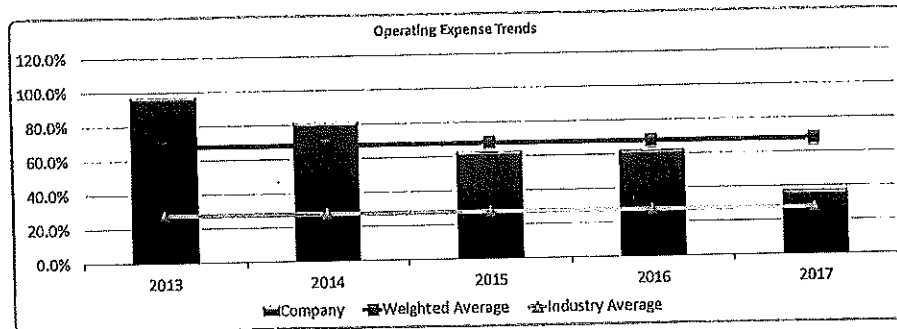


The Profit Before Taxes/ Revenue shows the percentage of total revenues that are retained by the Company. Overall, earnings have remained strong and well above the industry average. Earnings are expected to continue to be strong as the Company continues to grow their existing customers with relatively fixed costs going forward. The projected earnings of the Company are a low risk factor.





The Company's Gross Profit Margin has been consistently around 88%. The industry standards for gross profit margin comes in around 51%, showing processes that require less costs than their competitors. The trend of Gross Profit Margin has been very stable which shows excellent management of COGS.



The ability to manage operating expenses is a critical variable impacting the Company's overall profitability. The Company's operating expenses average at 67%, which is well above industry average. One must consider that the main driver within the operating expenses is owner's compensation. If one were to normalize compensation, operating expenses would fall in line with industry average. Moving forward the Company is expecting to achieve much greater efficiencies as they decrease their owner's compensation expenses. The Company's Operating Expense trend is a low risk factor.

## 8. APPROACHES TO VALUE

Business appraisers, like real estate appraisers, often think in terms of three basic approaches to valuation - Asset (or Cost) approaches, Income approaches, and Market approaches.

In real estate appraisal, the Asset Approach considers the cost to construct a property essentially identical to the one being appraised. Because the essential elements of a business are usually far more complex and far less tangible, it would be very difficult in most cases to determine the cost to create a business that is essentially the same as the one being appraised. Even the equipment used in a business can be difficult to value in this way, with such questions as whether the appropriate measure is the cost of new equipment, the depreciated cost of the existing equipment, the cost of used equipment, what the Company's equipment would sell for in liquidation, and whether to include the cost of delivery and installation. As a practical matter, Asset approaches in business valuation are usually 1) the book values of all the assets and liabilities of the business adjusted to their approximate Fair Market Values or 2) their value based on an orderly liquidation. The methods within the Asset Approach were rejected for determining the value of Computer Control + Integration Inc. because my review indicates that the value of the enterprise is driven by the ability of the collection of assets in place to generate a benefit stream and is more important in terms of valuation than the value of the underlying assets themselves. In other words, the value of the individual assets and their associated liabilities are less important than the manner in which management has utilized them.

The Income Approach traditionally refers to several methods that use one or more types of historical or projected income or cash flow as indicators of value. Value is estimated by applying a capitalization rate or discount rate that is derived from Duff & Phelps's rates of return, which are themselves derived from returns in the public stock and bond markets. These rates are then compiled to form a more suitable "private" company rate using the buildup method below. In the Section 9 we determine the discount rate, or the appropriate rate of return for investment with similar risks. In the Section 10 we show how this rate along with the earnings computed in Section 8, derive the value of the Company. After careful consideration, it was determined that the methods within the Income Approach provide a reliable determination of value for Computer Control + Integration Inc..

The Market Approach develops a value using the principle of substitution. This simply means that if one thing is similar to another and could be used (or in this case invested in) for the other, then they must be equal. Furthermore, the price of two like and similar items should approximate the value of one another. For the market approach to be used, there must be a sufficient number of comparable companies to make comparisons, or alternatively, the industry composition must be such that meaningful comparisons can be made. In this case, it was determined that the information available regarding transactions within the Company's industry was not sufficient in order to draw comparisons and conclusions of Computer Control + Integration Inc..

## 9. CAPITALIZATION RATES AND MULTIPLIERS

Revenue Ruling 59-60 says in Sec 6 in the application of certain fundamental valuation factors, such as earnings and dividends, it is necessary to capitalize the average or current results at some appropriate rate. A determination of the proper capitalization rate presents one of the most difficult problems in valuation. That there is no ready or simple solution will become apparent by a cursory check of the rates of return and dividend yields in terms of the selling prices of corporate shares listed on the major exchanges of the country. Wide variations will be found even for companies in the same industry. Moreover, the ratio will fluctuate from year to year depending upon economic conditions. Thus, no standard tables of capitalization rates applicable to closely held corporations can be formulated. Among the important factors to be taken into consideration in deciding upon a capitalization rate in a particular case are: (1) the nature of the business; (2) the risk involved; and (3) the stability or irregularity of earnings.

The discount rate represents the risk an investor is willing to accept for the potential reward an investment in the subject company will return. Different rates apply to types of businesses. It can also be considered the rate of return an investor requires on an ongoing basis. This risk is not calculated in a vacuum or sterile environment but rather it is calculated based on the factors that can be contrasted against the investment in other vehicles that are available and in the specific environment as of the valuation date.

The buildup method layers different risk estimates to build up a discount rate. The appropriate discount rate components for the Company are the risk free rate, equity risk premium, size premium and company specific premium. Subtracting the sustainable growth from the discount rate develops the capitalization rate.

The following rates are used as inputs into the buildup capitalization rate:

### Risk Free Rate

The risk free rate measures the rate of return an investor can earn without taking any additional risk. Examples of risk free returns are United States Treasury bonds. As of the valuation date, the yield on a 20 year US treasury bond was 2.79%.

### Equity Risk Premium

The equity risk premium represents the risk an investor accepts for investing in large public companies. This risk is measured by taking the returns of public companies over the last 80 years and subtracting the risk free return over the last 80 years (the average annual returns for large capitalization stocks minus average annual returns for long term government bonds). This information is published by Duff & Phelps in the 2017 Valuation Handbook: Guide to Cost of Capital. As of the valuation date, the equity risk premium was 5.97%.

### Size Risk Premium

Empirical evidence shows that the risk reward principle (the greater the risk the greater the reward) holds true in the size or capitalization of the company. The size premium represents average annual return for small capitalization stocks minus the average annual returns for large capitalization stocks. Based on 2017 Valuation Handbook: Guide to Cost of Capital, the small stock risk for a similar sized company was 5.59%.

#### Industry Risk Premium

Based upon the industry of the subject company as reported in 2016 Valuation Handbook: Guide to Cost of Capital, a publication of Duff and Phelps, the industry risk premium was calculated as 0.87%.

#### Specific Company Risk Premium

Based upon Company specific factors below, an additional investment risk is placed on the subject company. Each area is given careful consideration based on information obtained from the client, employees, company financial data, and observations made by the analyst. (+) Increased risk, (-) decreased risk, and ( ) balanced risk.

The summation requires an additional risk premium of 5%.

|                                    |     |
|------------------------------------|-----|
| Financial Risk                     | <>  |
| Financial Projections              | <+> |
| Key Person Risk                    | <+> |
| Industry Risk                      | <>  |
| Ease of Entry                      | <+> |
| Ease of Exit                       | <>  |
| Competition Risk                   | <+> |
| Proprietary Content                | <+> |
| Distribution rights                | <+> |
| Concentration                      | <+> |
| Size of Market                     | <+> |
| Strength of Market                 | <+> |
| Number of Highly Skilled Employees | <+> |
| Employee Turnover                  | <+> |
| Management Depth & Quality         | <+> |
| Covenants Not to Compete           | <+> |
| Employee Agreements                | <+> |

#### Expected Sustainable Growth Rate

We estimate 3% long term compound annual growth. This cash flow growth estimate is based upon our assessment of the Company's prospects for sustained growth in relationship of ongoing cash flow developed above.

#### Rate to Factor Conversion

The capitalization rate that was developed using the buildup method was: 15.7%

The reciprocal of this measure provides a capitalization multiple of: 6.389

| BUILDUP DISCOUNT RATE (COST OF EQUITY) |        |        |
|----------------------------------------|--------|--------|
| Risk-Free Rate of Return               | 2.79%  |        |
| Equity Risk Premium                    | 6.03%  |        |
| Small Stock Risk Premium               | 5.80%  |        |
| Industry Risk Premium                  | 0.87%  |        |
| Company Specific Premium               | 5.00%  |        |
| Discount Rate                          | 20.29% |        |
|                                        |        | 20.29% |
| Sustainable Growth                     |        | 3.00%  |
| Capitalization Rate                    |        | 17.29% |

## 10. COMPUTATION OF VALUE

### SUMMARY OF VALUATION METHOD RESULTS

We have shown the Company's current financial position, reviewed the inherent risks of the business, and have developed a rate of return that would be required by a hypothetical buyer to invest in the Company. The following section shows the conclusion of value by highlighting the approaches and methods utilized and showing the weights placed on each.

The rate of return derived and utilized in the income approach is a rate that has used marketable, liquid securities as a basis. The closely held Company that is being valued would not be considered liquid or marketable, the interest is also non-controlling meaning the shareholder does not have the ability to impact operations. We adjust for illiquidity, marketability, and lack of control (if necessary) below and explain these adjustments in greater detail in Section 11.

These results are for a going concern, so earnings and cash flow are the most meaningful.

The following table summarizes the results of the methods considered in this valuation. Details describing each method are presented in the following pages.

| VALUATION METHOD RESULTS                          | Weight | Weight % | Value     | Marketability Discount (b) | Value               |
|---------------------------------------------------|--------|----------|-----------|----------------------------|---------------------|
| a) Asset Approach                                 |        |          |           |                            |                     |
| 1. Adjusted Net Worth                             | 0      | 0%       | 1,422,000 | 0%                         | 1,422,000           |
| b) Income Approach                                |        |          |           |                            |                     |
| 1. Midyear DCF                                    | 1      | 100%     | 7,709,676 | 5%                         | 7,324,193           |
| Weighted Avg Value of Operations (a)              | 1      |          |           |                            | 7,324,193           |
| <i>Marketable, Controlling Interest Basis</i>     |        |          |           |                            |                     |
| Non-Operating Assets (c)                          |        |          |           |                            |                     |
| <b>Net Value of 100% Ownership Interest</b>       |        |          |           |                            | <b>\$ 7,324,193</b> |
| <i>Non-Marketable, controlling interest basis</i> |        |          |           |                            |                     |

#### NOTES TO THE SUMMARY OF VALUATION METHODS

- (a) We generally use as many methods as are meaningful, and then average the results, or take a weighted average based on our opinion as to which methods are the most appropriate. The reason for this is that no single valuation method utilizing a few mathematical variables can possibly capture the value of a complex, operating business. Historical methods assume that the future will be much like the past, even with allowances for anticipated changes. Future earnings and cash flow methods rely on projections that are often speculative and sometimes self-serving. Each method provides a different perspective on the value, and it is our opinion that the "true" value of the business is better revealed when it has been considered from as many perspectives as can be reasonably developed.

A discussion of the methods and the weights applied to each is included in the description of each method, on the following pages.

- (b) The adjustment for lack of marketability transforms the value from a non-marketable basis to a marketable basis. Marketability is defined as "the ability to quickly convert property to cash at minimal cost". The income approach uses capitalization and discount rates derived from the stock market which reflects very marketable securities. We discuss the purpose and conclusion of this discount in Section 11.
- (c) Non-operating assets consist of assets held in the Company that are not used in the course of doing business, i.e., the business would operate exactly the same without these assets. We determined that there were no non-operating/excess assets on the books as of the valuation date.

#### 10a. ASSET APPROACH

##### 10a.1 ADJUSTED NET WORTH

Net Worth as adjusted simply summarizes the net assets and liabilities of the Company. It is mostly of interest as an indicator of the financial reserves available to the owners and as an indicator of how much the owners have invested in the Company. This method ignores the value of revenue, earnings, and cash flow and is usually considered as an indicator of value only when the earnings methods indicate values lower than Net Worth.

The value of the Company lies within its tangible and intangible assets. As a result, the Adjusted Net Worth method is not a good indicator of the Company's value under these circumstances.

|                         | (\$)      |
|-------------------------|-----------|
| Book Value of Net Worth | 1,422,000 |
| Net Adjustments         | 0         |
| Adjusted Net Worth      | 1,422,000 |

## 10b. INCOME APPROACH

### 10b.1 MIDYEAR DISCOUNTED CASH FLOW (DCF)

This method is frequently used to project what operations of the Company are going to look like in the future. This method reflects expectations for both the amounts and the timing of future cash flows, as well as changes on the balance sheet which can have a major impact on cash flow. Financial projections for both the income statement and the balance sheet are an essential element, of course, which introduces the possibility of overly optimistic or pessimistic projections.

In this method, cash flows for each year of the projection period are discounted using the rate developed in Section 9. The mid-year discount rate assumes the investor of the interest ownership is receiving cash flows evenly throughout the year and prevents discounting the future value too much. The terminal year value is then capitalized using the capitalization rate developed in Section 9.

$$\frac{NCF_1}{(1+k)^{.5}} + \frac{NCF_2}{(1+k)^{1.5}} + \dots + \frac{NCF_n}{(1+k)^{n-.5}} + \frac{NCF_n + (1+g)}{(k-g)} \cdot \frac{1}{(1+k)^{n-.5}}$$

|      |                                                |
|------|------------------------------------------------|
| PV   | Present value                                  |
| n    | Projection period                              |
| NCF1 | Expected ongoing cash flow                     |
| k    | Discount Rate Calculated in Section 9          |
| g    | Expected long-term growth rate into perpetuity |

#### DISCOUNT RATE

|                                                |        |
|------------------------------------------------|--------|
| Equity Cash Flow after Tax capitalization rate | 17.29% |
| Company long term growth rate                  | 3.00%  |
| Discount rate                                  | 20.29% |
| Company 10 yr avg projected growth rate        | 6.81%  |

#### CALCULATION OF VALUE

Following are the projected earnings for the company

| Year Ending (n)                                    | Revenue Growth (g) | Projected Revenue | Margin | Project Net Cash flow (NCF) | (n)  | Mid-year Adj Disc Factor | Present Value |
|----------------------------------------------------|--------------------|-------------------|--------|-----------------------------|------|--------------------------|---------------|
| Jun-18                                             | 5.0%               | 3,077,881         | 27.7%  | 853,284                     | 0.50 | 0.9118                   | 778,006       |
| Jun-19                                             | 23.1%              | 3,789,273         | 31.4%  | 1,190,904                   | 1.5  | 0.7580                   | 902,706       |
| Jun-20                                             | 10.0%              | 4,168,200         | 30.4%  | 1,265,502                   | 2.5  | 0.6301                   | 797,393       |
| Jun-21                                             | 5.0%               | 4,376,610         | 30.8%  | 1,350,115                   | 3.5  | 0.5238                   | 707,190       |
| Jun-22                                             | 5.0%               | 4,595,441         | 31.3%  | 1,439,410                   | 4.5  | 0.4355                   | 626,863       |
| Jun-23                                             | 5.0%               | 4,825,213         | 31.3%  | 1,511,360                   | 5.5  | 0.3620                   | 547,120       |
| Jun-24                                             | 5.0%               | 5,066,474         | 31.3%  | 1,586,949                   | 6.5  | 0.3010                   | 477,672       |
| Jun-25                                             | 4.0%               | 5,269,132         | 31.3%  | 1,650,427                   | 7.5  | 0.2502                   | 412,937       |
| Jun-26                                             | 3.0%               | 5,427,206         | 31.3%  | 1,699,940                   | 8.5  | 0.2080                   | 353,587       |
| Jun-27                                             | 3.0%               | 5,590,023         | 31.3%  | 1,750,938                   | 9.5  | 0.1729                   | 302,737       |
| Terminal Value = last period x (growth) / cap rate |                    |                   |        | 10,430,689                  | 9.5  | 0.1729                   | 1,803,466     |

Present value of future cash flow (based on after-tax cash flow) 7,709,676

**Net Valuation** (Freely-marketable, controlling interest basis) **7,709,676**



## 11. ADJUSTMENTS TO VALUE

### ADJUSTMENT FOR LACK OF MARKETABILITY

Marketability considers the liquidity of the interest, that is, how quickly and certainly it can be converted to cash at the owner's discretion. The market pays a premium for liquidity or, conversely, exacts a discount for a lack of it.

There are almost always differences in the marketability of public company stocks and interest in closely held companies. When public stocks have provided the market basis for valuing a closely held company, a discount for lack of marketability is usually necessary due to the difference in liquidity between actively traded public securities and closely held stock. Further, there may be reason to discount a value derived from analysis of market transactions involving sales of closely held companies, even though the transaction usually represents the sale of a closely held interest.

The undiscounted value is based on actual sales of small businesses similar to this one, and therefore represents a "marketable" value, but it is not "freely marketable" in the same sense as most public stock. While the undiscounted value represents the amount the owner would be likely to eventually receive in a sale of this business, it would still take some time to prepare for, arrange and complete a sale. Further, for a minority interest, the time to reach liquidity could be much longer, if ever, because the minority interest cannot force a sale of the business in most circumstances. This adjustment brings that potential future liquidity value to its present value.

To complicate things, discounts for lack of marketability for controlling interests are different than discounts for lack of marketability for minority interests. Unlike in minority interest transactions, there is no empirical transaction database from which to draw guidance for quantifying discounts for lack of marketability for controlling interests.

#### Marketability of Controlling Interests

The rationale for a lack of marketability discount for a controlling interest of a closely held company is that the owner of closely held business who wishes to liquidate a controlling interest generally faces several issues:

- 1 Uncertain time horizon to complete the offering or sale, usually many months or even several years
- 2 Costs to prepare for and execute the offering or sale
- 3 Risk concerning the eventual sale price
- 4 Noncash and deferred transaction proceeds, e.g., Stock swaps, seller financing, contingent payments
- 5 Inability to hypothecate (i.e. the inability to borrow against the estimated value of the stock)

The most logical base from which to take the discount is the anticipated buyout price (i.e. the price the owner expects to receive prior to all transaction costs). In order to complete a sale and receive the proceeds, the Company and owner generally will have to complete several tasks:

- 1 Create accounting records satisfactory to buyers.
- 2 Incur legal expenses to document Company attributes, often including representations and warranties regarding the state of various aspects of the Company (contingent liabilities).
- 3 Utilize substantial management time to facilitate the above and cure negative factors that would be undesirable to the typical buyer (i.e. take nonperforming relatives off the payroll).
- 4 Find a buyer or buyers (easier for some kinds of companies than others).
- 5 Engage in negotiations with one or more buyers over an extended time.

The value must reflect both the potential risks, and the accomplishment of the above listed tasks.

The Company is being valued as of a certain date. Generally, the Company's stockholders have not completed any of the above items as of the valuation date. Were the Company's management to have offered the Company for sale at the valuation date it would still have to complete the above tasks and it would be exposed to the stated risks during the sale process. The costs of accomplishing these tasks and the transaction costs of sale, must be reflected in the discount for lack of marketability when comparing value at the valuation date to any expected future proceeds.

Accomplishing these necessary steps takes time. Therefore, eventual expected proceeds need to be discounted to allow for the time value of money. Also, there is no guarantee that the time value of money will be offset by the expected positive cash flows during the holding period. Accordingly, the owner would be expected to accept a discount from the eventual selling price, if the business could be sold for cash within a few days, rather than the probable months or years required for the typical selling cycle.

## 12. CASH FLOW COVERAGE

The following calculations confirm whether a sale of the business at the net value can be justified by the cash flow of the business, assuming that the business was sold on realistic terms. This analysis considers whether the value is realistic from the point of view of a willing buyer.

|                                                                                       |              |           |
|---------------------------------------------------------------------------------------|--------------|-----------|
| Value of Equity Operations                                                            | [Section 10] | 7,324,193 |
| Cash Assumed                                                                          |              | 0         |
| Current Debt being assumed                                                            |              | 0         |
| Down Payment on Purchase                                                              | 20.00%       | 1,464,839 |
| Balance to Pay, above existing debt                                                   |              | 5,859,354 |
| Interest Rate on new Purchase Debt                                                    | 5.0%         |           |
| Years to Pay                                                                          | 10           |           |
| Annual Debt Service on Balance to Pay<br>(Interest and Principal, one annual payment) |              | \$758,813 |

### AMORTIZATION OF PURCHASE DEBT

|                   | Jun-18    | Jun-19    | Jun-20    | Jun-21    | Jun-22    |
|-------------------|-----------|-----------|-----------|-----------|-----------|
| Beginning Balance | 5,859,354 | 5,393,509 | 4,904,371 | 4,390,776 | 3,851,502 |
| Interest          | 292,968   | 269,675   | 245,219   | 219,539   | 192,575   |
| Principal         | 465,845   | 489,138   | 513,595   | 539,274   | 568,238   |
| Ending Balance    | 5,393,509 | 4,904,371 | 4,390,776 | 3,851,502 | 3,285,264 |

### CASH ON CASH RETURN ON DOWN PAYMENT

|                                     |           |           |           |           |           |
|-------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Projected Cash Flow after Tax       | 1,629,326 | 1,710,792 | 1,798,332 | 1,886,148 | 1,980,456 |
| Tax Benefit, Purchase Interest      | 102,539   | 94,386    | 85,826    | 76,839    | 67,401    |
| Purchase Payments                   | (758,813) | (758,813) | (758,813) | (758,813) | (758,813) |
| Cash Flow after Purchase            | 973,051   | 1,046,365 | 1,123,345 | 1,204,174 | 1,289,044 |
| Debt/Equity including purchase debt | 1.88      | 1.72      | 1.55      | 1.38      | 1.17      |
| Coverage Ratio                      | 2.28      | 2.38      | 2.48      | 2.59      | 2.70      |

### Coverage Ratio for \$3.1 million dollar loan

|                                   |           |           |           |           |           |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|
| Projected Cash Flow after Tax     | 1,736,293 | 1,808,579 | 1,884,620 | 1,964,612 | 2,048,763 |
| Tax Benefit, Purchase Interest    | 65,100    | 60,161    | 54,926    | 49,376    | 43,494    |
| Purchase Payments (Interest+debt) | (421,191) | (421,191) | (421,191) | (421,191) | (421,191) |
| Cash Flow after Purchase          | 1,380,203 | 1,447,549 | 1,518,355 | 1,592,798 | 1,671,066 |
| Coverage Ratio                    | 4.28      | 4.44      | 4.60      | 4.78      | 4.97      |

Generally, a Cash Return on Down Payment in the range of 20-30% is considered satisfactory, although under some circumstances a higher or lower return might be appropriate. At the same time, the Debt/Equity ratio should be within a realistic range for bank financing, usually less than 2 to 2.5. Finally, the Loan to Coverage Ratio should be higher than 1.2. Conditions outside these ranges will generally require seller financing.

### 13. CERTIFICATION

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We certify that, to the best of our knowledge and belief,

The analyses, opinions, and conclusions of value included in this valuation report are subject to the specified assumptions and limiting conditions, and they are the personal analyses, opinions, and conclusion of value of the valuation analyst.

The economic and industry data included in the valuation report have been obtained from various printed or electronic reference sources that the valuation analyst believes to be reliable. The valuation analyst has not performed corroborating procedures to substantiate that data.

The valuation engagement was performed in accordance with the American Institute of Certified Public Accountants Statement of Standards for Valuation Services.

The parties for which the information and use of the valuation report is restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.

The analyst's compensation is fee-based and is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the estimate of value or the attainment of a stipulated result.

The valuation analyst has no obligation to update the report or the opinion of value for information that comes to his attention after the date of the report. This report was prepared under the direction of Troy Patton, CPA/ABV.

*Patton & Associates*

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Patton & Associates, LLC  
Jun 08, 2017

#### 14. APPRAISER'S CREDENTIALS

Troy C. Patton, CPA/ABV  
9000 Keystone Crossing #630  
Indianapolis, IN 46240  
(800) 800-1776

As a Partner of Patton and Associates, LLC, Troy serves as partner in charge of the firm's Valuation and Litigation practice. In addition to his CPA certification, he has obtained his Accredited Business Valuation certification by the AICPA. Troy has been called as an expert in state and local courts, and has testified in courts, arbitration, and depositions in matters involving valuation and financial issues.

Troy has been a speaker with various State CPA Societies and to groups of CPA's and Accountants regarding business valuations. He teaches a CLE course in Indiana to Attorneys discussing marital value. He is often seen as an outsourcing arm for many CPA's across the country and currently prepares 8-14 valuations per month for closely held and publicly traded businesses across many different types of companies and professional practices. He is also a resource to nearly a half dozen banks for valuation issues involving SBA lending.

Education: Miami University, Oxford, OH, B.S. Accountancy - 1992

Experience: Patton and Associates, LLC – Managing Partner.

January 2005 – Present

Leads the Business Valuation Group as Analyst and Litigation expert.

30% of our engagements are for Marital Value/Enterprise vs. Personal Goodwill

70% are for corporate planning purposes, which include estate, buy/sell, stock options, SBA lending, shareholder disputes, damages, etc.

Archer Investment Corporation, Inc. – President

Responsible for the management of The Archer Funds.

July 2005 – Present

Prepare Business Valuations for Intrinsic Value/FMV for Publicly Traded Companies

(Stock Options, Phantom Stock)

Responsible for the day to day operations of an SEC RIA, Archer Investment Corporation, including compliance, supervision, registrations, etc.

Ernst & Young, LLP – Audit Senior. 1992-1995

Correlated Products, Inc. – CFO/Treasurer. 1995-1996

Frontier CPA Group – Managing Partner of 10 offices throughout Indiana 1996-2004

(negotiated the sale to a billion dollar worldwide accounting firm in 2004)

Accounting and technical experience include:

- Preparation of extensive Business Valuations across all industries.
- Extensive consulting regarding Business Valuations for buy-sell, divorce, estate, liquidation, minority interests
- Direct and assist executives/owners in implementation of strategic planning concepts.
- Provide attorneys extensive consulting on non prepared valuations
- Preparation of financial statements for public and private entities.
- Preparation of registration statements, 10K filings, and other financial presentations for the SEC and other agencies.
- Presentation of financial results and other matters to executive clientele.
- Assisted in the preparation of engagement proposals and budgeting.
- Train colleagues in technical and technological matters.

**Achievements, presentations and professional affiliations:**

- American Institute of Certified Public Accountants.
- Indiana CPA Society
- 2008 Top 40 CPA's in the U.S.A. by Thomson/Reuters
- 2005 Named Outstanding CPA in public practice by the Indiana CPA Society
- Editorial Board for Accounting Technology -- responsible for shaping the discussion of practice management and areas of interest to the CPA community (2009/10)
- 1990 Member of USA Wrestling team to compete in Yugoslavia against communist block countries.
- Recognized in 2003 as top 5 CPA's in Indiana under 35.
- Guest speaker for CPA Societies in Valuations of CPA Firms.
- Over 150 hours of Continuing Professional Education in last three years.
- Guest Speaker for the American Association of Individual Investors for their Annual Conference with 800 attendees -- 2008
- Developed the Valuation Template for one of the nation's leading publicly traded banks for lending to professional practices
- Published, "Three things every Accountant should know about Business Valuations" for New Clients, Inc. Distributed to over 10,000 CPA's across the country. (2008)
- Consultant to the American Dental Association
- Lead Instructor for the ADA for courses on Dental practice valuation, operations, financing, etc.
- Lead Instructor and author of the CPE class: "How to consult on value without being an expert in valuations."
- Lead Instructor for CLE class: "Business Valuation and Divorce, the Complicated Relationship"
- Has Testified in Virginia, Florida, Indiana, Ohio, and California. Has prepared valuations in every State of the United States except for Alaska.
- Lead Instructor for Clear Law Institute: "Valuations For Businesses under \$10 million in Revenue"

## **16. SOURCES OF INFORMATION**

In the course of this study, the following documents and materials were considered:

Federal Tax Returns 12/31/2012 - 12/31/2016

Internal Financials 12/31/2012 - 3/31/2017

Detailed Revenue 2014-2016

AR Detailed

Offering Memorandum

Management Interview conducted by Kurt Tobin, CVA

Management Statements and Projections

Statment Studies, Risk Management Associates - summary statistics on more than 600 industries, based on approximately 80,000 financial statements submitted by commercial banks.

IBIS World - Industry Profiles and Outlooks

Key Value Data

Bureau of Labor Statistics salary and compensation database

Federal Reserve Bank, Monthly Summary of Economic Activity

Blzcomps Database of Closely Held Company Sales, describing sales of closely held companies with sales prices typically in the range of \$50,000 to \$5 million.

Pratt's Stats Database, describing sales of closely held companies of all sizes.

## 16. CONDITIONS AND ASSUMPTIONS

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### Conditions

The historical financial information presented in this report is included solely to assist in the development of the value conclusion presented in this report, and it should not be used to obtain credit or for any other purpose. Because of the limited purpose of this presentation, it may be incomplete and contain departures from generally accepted accounting principles. We have not audited, reviewed, or compiled the historical accounting statements and express no assurance on them. The financial information presented in this report includes normalization adjustments made solely to assist in the development of the value conclusion presented in this report. Normalization adjustments are hypothetical in nature and are not intended to present restated historical results or forecasts of the future in accordance with AICPA guidelines.

Readers of this business valuation report should be aware that business valuations are based on future earnings potential that may or may not materialize. Any financial projections presented in this report are included solely to assist in the development of the value conclusion presented in this report. These presentations do not include all disclosures required by the guidelines established by the AICPA for the presentation of financial projections. The presentation includes financial projections. The actual results may vary from the projections, and the variations may be material.

This report should not be used to obtain credit or for any purposes other than those listed in this valuation. This report is only to be used in its entirety, and for the purpose for which it was prepared. No third parties should rely on the information contained in this report without the advice of their attorney or accountant, and without confirming for themselves the information contained herein.

The value of a business changes over time in response to changes in its markets, the economy, its internal operations, and a myriad of other factors both within and outside the control of its owners and managers. The value discussed in this report was developed using data pertinent to a specific point in time. The value conclusions in this report therefore cannot be assumed to be meaningful at any other point in time.

We have no responsibility to update this report for events and circumstances occurring subsequent to the date of this report. We do not purport to be guarantor of value. Valuations of closely-held companies is an imprecise science, with value being a question of fact, and reasonable people can differ in their estimates of value. We have, however, used conceptually sound and commonly accepted methods and procedures of valuation in determining the estimate of value in this report.

The valuation analyst, by reason of performing this valuation and preparing this report, is not to be required to give expert testimony nor be in attendance in court or at any government hearing with reference to the matters contained herein.

#### **General Assumptions**

The opinion of value given in this report is based on information provided in part by management of the Company and other sources contained herein. This information is assumed to be accurate and complete; we have not audited or attempted to confirm this information for accuracy or completeness.

We have relied upon the representations contained in the public and other documents in our possession concerning the value and useful condition of all investments in securities or partnership interests, and any other assets or liabilities except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances, or that the owner has good title to all the assets.

We have also assumed that the business will be operated prudently and that there are no unforeseen adverse changes in the economic conditions affecting the business, the market, or the industry. This report presumes that the management of the Company will maintain the character and integrity of the Company through any sale, reorganization or reduction of any owner's or manager's participation in the existing activities of the Company.

We have been informed by management that there are no environmental or toxic contamination problems, and no significant lawsuits, or any other undisclosed contingent liabilities which may potentially affect the business, except as may be disclosed elsewhere in this report. We have assumed that no costs or expenses will be incurred in connection with such liabilities, except as explicitly stated in this report.

It is implicit in the value calculations that in the event of a sale of the business to a willing buyer, the current management would remain in place at least long enough to effect an orderly transition with no loss of essential management skills and productivity.

In the event of a sale, it is also implicit in the calculation of value that the current owners would be willing to commit to a non-competition agreement. Such agreements are an element of almost all business sales, and the absence of such an agreement would generally reduce the value of the business as a going concern.



## 17. REVENUE RULING 59-60

This valuation was conducted under guidelines established by Treasury Department and the Internal Revenue Service in its determination of fair market values of closely held business enterprises for income tax, estate tax, gift tax, and other related purposes. The Internal Revenue Code, Section 2031(b), specifies that the value of stocks and securities of corporations not listed on an exchange or freely traded "...shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities, of corporations engaged in similar line of business which are listed on an exchange."

The basic rules for tax-related valuations were laid down in Revenue Ruling 59-60 issued by the Internal Revenue Service in March 1959. In Revenue Ruling 65-193 the Treasury Department extended the use of Revenue Ruling 59-60 to include the determination of fair market value of closely held businesses for income and other tax purposes. These rulings have been widely adopted as the primary authority for determination of fair market value of a business enterprise in virtually all valuation situations.

The rulings define "fair market value" as follows:

"...the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts."

Court decisions frequently state, in addition, that the hypothetical buyer and seller are assumed to be able and willing to trade and be well informed about the property and concerning the market for such property.

This definition is widely accepted and used in courts of law and in tax literature and is the most widely used approach in valuing closely held securities. It is the basic definition upon which we rely in determining the fair market value of a Company's stock.

Revenue Ruling 59-60 requires that the following factors be considered:

- 1 The history of the Company and the nature of the business.  
See Section 3. COMPANY DESCRIPTION
- 2 General economic outlook and the outlook of the particular industry.  
See Section 3. COMPANY DESCRIPTION  
See Appendix I ECONOMIC CONDITIONS AND OUTLOOK  
See Appendix II INDUSTRY PROFILE
- 3 Book value of the stock and the financial condition of the business.  
See Section 5. BALANCE SHEET  
See Section 7. RISK ASSESSMENT, COMPARATIVE ANALYSIS
- 4 Earnings capacity of the Company.  
See Section 4. INCOME STATEMENT
- 5 Dividend paying capacity.  
See Section 10. COMPUTATION OF VALUE  
See Section 6. HISTORICAL AND PROJECTED CASH FLOW
- 6 Whether the enterprise has goodwill or other intangible value.  
See Section 2. CONCLUSION OF VALUE  
See Section 10. COMPUTATION OF VALUE
- 7 Sales of stock and the size of the block to be valued.  
See Section 10. COMPUTATION OF VALUE
- 8 Market prices of stock other comparable companies traded on exchanges.  
NO COMPARABLE TRANSACTIONS WERE FOUND

These eight factors are fundamental to any appraisal of closely held securities. They are not, however, all-inclusive. All other factors relevant to the subject valuation must also be considered. Specifically, an appraiser must consider comparability of accounting methods and discounts for fair market value determinants.

## **Appendix I: Economic Overview**

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After strong improvements in many areas since November, the national economic picture dimmed in March, although the downgrades were likely to be temporary. Most notably, after growing faster than expected in Q4 2016, the U.S. economy weakened in the first quarter of 2017, according to the U.S. Commerce Department's first estimate of Q1 economic growth. Overall, the first quarter's growth came in at a meager 0.7%, its weakest performance in three years, following a 2.1% gain in Q4 2016. The situation was a virtual repeat of 2016 as a whole, as the economy last year grew by an anemic 1.6%, down from the already modest 2.6% growth in 2015 and the economy's worst annual performance since 2011. Likewise, after adding 219,000 new jobs in January and 216,000 in February, the U.S. economy in March created just 98,000 new nonfarm jobs, the lowest since last May, the U.S. Labor Department reported. More positively, the U.S. unemployment rate fell from 4.7% in February to 4.5% in March, a nearly 10-year low.

Other concerns persist. Although the budget deficit for FY 2015 fell to a seven-year low, the FY 2016 deficit rose by 33.8% to \$587.4 billion, and both Federal spending and taxation again hit new highs. That said, the consumer outlook remained upbeat, with the Conference Board and Bloomberg gauges hitting 16- and 10-year highs, respectively, although two other measures retreated slightly. In other areas, on the positive side, the U.S. national debt actually fell by \$114 billion from the previous month's level, industrial production was up by 0.5%, new- and existing-home sales rose sharply, wages were up, consumer prices fell by 0.3%, and crude oil and gasoline prices were stable. On the negative side, stocks' post-election surge ended (albeit after the Dow had reached 21,000 for the first time), auto sales fell for a third straight month, and retail sales dipped.

### **U.S. Economic Growth Weakens to 0.7% in First Quarter**

After growing more strongly than expected in 2016's fourth quarter, the U.S. economy weakened in the first quarter of 2017, according to the U.S. Commerce Department's first estimate of the first quarter's economic growth, released on April 28. Overall, the Q1 growth rate came in at a meager 0.7%, its weakest performance in three years, following a 2.1% mark in the fourth quarter of 2016. Economists, however, predicted that the slowdown would be temporary. Previously, for 2016 as a whole, the economy grew by only 1.6%, down sharply from the already modest 2.6% growth rate in 2015 and the economy's worst annual performance since 2011. The last time the U.S. economy topped an annual 3% growth rate—the historical average is 3.3%—was in 2005.

### **U.S. Job Market Sags in March**

After adding a downwardly revised 219,000 new jobs in January and a downwardly revised 216,000 new jobs in February, the U.S. economy in March created just 98,000 new nonfarm positions, the lowest since last May, the U.S. Labor Department reported on April 7. Economists had expected an increase of 180,000 jobs for the month. At the same time, January's and February's gains were lowered by 19,000 for each month. More positively, after having fallen from 4.8% in January to 4.7% in February—the lowest level since August 2007—the U.S. headline unemployment rate dove further to 4.5% in March, reaching a decade-long low, the U.S. Labor Department said on April 7.

### **Budget Deficit Up in FY 2016**

After topping \$1 trillion each year from FY 2009 to FY 2012, the Federal budget deficit fell sharply from FY 2012's \$1.08 trillion level to \$438.9 billion in FY 2015, which ended on September 30, 2015. However, the Federal budget deficit jumped back up to \$587.4 billion in FY 2016, which ended on September 30, 2016—representing an increase of 33.8% over the FY 2015 level (although the final FY 2016 figure was down from the \$600 billion projection issued for FY 2016 last July 15).

#### **U.S. National Debt Falls Back**

After hitting a record \$19.908 trillion in November, the U.S. national debt ended 2016 by slipping to \$19.749 trillion. Thereafter, the debt by Inauguration Day 2017 reached \$19.944 trillion and climbed further to \$19.960 trillion on February 28. But by March 31, it had declined to \$19.846 trillion—a one-month falloff of \$114 billion.

#### **Federal Spending and Tax Collections Again Set New Records**

Federal spending hit another all-time record in FY 2016, which ended on September 30, 2016, with spending for the year coming in at an estimated \$3.854 trillion vs. \$3.688 trillion in FY 2015, an increase of 4.5%. The government also took in another new record of \$3.27 trillion in taxes in FY 2016, up from the \$3.25 trillion collected the previous year.

#### **Stocks' Post-Election Surge Ends**

U.S. stocks' post-election surge that took place from November through February continued into the first part of March. After closing above 20,000 on February 3, the Dow Jones Industrial Index remained above that level throughout the month. Then, on March 1, the Dow closed above 21,000 (21,115.55) for the first time ever, in what was one of the fastest 1,000-point advances in the index's history. After remaining above 21,000 through March 3, however, the Dow, along with the S&P 500, went on to post their first 1% fall in 5 months, declining by 1.2% and ending the longest streak of stock-market calm since 1995. Nevertheless, for the entire first quarter of 2017, the S&P 500 posted its biggest quarterly gain since the end of 2005, rising by 5.5%.

#### **Industrial Production Up by 0.5% in March**

After inching up by an upwardly revised 0.1% in February, U.S. industrial production rose by a solid 0.5% in March, the U.S. Federal Reserve reported on April 18.

#### **Productivity Sags in the Fourth Quarter**

After falling for three straight quarters, U.S. nonfarm productivity—or the level of employee output per hour—bounced back by a downwardly revised 3.3% in 2016's third quarter before sagging to a 1.3% growth rate in the fourth quarter.

#### **U.S. Auto Sales Fall Again in March**

After posting a record high in 2016 following strong gains in November and December, U.S. auto sales retreated by 2.0% in January and by another 1.1% in February before declining by 1.6% in March, according to an April 3 report from auto-data firm Autodata.

#### **Obamacare Premiums to Rise by 25% in 2017**

The U.S. Department of Health & Human Services announced last October 26 that premiums for midlevel Obamacare health plans would rise by a projected average of 25% in 2017 in the 39 states that use the Federal

HealthCare.gov—triple the increase in premiums for 2016—with rates in some states climbing by between 40% and 116%.

#### **New- and Existing-Home Sales Up Sharply**

After rebounding in January and rising sharply in February, U.S. single-family new-home sales in March climbed to a eight-month high, the U.S. Commerce Department said on April 25. At the same time, after reaching a 10-year high in January, the number of contracts to buy previously-owned U.S. homes fell in February before rebounding in March to reach another 10-year high, the National Association of Realtors (NAR) said.

#### **Consumer Confidence Mixed But Still Strong in March**

After post-election surges, consumer confidence in March was mixed but still strong. Notably, the Conference Board's Consumer Confidence Index hit a 16-year-high and Bloomberg's Consumer Comfort Index reached a 10-year high. Two other indices fell.

#### **Wages Increase in March**

After steadily increasing from December to February, U.S. hourly wages edged up again in March from February's \$26.09 to \$26.14, the U.S. Labor Department reported on April 7. March's figure was 2.8% higher than that of one year earlier.

#### **Consumer Spending Unchanged in March**

Following gains of 0.2% in January and 0.1% in February, U.S. consumer spending was unchanged in March, the U.S. Commerce Department reported.

#### **Retail Sales Dip in March**

After falling by 0.3% in February (vs. an originally reported 0.1% gain), U.S. retail sales declined by 0.2% in March, the U.S. Department of Commerce reported on April 14.

#### **Consumer Prices Fall by 0.3% in March**

The U.S. Consumer Price Index (CPI) for all goods fell by 0.3% in March after having jumped by 0.6% in January (its largest increase in four years) and having edged up by 0.1% in February. The index for all items less food and energy declined by 0.1% in March after having risen by 0.3% in January and by 0.2% in February.

#### **Crude Oil and Gasoline Prices Stable in March**

After hitting \$54.00 per barrel on February 28, crude oil prices on March 8 dipped below \$50 a barrel for the first time since December before ticking back up to \$50.54 per barrel on March 31. Likewise, after slipping to \$2.23 per gallon on February 27, the average retail price of a gallon of regular unleaded fuel held at that level on March 27.

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**CONSENT ORDER COMPELLING  
DISCOVERY**

**THIS MATTER** comes before the Court upon the Motion to Compel Discovery of Plaintiff Julia Sibley-Jones, as Personal Representative of the Estate of William A.L. Sibley, Jr. (“Plaintiff”), pursuant to Rule 37, SCRPC. Before the hearing, the Court was advised that the parties had resolved Plaintiff’s motion by Defendant Decide4action, Inc.’s (“Defendant”) agreeing to respond fully to Plaintiff’s Second Interrogatories and Requests for Production of Documents to Defendant, in compliance with Rules 33 and 34, S.C.R.C.P., including, without limitation, a signed verification, as set forth herein.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT**, on or before January 18, 2021, Defendant shall:

1. Fully answer Plaintiff’s Interrogatory 25, setting forth an itemized statement of all damages claimed, describing in detail the damages claimed and method of computation, including the amounts and period for which the loss is claimed, how the amounts in the subject valuations will be used at trial, and what the total damages claim is.

2. Produce all documents responsive to Plaintiff's Request for Production of Documents 23, including Defendant's and CC+I's financial statements and tax returns from July 1, 2016, to the present. Such documents include the following:

- a. CC+I P&L – 7/1/2017-6/30/2018
- b. CC+I P&L – 7/1/2018-7/30/2019
- c. CC+I P&L – 7/1/2019-6/30/2020
- d. CC+I Tax Return - Year Ended June 30, 2020
- e. Decide4action Tax Return – Year Ended June 30, 2019
- f. Decide4action Tax Return – Year Ended June 30, 2018
- g. Decide4action Balance Sheets as of 6/30/18, 6/30/19, 6/30/20, and 12/31/20; and
- h. W2s, K1s, and 1099s to shareholders of CC+I and Decide4action from July 1, 2017 to the present.

**IT IS SO ORDERED.**

**WE CONSENT:**

WYCHE, P.A.

By: s/Gregory J. English  
Gregory J. English (#65470)

200 East Camperdown Way  
Post Office Box 728  
Greenville, South Carolina 29602  
(864) 242-8200

Attorneys for Plaintiff

TRULUCK THOMASON, LLC

By: s/ Devon Puriefoy  
Devon Puriefoy  
Kimberly Thomason

1011 East Washington Street  
Greenville, SC 29601

Attorneys for Defendant

*Judge Gravely's Signature Page to Follow*



Greenville Common Pleas

**Case Caption:** Julia Sibley Jones Personal Representative, plaintiff, et al vs.  
Decide4action Inc , defendant, et al

**Case Number:** 2019CP2302032

**Type:** Order/Consent Order

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2021-01-08 09:44:05 page 4 of 4





THE LAW OFFICES OF  
TRULUCK THOMASON, LLC

ATTORNEYS

Kimberly Thomason, Managing Partner  
Rachael Hardin, Associate  
Devon Puriefoy, Associate

LOCATION

1011 E. Washington Street  
Greenville, SC 29601

CONTACT

P & F 864-331-1751

September 19, 2018

United Community Bank  
Attn: Sharon Whitney  
306 East North St.  
Greenville, SC 29601

Re: Computer Control + Integration Purchase, October 16, 2017

Dear Ms. Whitney:

Please let this letter serve as United Community Bank's notice that Decide4Action ("Buyer") has pending claims against William A.L. Sibley, Jr., Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, and Robert E. Leviner (collectively "Sellers") in the amount of at least One Million Three Hundred Fourteen Thousand Thirty-Four Dollars and No/100 (\$1,314,034.00). As set forth below, Decide4Action seeks indemnification from all Sellers and requests United Community Bank ("Escrow Agent") hold all funds in escrow until written notice from all parties shows the pending claims have been resolved.

On October 16, 2017, Buyer and Sellers entered into a Stock Purchase Agreement ("SPA") whereby Buyer would purchase from Sellers all issued and outstanding capital stock of Computer Control + Integration, Inc. ("CC+I"). Pursuant to the SPA, certain Seller warranties would survive closing for a period of twelve months after the date of signing. The SPA in relevant part provides in Paragraph 8(a) "[a]ll of the representations and warranties of Sellers contained in §4 above shall survive the Closing and continue in full force and effect until the date that is 12 months after the Closing Date..." Additionally, Paragraph 8(b) directs Buyer to:

"make a written claim for indemnification against Sellers pursuant to §10(h)<sup>1</sup> within the Survival Period (if there is an applicable survival period pursuant to §8(a) above), then such Seller shall indemnify Buyer or Target from and against any and all Adverse Consequences

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<sup>1</sup> Which is presumably 10(g) that speaks to notice whereas 10(h) speaks to governing law of South Carolina.

suffered or incurred by Buyer or Target that arise from or are attributable to such breach; provided, however, that Sellers shall not have any obligation to indemnify Buyer or Target from and against any Adverse Consequences arising from or attributable to the breach of any representation or warranty or Sellers contained in §4 above (other than the representations and warranties in §4(a), §4(b), §4(c) and §4(d) above) (A) until Buyer has suffered Adverse Consequences by reason of all such breaches in excess of \$25,000.00 (the “Threshold”), after which point sellers will be obligated to indemnify Buyer from and against all such Adverse Consequences, including those counted towards the Threshold...”

As part of the SPA, Buyer and Sellers agreed to hold funds in escrow with Escrow Agent, the terms of which were memorialized in the Agreement Regarding Application of Funds (“Escrow Agreement”) executed by Buyer, Sellers, and Escrow Agent (collectively “Parties”). Pursuant to the Escrow Agreement, “Buyer must provide to the Escrow Agent and Sellers’ representative, no fewer than three (3) Business Days prior to the Indemnification Escrow Release Date (October 16, 2018), a written notice describing the Pending Claims in reasonable detail, indicating the estimated amount and methodology for determining the amount of the Pending Claims (the “Pending Claims Amount”) and the provision or provisions under the Purchase Agreement upon which such claim is based.” Therefore, as required by the SPA and Escrow Agreement, Buyer provides the following:

I. Pending Claims and Relevant SPA Provisions:

On June 22, 2017 and June 26, 2017, Sellers increased one (1) non-owner employee’s salary and paid seven (7) bonuses to non-owner employees that in effect doubled their annual salaries for one year, totalling approximately Three Hundred Fifty-Nine Thousand Eight Hundred Seventy-Four Dollars (\$359,874.00). In an announcement to the company, Sellers justified these bonuses to non-owner employees based on CC+ I’s “very profitable” previous fiscal year. Payment of these undisclosed bonuses occurred after the Due Diligence period ended on May 17, 2017 and materially and adversely affected the value of CC+1. In addition to bonuses being paid after the end of Due Diligence, Sellers failed to disclose the bonuses to Buyer prior to the closing on October 16, 2017. Sellers were bound by certain representations and warranties pursuant to the SPA, Paragraph 4(i) which provides, in relevant part:

(i) Events Subsequent to May 17, 2017. Except as set forth in § 4(i) of the Disclosure Schedule, since May 17, 2017, there has not been any Material Adverse Change and Target has conducted its business in the Ordinary Course of Business. Without limiting the generality of the foregoing, since May 17, 2017:

(xv) Target has not entered into or terminated any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(xvi) Target has not granted any increase in the base compensation of any of its directors, officers, or employees outside the Ordinary Course of Business;

(xvii) Target has not adopted, amended, modified or terminated any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees (or taken any such action with respect to any other Employee Benefit Plan);

Additionally, Schedule 4(i), Events Subsequent to May 17, 2017, provides in relevant part:

(3) Target paid a fiscal year-end bonus and subsequently has paid special bonuses to employees on three occasions.

Sellers directly breached the above warranties when they awarded non-owner employees with bonuses and increased one non-owner employee's salary after failing to disclose these material adverse changes in violation of the representations and warranties agreed to pursuant to Paragraph 4(i)(xv), (xvi), and (xvii) of the SPA. As a result of these undisclosed changes, Buyer has suffered damages and intends to pursue all available legal remedies against Sellers.

## II. Amount of Pending Claims:

Sellers' payment of bonuses to non-owner employees has significantly and adversely affected the value of CC + I, resulting in the loss of several of the non-owner employees on the anniversary of the annual bonuses. Sellers previously disclosed the value of only three (3) bonuses totalling approximately Thirty-Five Thousand Dollars (\$35,000.00), a fractional amount in comparison to the actual value of bonuses paid to non-owner employees. Buyer alleges that as a result of the payment of these undisclosed bonuses, the non-owner employees elected to leave the company when these bonuses were not matched by Buyer in 2018, and Buyer has suffered damages in excess of One Million Three Hundred Fourteen Thousand Thirty-Four and No/100 Dollars (\$1,314,034.00). Included with this notice is a damages analysis attached as **Exhibit A**.

Therefore, based on the foregoing, Buyer requests United Community Bank hold all funds deposited pursuant to the Escrow Agreement of approximately Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00) because Buyer's claims exceed that amount. If you have any questions regarding this notice please do not hesitate to contact me at the number above.

Very Respectfully,

TRULUCK THOMASON, LLC

  
Kimberly Thomason, Esq.

CC: William A.L. Sibley  
Andrew Coburn, Esq.  
Joyce Featherstone  
James T. Clark  
Frank T. Starrett, Jr.  
Scott W. Dozier  
Robert E. Leviner

From OM:

OM Date: 1/18/2017  
Base Year: 2016  
Sales: \$2,500,000 Page 4  
EBITDA: **\$1,173,000** Page 4  
Salary and Wages (Non owners) **\$116,000** Page 24

Offer Made based on OM

First LOI Submitted: 2/8/2017  
Second LOI Submitted: 3/10/2017  
Offer: **\$4,400,000**  
EBITDA Multiple: **3.75**

Non Owners Salaries and Bonuses disclosed during due diligence - 5/17/17

| Name                  | Position   | At the time of Due Diligence |                 |
|-----------------------|------------|------------------------------|-----------------|
|                       |            | Salary                       | Bonus           |
| Kimberly French       | Admin      | \$37,500                     | \$0             |
| Taylor, Joseph B.     | Soft Dev   | \$46,000                     | \$15,000        |
| Herrmann, Nathan D.   | Soft Dev   | \$63,874                     | \$15,000        |
| Viveros, Carlos A.    | Soft Dev   | \$75,000                     | \$5,000         |
| Clark, Ryan O.        | Production | \$50,000                     | \$0             |
| Jones, Christopher L. | IT         | \$45,000                     | \$0             |
| Pavatte, Justin D.    | Soft Dev   | \$75,000                     | \$0             |
|                       |            | <b>\$392,374</b>             | <b>\$35,000</b> |

Calculation of Tax and Insurance Rate applicable in 2017

Salaries and Wages: \$3,229,784  
Payroll Taxes: \$125,127  
Medical Insurance: \$101,150  
Total: **\$226,277 7.0%**

Impact of Unapproved Changed on Company Value

Salary & Bonus changed after 5/17/17: **\$327,374**  
Prorated Payroll Taxes and Insurance: **\$22,936 7.0%**  
Effect on Company Value: **\$350,310**  
EBITDA From OM: **\$1,173,000**  
Reduction of EBITDA for Bonus & New Payroll: **(\$350,310)**  
ACTUAL: EBITDA **\$822,690**  
Multiple from OM: **3.75**  
Claim for reduction of Company Value: **\$1,314,034**

Applicable SPA Clause: 4. (i)  
4. (Xiv)  
4. (Xv)  
4. (Xvi)  
4. (Xvii)  
4. (Xviii)

| At the time of closing |          | Date Changed | Difference (Annualized) |                  |
|------------------------|----------|--------------|-------------------------|------------------|
| Salary                 | Bonus    |              | Salary                  | Bonus            |
| \$40,000               | \$10,000 | 7/31/2017    | \$2,500                 | \$10,000         |
| \$46,000               | \$46,000 | 6/30/2017    | \$0                     | \$31,000         |
| \$63,874               | \$63,874 | 6/30/2017    | \$0                     | \$48,874         |
| \$75,000               | \$75,000 | 6/30/2017    | \$0                     | \$70,000         |
| \$50,000               | \$50,000 | 6/30/2017    | \$0                     | \$50,000         |
| \$45,000               | \$45,000 | 6/30/2017    | \$0                     | \$45,000         |
| \$75,000               | \$70,000 | 6/30/2017    | \$0                     | \$70,000         |
| <b>\$394,874</b>       |          |              | <b>\$2,500</b>          | <b>\$324,874</b> |
|                        |          |              | <b>\$327,374</b>        |                  |

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS**  
**THIRTEENTH JUDICIAL CIRCUIT**

**Case No. 2019-CP-23-02032**

Julia Sibley-Jones, as Personal  
 Representative of the Estate of William  
 A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
 Representative of the Estate of William  
 A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
 Defendant.

**PLAINTIFF’S AND**  
**THIRD-PARTY DEFENDANT’S**  
**MOTION TO ALTER AND AMEND**  
**JUDGMENT TO INCLUDE ACCRUED**  
**INTEREST, PREJUDGMENT INTEREST,**  
**AND COSTS**

Plaintiff Julia Sibley-Jones and Third-Party Defendant Joyce Featherstone (collectively, “Sellers”) hereby move the Court, pursuant to Rules 54, 58, and 59, SCRCP, and other applicable law, to alter and amend the Judgment in favor of Plaintiff against Defendant Decide4action Inc. (“Decide4action”) to include awards of: (1) actual damages in the amount of \$443,869.43 being held by United Community Bank (“UCB”) in escrow, plus accrued interest (the “Escrow Fund”); (2) prejudgment interest on the \$440,000 held in the Escrow Fund from October 16, 2018, to August 16, 2021; and (3) costs, as follows:

|                                               |                                             |
|-----------------------------------------------|---------------------------------------------|
| Escrow Fund as of July 16, 2021               | \$443,869.43 (plus accrued interest)        |
| Prejudgment interest to August 16, 2021       | 109,833.33                                  |
| Costs                                         | <u>+ 999.31</u>                             |
| <b>Total Judgment vs. Decide4action, Inc.</b> | <b>\$554,702.07 (plus accrued interest)</b> |

This motion is made upon the following grounds:

1. **The Judgment should be altered and amended to clarify that Decide4action is liable to Plaintiff in the amount of \$443,869.43 plus accrued interest on her breach of contract claim.**

In its Judgment in a Civil Case dated July 28, 2021, and filed July 30, 2021 (the “Judgment”), the Court granted Plaintiff’s motion for directed verdict and ordered the Escrow Fund be released to Plaintiff. *Id.* at p. 2 (“The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by [UCB] under the [Escrow Agreement].... [T]he Court granted Plaintiff’s Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff.”).

This granting of directed verdict to Plaintiff on her breach of contract claim was correct because the Indemnity Escrow Agreement, Plaintiff’s Exhibit 9 (the “Escrow Agreement”), at p. 2, § 3(d), required that Decide4action prove a “Pending Claims Amount” in order recover any amount from the Escrow Fund.

Decide4action never proved a Pending Claims Amount. In fact, Decide4action admitted in its Rule 30(b)(6) deposition published in court that the claim it submitted to UCB was not the claim it wanted to try to prove to the jury. This is because what Decide4action submitted to UCB, Plaintiff’s Exhibit 10, was prohibited by the Stock Purchase Agreement (“SPA”), which provided:

**in no event shall any Seller be liable to Buyer for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.**

(Plaintiff’s Exhibit 8, p. 21, Section 8(b)) (emphasis added)

This language is absolute and applied to bar Decide4action’s claim to UCB, which was a claim of diminution in value of the Company based upon a multiple of EBITDA. Accordingly,

the Court correctly ruled that Decide4action breached the Escrow Agreement and Plaintiff was entitled to directed verdict against it on her breach of contract claim.

The Judgment for Plaintiff was listed as \$440,000 plus accrued interest. In addition to the original \$440,000 placed in the Escrow Fund, Sellers were also entitled to “any earnings and income thereon.” Escrow Agreement at 1, § 1(b). Therefore, Judgment against Decide4action should include all amounts in the Escrow Fund.

As of July 16, 2021, the Escrow Fund totaled \$443,869.43. Plaintiff’s Exhibit 21. Therefore, the Court should direct the clerk to enter judgment in favor of Plaintiff against Decide4action in the amount of \$443,869.43, plus interest accruing thereafter. Rules 54(b), SCRCP (decision final upon entry of judgment adjudicating all the claims and rights and liabilities of the parties); 58(a), SCRCP (Circuit Court shall enter judgment upon decision granting multiple forms of relief).

**2. The Judgment should be altered and amended to award Plaintiff prejudgment interest on \$440,000 from October 16, 2018, to August 16, 2021.**

Under S.C. Code Ann. § 34-31-20(A), liquidated sums bear prejudgment interest at the legal rate of 8.75% per annum. *Robert E. Lee & Co. v. Commission of Public Works*, 248 S.C. 92, 149 S.E.2d 59, 62 (1966); *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789, 791 (1993); *T.W. Morton Builders v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87, 93 (Ct. App. 1994) (all finding that the law allows prejudgment interest on amounts that are liquidated).

Because the Closing Date was October 16, 2017, the \$440,000 originally placed in the Escrow Fund should have been released to Sellers on October 16, 2018. Escrow Agreement, p. 2, § 3(d) (Escrow Fund to be released to Sellers “on the first Business Day following the Indemnification Escrow Release Date,” defined as “the first anniversary of the date of the Closing Date”); Agreement regarding Application of Funds, Plaintiff’s Exhibit 16 (“Fund Agreement”), at

p. 2, § 5 (“on the first anniversary of the Closing (i.e., twelve (12) months following the Closing), any remaining amounts in the Escrow Account shall be paid to Sellers”).

Because it prevented Sellers from receiving the Escrow Fund for nearly three years and because it is liquidated amount, Decide4action is liable for prejudgment interest on the \$440,000. It does not matter that Decide4action disputed the amount. As noted by the Supreme Court:

The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty. **The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest.** The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.

*Smith-Hunter Const. Co., Inc. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (emphasis added; citations omitted).

The \$440,000 originally placed in the Escrow Fund is a liquidated sum because it is “certain or capable of being reduced to a certainty.” *Builders Transport, Inc. v. South Carolina Property & Casualty Ins. Guaranty Ass’n*, 307 S.C. 398, 415 S.E.2d 419, 424 (Ct. App. 1992); *Weeks v. McMillan*, 291 S.C. 287, 353 S.E.2d 289, 293 (Ct. App. 1987). “It is well settled in this state that the award of prejudgment interest is a function of the trial court ....” *Bickerstaff v. Prevost*, 380 S.C. 521, 524, 670 S.E.2d 660, 661 (Ct. App. 2008) (citing *Smith-Hunter Constr. Co. v. Hopson*, *supra*, and *Babb v. Rothrock*, *supra*). Therefore, the Judgment should have included prejudgment interest on the \$440,000.

The Judgment, however, incorrectly ruled that the lack of a provision in the Escrow Agreement for prejudgment interest precluded an award of prejudgment interest. The law, however, is that where a contract is silent on the rate of interest and Plaintiff is entitled to a liquidated amount, the Plaintiff is entitled to prejudgment interest at the legal rate set forth in S.C.



Code Ann. § 34-31-20(A). *Burnett Dubose Co., Inc. v. Starnes*, 284 S.C. 196, 324 S.E.2d 651 (Ct. App. 1984) (holding the statutory interest rate prescribed by Section 34-31-20 is applicable “in the absence of a written agreement between the parties fixing a different rate of interest.”); *Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc.*, 272 S.C. 289, 251 S.E.2d 738 (1979) (same).

Pursuant to the parties’ Escrow Agreement, the \$440,000 in the Escrow Fund was to be released to Sellers on October 16, 2018. *Id.* at p. 2, § 3(c); Fund Agreement at p. 2, § 5. Therefore, Decide4action owes Plaintiff interest on the \$440,000 from October 16, 2018, to August 16, 2021, or 2 years and 10 months, at the legal rate of 8.75% in the amount of \$109,833.33 ( $\$440,000 \times .0875 \times 2 \frac{10}{12}$ ).

Accordingly, the Judgment should be altered and amended to add prejudgment interest of \$109,833.33. S.C. Code Ann. § 34-31-20(A); Rule 59(e), SCRCP.<sup>1</sup>

### **3. The Judgment should be altered and amended to award Plaintiff costs of \$999.31.**

Plaintiff should also be awarded the following costs under Rule 54(d), SCRCP:

|                 |                                                             |
|-----------------|-------------------------------------------------------------|
| \$180.32        | Filing fee for summons and complaint (Rule 54(e)(2), SCRCP) |
| 31.74           | Filing fee for motion to compel (Rule 54(e)(2), SCRCP)      |
| <u>+787.25</u>  | Deposition of Decide4action (S.C. Code Ann. § 15-37-40)     |
| <b>\$999.31</b> |                                                             |

*See Exhibit A.*

“Once a trial judge awards costs to the prevailing party the clerk shall insert in the judgment costs of ‘the fees of witnesses’ and ‘the reasonable compensation of commissioners in taking depositions.’ S.C. Code Ann. § 15-37-40 (1976). In addition, the Rules of Civil Procedure

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<sup>1</sup> Of course, once received by Plaintiff, the Escrow Fund, including interest accrued thereon from October 16, 2017, will be credited against and reduce the amount owed by Decide4action on the Judgment.

recognize that the prevailing party shall be allowed costs per a trial court's ruling. Rule 54(d), SCRCP.” *Peterson v. National R.R. Passenger Corp.*, 365 S.C. 391, 618 S.E.2d 903, 908 (2005). Accordingly, the Judgment should be altered and amended to add \$999.31 in costs. Rule 59(e), SCRCP.

### CONCLUSION

For the foregoing reasons, the Court should alter and amend the Judgment, and direct the Clerk of Court to enter judgment in favor of Plaintiff against Defendant Decide4action Inc. as follows:

|                                               |                                             |
|-----------------------------------------------|---------------------------------------------|
| Escrow Fund as of July 16, 2021               | \$443,869.43 (plus accrued interest)        |
| Prejudgment interest to August 16, 2021       | 109,833.33                                  |
| Costs                                         | + <u>999.31</u>                             |
| <b>Total Judgment vs. Decide4action, Inc.</b> | <b>\$554,702.07</b> (plus accrued interest) |

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English  
 Gregory J. English (SC #65470)  
 200 E. Camperdown Way  
 Post Office Box 728  
 Greenville, SC 29602-0728  
 Telephone: 864-242-8200  
 Telefax: 864-235-8900

Attorneys for Plaintiff and Third Party Defendant  
 Julia Sibley-Jones, as Personal Representative of the Estate  
 of William A.L. Sibley, Jr. and Joyce Featherstone

August 9, 2021

# **EXHIBIT A**

**Greg English**

**From:** noreply@portal.sc.gov  
**Sent:** Thursday, April 11, 2019 3:44 PM  
**Subject:** Greenville County Circuit Court E-Filings Receipt

## Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

### Receipt Contact Information

**Contact Name** Greenville County Circuit Court  
**Contact Email**  
**Contact Url**  
**Contact Phone**  
**Contact Address** 305 East North Street ,  
Suite 226  
Greenville, SC 29601

### Transaction Summary

| Description                                 | Amount   |
|---------------------------------------------|----------|
| Greenville County Circuit Court - E-Filings | \$175.00 |
| SC.GOV TOTAL                                | \$180.32 |

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

### Customer Information

**Customer Name** Gregory Jacobs English  
**Company Name**  
**Local Reference ID** F\_1634182\_2194  
**Receipt Date** 4/11/2019  
**Receipt Time** 03:44:19 PM EDT

### Payment Information

**Payment Type** Credit Card  
**Credit Card Type** VISA  
**Credit Card Number** \*\*\*\*\*7598  
**Order ID** 70842970  
**Billing Name** Wyche, PA

### Billing Information

**Billing Address** PO Box 728  
**Billing City, State** Greenville, SC  
**ZIP/Postal Code** 296020728  
**Country** US  
**Phone Number** 864-242-8247

**Greg English**

**From:** noreply@egov.com  
**Sent:** Thursday, December 10, 2020 11:17 AM  
**Subject:** Greenville County Common Pleas Court - E-Filings Receipt

**Payment Receipt Confirmation**

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

**Receipt Contact Information**

**Contact Name** Greenville County -  
Common Pleas - 23002 -  
E-Filings

**Transaction Summary**

| Description                                          | Amount         |
|------------------------------------------------------|----------------|
| Greenville County - Common Pleas - 23002 - E-Filings | \$30.00        |
| ServiceFee*SC.GOV                                    | \$1.74         |
| <b>TOTAL</b>                                         | <b>\$31.74</b> |

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

**Customer Information**

**Customer Name** Gregory Jacobs English  
**Company Name**  
**Local Reference ID** F\_3265833\_2194  
**Receipt Date** 12/10/2020  
**Receipt Time** 11:16:54 AM EST

**Payment Information**

**Payment Type** Credit Card  
**Credit Card Type** VISA  
**Credit Card Number** \*\*\*\*\*7357  
**Order ID** 111584516  
**Billing Name** Wyche PA

**Billing Information**

**Billing Address** PO Box 728  
**Billing City, State** Greenville, SC  
**ZIP/Postal Code** 296020728  
**Country** US  
**Phone Number** 864-242-8247  
**This receipt has been emailed to the address below.**  
**Email Address** genglish@wyche.com

ORIGINAL  
INVOICE

Since 1976.

GREG ENGLISH, Esquire  
WYCHE, PA  
44 EAST CAMPERDOWN WAY  
POST OFFICE BOX 728  
GREENVILLE, SC 29601

Invoice Number: 14 20010  
Federal ID: 57-0628151  
Invoice Date: 12/06/2020

**Terms: Payment Due Ten (10) Days After Invoice Date**

Office: SPARTANBURG

Date Taken: 09/29/2020

Order Number:

Case: SIBLEY VS DECIDE4ACTION

Location: GREENVILLE

**Service Provided**

|                       | <b>Pages/Quantity</b> | <b>Total</b> |
|-----------------------|-----------------------|--------------|
| APPEARANCE FEE        | 1.00                  | 190.00       |
| 10:00 - 2:30 P.M.     |                       |              |
| ORIGINAL and ONE COPY | 141.00                | 556.95       |
| R. BERGERON           |                       |              |
| EXHIBITS              | 202.00                | 30.30        |
| DELIVERY              | 1.00                  | 10.00        |

**COMMENTS:**

THANK YOU FOR YOUR BUSINESS

Invoice Total: **\$787.25**

**STATE OF SOUTH CAROLINA**  
**COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS**  
**THIRTEENTH JUDICIAL CIRCUIT**

**Case No. 2019-CP-23-02032**

Julia Sibley-Jones, as Personal  
 Representative of the Estate of William  
 A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

Julia Sibley-Jones, as Personal  
 Representative of the Estate of William  
 A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
 Defendant.

**REPLY IN SUPPORT OF PLAINTIFF'S  
 AND THIRD-PARTY DEFENDANT'S  
 MOTION TO ALTER AND AMEND  
 JUDGMENT TO INCLUDE ACCRUED  
 INTEREST, PREJUDGMENT INTEREST,  
 AND COSTS**

Plaintiff Julia Sibley-Jones and Third-Party Defendant Joyce Featherstone (collectively, “Sellers”) hereby reply to Defendant Decide4action Inc.’s (“Decide4action”) memorandum in opposition to Sellers’ motion pursuant to Rules 54, 58, and 59, SCRPC, and other applicable law, to alter and amend the Judgment in favor of Plaintiff against Decide4action to include awards of: (1) actual damages in the amount of \$443,869.43 being held by United Community Bank (“UCB”) in escrow, plus accrued interest (the “Escrow Fund”); (2) prejudgment interest on the \$440,000 held in the Escrow Fund from October 16, 2018; and (3) costs, as follows:

1. **The Judgment should be altered and amended to clarify that Decide4action is liable to Plaintiff in the amount of \$443,869.43 plus accrued interest on her breach of contract claim, which was requested throughout the case and would not result in a “double recovery.”**

In its Judgment in a Civil Case dated July 28, 2021, and filed July 30, 2021 (the “Judgment”), the Court granted Plaintiff’s motion for directed verdict and ordered the Escrow Fund be released to Plaintiff. *Id.* at p. 2 (“The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by [UCB] under the [Escrow Agreement].... [T]he Court granted Plaintiff’s Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff.”).

If the Court had not granted directed verdict, Plaintiff would have taken her breach of contract claim to the jury and gotten a verdict for damages and then money judgment against Decide4action. The Escrow Fund – which acts a security for the money judgment to which Plaintiff is entitled – would be applied to reduce the judgment. Contrary to Decide4action’s memo, that is what Plaintiff requested in her complaint:

20. DECIDE4ACTION’s breach of the Contract has caused SIBLEY and the other Selling Shareholders actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs ..., which SIBLEY is entitled to recover from DECIDE4ACTION.

21. The Court should declare that, because of DECIDE4ACTION’s breach of the Contract, the funds in the Escrow Account should be paid to Plaintiff and applied to SIBLEY’s and the other Selling Shareholders’ damages.

\* \* \*

**WHEREFORE**, Plaintiff prays that she be granted judgment against DECIDE4ACTION (a) for actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs ... [and] (c) declaring that the funds in the Escrow Account should be paid to Plaintiff and applied to SIBLEY’s and the other Selling Shareholders’ damages ....

Complaint at 3, 4.

Granting Plaintiff a money judgment and then applying the Escrow Fund to reduce that judgment are not “inconsistent remedies” and would not result in “double recovery.” Plaintiff would just be receiving the full amount she is entitled to receive and requested in her complaint



and in court: \$440,000, plus interest in the Escrow Account, plus prejudgment interest at 8.75% on the foregoing amounts, plus costs. This judgment would be paid from the Escrow Fund and Decide4action to the extent the Escrow Fund does not cover the full amount of the judgment.

As of July 16, 2021, the Escrow Fund totaled \$443,869.43.<sup>1</sup> Plaintiff's Exhibit 21. Therefore, the Court should direct the clerk to enter judgment in favor of Plaintiff against Decide4action in the amount of \$443,869.43, plus interest accruing thereafter. Rules 54(b), SCRCP (decision final upon entry of judgment adjudicating all the claims and rights and liabilities of the parties); 58(a), SCRCP (Circuit Court shall enter judgment upon decision granting multiple forms of relief).

**2. The Judgment should now be altered and amended to award Plaintiff prejudgment interest on \$440,000 from October 16, 2018, through September 24, 2021.**

As noted above, Plaintiff requested prejudgment interest on the \$440,000 Escrow Fund in her complaint and throughout the case, which was allowed under S.C. Code Ann. § 34-31-20(A) (liquidated sums bear prejudgment interest at the legal rate of 8.75% per annum). *See also Robert E. Lee & Co. v. Commission of Public Works*, 248 S.C. 92, 149 S.E.2d 59, 62 (1966); *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789, 791 (1993); *T.W. Morton Builders v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87, 93 (Ct. App. 1994) (all finding that the law allows prejudgment interest on amounts that are liquidated).

Contrary to Decide4action's memo, the evidence presented at trial was clear that Plaintiff was entitled to and should have received the liquidated sum of \$440,000 on October 16, 2018, and therefore was entitled to prejudgment interest when Decide4action prevented Plaintiff from receiving that amount on that date. The Indemnity Escrow Agreement, Plaintiff's Exhibit 9 (the

---

<sup>1</sup> In addition to the original \$440,000 placed in the Escrow Fund, Sellers were also entitled to "any earnings and income thereon." Escrow Agreement at 1, § 1(b).

“Escrow Agreement”), at p. 2, § 3(d), required that Decide4action prove a “Pending Claims Amount” in order recover any amount from the Escrow Fund. Decide4action never did so. In fact, Decide4action admitted in its Rule 30(b)(6) deposition published in court that the claim it submitted to UCB was not the claim it wanted to try to prove to the jury. This is because what Decide4action submitted to UCB, Plaintiff’s Exhibit 10, was prohibited by the Stock Purchase Agreement (“SPA”), Plaintiff’s Exhibit 8, p. 21, Section 8(b)) (stating “in no event shall any Seller be liable to Buyer for ... diminution of value or any damages based on any type of multiple.”).

Because the Closing Date was October 16, 2017, the \$440,000 originally placed in the Escrow Fund should have been released to Sellers on October 16, 2018. Escrow Agreement, p. 2, § 3(d) (Escrow Fund to be released to Sellers “on the first Business Day following the Indemnification Escrow Release Date,” defined as “the first anniversary of the date of the Closing Date”); Agreement regarding Application of Funds, Plaintiff’s Exhibit 16 (“Fund Agreement”), at p. 2, § 5 (“on the first anniversary of the Closing (i.e., twelve (12) months following the Closing), any remaining amounts in the Escrow Account shall be paid to Sellers”).

Because it prevented Sellers from receiving the Escrow Fund for nearly three years and because it is liquidated amount, Decide4action is liable for prejudgment interest on the \$440,000.

Also contrary to Decide4action’s memo, the law does not require the parties to agree to prejudgment interest, just a “sum is certain or capable of being reduced to certainty.” *Smith-Hunter Const. Co., Inc. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005). The \$440,000 placed into and due to be released from the Escrow Fund clearly satisfies that requirement.

Decide4action’s memo is also wrong that the parties agreed to a rate of interest in the Escrow Agreement. They simply agreed that the Escrow Fund, plus whatever interest UCB paid on those funds between October 16, 2017, and October 16, 2018, would be paid to Plaintiff on

October 16, 2018, if Decide4action had no legitimate Pending Claims Amount. The Escrow Agreement was silent as to the interest that would be due if Decide4action prevented the Escrow Funds from being paid on October 16, 2018. Because the contract was silent on the rate of interest to which Plaintiff was entitled on the liquidated amount after October 16, 2018, Plaintiff is entitled to prejudgment interest at the legal rate set forth in S.C. Code Ann. § 34-31-20(A). *Burnett Dubose Co., Inc. v. Starnes*, 284 S.C. 196, 324 S.E.2d 651 (Ct. App. 1984) (holding the statutory interest rate prescribed by Section 34-31-20 is applicable “in the absence of a written agreement between the parties fixing a different rate of interest.”); *Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc.*, 272 S.C. 289, 251 S.E.2d 738 (1979) (same).

Pursuant to the parties’ Escrow Agreement, the \$440,000 in the Escrow Fund was to be released to Sellers on October 16, 2018. *Id.* at p. 2, § 3(c); Fund Agreement at p. 2, § 5. Therefore, Decide4action owes Plaintiff interest on the \$440,000 from October 16, 2018, to September 24, 2021, or 2 and 49/52 years, at the legal rate of 8.75% in the amount of \$113,278.84 ( $\$440,000 \times .0875 \times 2 \frac{49}{52}$ ).

Accordingly, the Judgment should be altered and amended to add prejudgment interest of \$113,278.84. S.C. Code Ann. § 34-31-20(A); Rule 59(e), SCRCP.<sup>2</sup>

### **3. The Judgment should be altered and amended to award Plaintiff costs of \$999.31.**

Plaintiff should also be awarded the following costs under Rule 54(d), SCRCP:

|                 |                                                             |
|-----------------|-------------------------------------------------------------|
| \$180.32        | Filing fee for summons and complaint (Rule 54(e)(2), SCRCP) |
| 31.74           | Filing fee for motion to compel (Rule 54(e)(2), SCRCP)      |
| <u>+787.25</u>  | Deposition of Decide4action (S.C. Code Ann. § 15-37-40)     |
| <b>\$999.31</b> |                                                             |

---

<sup>2</sup> As noted above, once received by Plaintiff, the Escrow Fund, including interest accrued thereon from October 16, 2017, will be credited against and reduce the amount owed by Decide4action on the Judgment.

Although Decide4action argues that these costs were not included in an affidavit, the filing fees for the summons and complaint and motion to compel are matters of public record (see <https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAgency=23002&Casenum=2019CP2302032&CaseType=V&HKey=108109119897010756549811755565210567799811597846510247118819052106667083103491205377837470681205773> ), the deposition was read into the record in this case and the receipt was attached to the motion, and Decide4action does not question the amounts, so that the Court can take judicial notice of these costs. Rule 201, SCRE. To the extent the Court deems an affidavit to be necessary, one is filed herewith. *See* Exhibit A.

Accordingly, the Judgment should be altered and amended to add \$999.31 in costs. Rule 59(e), SCRC.P.

### **CONCLUSION**

For the foregoing reasons, the Court should alter and amend the Judgment, and direct the Clerk of Court to enter judgment in favor of Plaintiff against Defendant Decide4action Inc. as follows:

|                                               |                                             |
|-----------------------------------------------|---------------------------------------------|
| Escrow Fund as of July 16, 2021               | \$443,869.43 (plus accrued interest)        |
| Prejudgment interest to August 16, 2021       | 113,278.84                                  |
| Costs                                         | <u>+ 999.31</u>                             |
| <b>Total Judgment vs. Decide4action, Inc.</b> | <b>\$558,147.58</b> (plus accrued interest) |

[Signature on following page]

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English  
Gregory J. English (SC #65470)  
200 E. Camperdown Way  
Post Office Box 728  
Greenville, SC 29602-0728  
Telephone: 864-242-8200  
Telefax: 864-235-8900

Attorneys for Plaintiff and Third Party Defendant  
Julia Sibley-Jones, as Personal Representative of the Estate  
of William A.L. Sibley, Jr. and Joyce Featherstone

September 21, 2021

**STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE**

**IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT**

**Case No. 2019-CP-23-02032**

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

---

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,  
vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

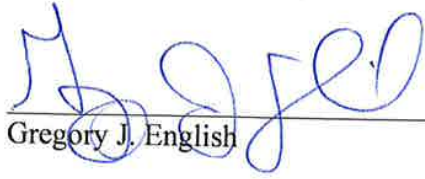
**AFFIDAVIT OF  
GREGORY J. ENGLISH, ESQ.**

**PERSONALLY** appeared before me Gregory J. English, Esq., who being duly sworn,  
states as follows:

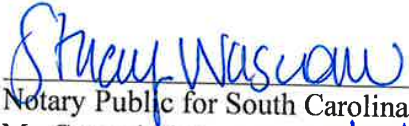
1. I am an attorney for Plaintiff in the above-entitled action.
2. The following costs are correct and were necessarily incurred by Plaintiff in this  
action:
 

|                |                                                             |
|----------------|-------------------------------------------------------------|
| \$180.32       | Filing fee for summons and complaint (Rule 54(e)(2), SCRCP) |
| 31.74          | Filing fee for motion to compel (Rule 54(e)(2), SCRCP)      |
| <u>+787.25</u> | Deposition of Decide4action (S.C. Code Ann. § 15-37-40)     |
| \$999.31       |                                                             |

**FURTHER AFFIANT SAITH NOT.**

  
\_\_\_\_\_  
Gregory J. English

SWORN to before me this  
21<sup>st</sup> day of September, 2021.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires: 3/30/26

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

94862  
**RECEIVED**

OCT 18 2021

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Perry H. Gravely, Circuit Court Judge

Common Pleas Case No. 2019-CP-23-02032

Appellate Case No.

Julia Sibley-Jones, as Personal Representative  
of the Estate of William A.L. Sibley, Jr.,

*Respondent,*

v.

Decide4Action, Inc.,

*Appellant.*

**NOTICE OF APPEAL**

Decide4Action, Inc. appeals the Orders in this matter filed on July 30, 2021 and August 6, 2021. Copy of the written Orders are attached to this Notice as Exhibit "A" and Exhibit "B".

Dated this 13th day of October, 2021

**TRULUCK THOMASON, LLC**

s/Devon M. Puriefoy  
Devon M. Puriefoy  
SC Bar No.: 102097  
Kimberly T. Thomason  
SC Bar No.: 70179  
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Greenville, SC 29601  
devon@truluckthomason.com  
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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Julia Sibley-Jones, as Personal Representative  
of the Estate of William A.L. Sibley, Jr.

Plaintiff,

v.

Decide4Action, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL DISTRICT

C.A. FILE NO. 2019-CP-23-02032

**RECEIVED**

OCT 18 2021

**SC Court of Appeals**

**NOTICE OF FILING**

**To: Clerk of Court and Plaintiff of Record**

Please take notice that Defendants have filed the attached notice of appeal to the South Carolina Court of Appeals.

Dated this 13th day of October, 2021

**TRULUCK THOMASON**

s/Devon M. Puriefoy  
Devon M. Puriefoy  
SC Bar No.: 102097  
Kimberly T. Thomason  
SC Bar No.: 79179  
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Greenville, SC 29601  
[devon@truluckthomason.com](mailto:devon@truluckthomason.com)  
[kim@truluckthomason.com](mailto:kim@truluckthomason.com)  
P: 864-331-1751

## CERTIFICATE OF SERVICE

I, the undersigned, served a copy of this document on the following counsel of record this 13<sup>th</sup> day of October, 2021, by email and U.S. mail to the following addresses of record:

Gregory J. English  
200 East Camperdown Way  
P.O. Box 728  
Greenville, SC 29602-0728  
[genglish@wyche.com](mailto:genglish@wyche.com)

s/Devon M. Puriefoy  
Devon M. Puriefoy  
SC Bard No.: 102097  
3 Boyce Avenue  
Greenville, SC 29601  
[devon@truluckthomason.com](mailto:devon@truluckthomason.com)

*Attorney for Defendant*

**RECEIVED**

OCT 18 2021

**SC Court of Appeals**



THE LAW OFFICES OF  
**TRULUCK THOMASON, LLC**

3 Boyce Avenue • Greenville • SC • 29601  
Phone (864) 331-1751 • Facsimile (864) 243-8115

Kimberly T. Thomason  
Thomas C. Brissey  
Devon M. Puriefoy  
John-Paul Baum

kim@truluckthomason.com  
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devon@truluckthomason.com  
johnpaul@truluckthomason.com

October 13, 2021

Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

OCT 18 2021

**SC Court of Appeals**

**Re:** William A.L. Sibley, Jr. v. Decide4Action, Inc.  
**Case No.:** 2019-CP-23-02032

To Whom It May Concern:

Enclosed for filing find Notice of Supersedeas and Notice of Appeal in the above captioned matter as well as the required filing fees in the amount of \$300.

**TRULUCK THOMASON, LLC**

Very respectfully,

Brandi Larobardiere  
Legal Assistant  
brandi@truluckthomason.com

enclosures  
cc: Gregory English

 THE LAW OFFICES OF  
TRULUCK THOMASON, LLC  
3 Boyce Avenue | Greenville, SC 29601



**RECEIVED**  
OCT 18 2021  
SC Court of Appeals

Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA         | ) | COURT OF COMMON PLEAS |
|                                 | ) | 2019-CP-23-02032      |
| COUNTY OF GREENVILLE            | ) |                       |
|                                 | ) |                       |
| JULIA SIBLEY-JONES, AS PERSONAL | ) |                       |
| REPRESENTATIVE OF THE ESTATE OF | ) |                       |
| WILLIAM A.L. SIBLEY, JR.,       | ) |                       |
| PLAINTIFF,                      | ) |                       |
|                                 | ) |                       |
| vs.                             | ) | TRANSCRIPT OF RECORD  |
|                                 | ) |                       |
| DECIDE4ACTION, INC,             | ) |                       |
| DEFENDANT.                      | ) |                       |
|                                 | ) |                       |
| DECIDE4ACTION, INC,             | ) |                       |
| COUNTERCLAIMANT/THIRD PARTY     | ) |                       |
| PLAINTIFF,                      | ) |                       |
|                                 | ) |                       |
| vs.                             | ) |                       |
|                                 | ) |                       |
| JULIA SIBLEY-JONES, AS PERSONAL | ) |                       |
| REPRESENTATIVE OF THE ESTATE OF | ) |                       |
| WILLIAM A.L. SIBLEY, JR., AND   | ) |                       |
| JOYCE FEATHERSTONE,             | ) |                       |
| COUNTERCLAIM DEFENDANT/THIRD    | ) |                       |
| PARTY DEFENDANT.                | ) |                       |
|                                 | ) |                       |

July 26, 27, 28, 2021  
Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE, and a Jury.

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

GREGORY ENGLISH, ESQ.  
Attorney for the Plaintiff/Counterclaim Defendant

KIMBERLY T. THOMASON, ESQ.  
DEVON MARC PURIEFOY, ESQ.  
Attorney for the Defendant/Counterclaimant

CHERYL A. SMITH  
Circuit Court Reporter

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(DW) - Denotes Defense Witness

(IC) - Denotes In Camera

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(Reporter's Note: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.)

EXHIBITS

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P R O C E E D I N G S

MONDAY, JULY 26, 2021

(WHEREUPON, proceedings commenced at 10:26 a.m.;  
Plaintiff's Exhibits 1 through 12 and 16 through 20 and  
Defendant's Exhibits 3 through 9 were premarked.)

THE COURT: All right. I guess just for some  
housekeeping matters, when you are talking, you can pull  
your mask down. And here's what I tell the jury, what I've  
told them before is when they're in their little cone of  
silence, which is what I call it, I will let them take  
their mask off. I had a lady in Oconee who passed out.  
She had her mask on and she -- was one of those things, and  
somebody told me they're a lot hotter than normal. She  
passed out. Her blood sugar dropped, and was going to take  
a little break. It was a murder trial, too, so it was like  
we didn't want to lose a juror. That was the first  
witness, so . . .

All right. As far as deposition designations, I guess  
y'all have exchanged those.

Mr. English, for some reason, your letter didn't come  
in when I tried to print it or pull it up.

MR. ENGLISH: I have a hard copy of that for Your  
Honor, and I also have a courtesy copy of the exhibits that  
we've agreed on for you.

THE COURT: Okay. How about voir dire? Have you each

1 looked at each other's voir dire?

2 MR. PURIEFOY: We have, Your Honor.

3 MR. ENGLISH: Yes.

4 THE COURT: All right. Any questions or problems with  
5 any of them?

6 MR. PURIEFOY: We don't have any objections with what  
7 we've seen.

8 MR. ENGLISH: We object to the defendant's second  
9 bullet point ---

10 THE COURT: Let me pull that up here.

11 MR. ENGLISH: --- on the grounds we think that's  
12 one-sided and it's a commentary on the case.

13 THE COURT: I'll reword that to something just  
14 regardless of your feelings, do you feel like you can  
15 follow the law, or something like that.

16 MR. ENGLISH: Thank you.

17 THE COURT: Other than that, everything's good.

18 So I've got defendant counterclaimant's supplemental  
19 voir dire. Was there an original one?

20 MR. PURIEFOY: There wasn't. We just call it  
21 supplemental as it's a supplement to your voir dire.

22 THE COURT: Okay. And then we have plaintiff and  
23 third-party defendants, voir dire, and a witness list from  
24 plaintiff. Do we have a witness list from defendant?

25 MR. PURIEFOY: We forwarded that to your attention

1 Your Honor, but I can ---

2 THE COURT: Okay. Is it in this list? Maybe it's  
3 attached. Okay. It was attached to your deposition. All  
4 right. I've got that. So I've got the plaintiff's witness  
5 list. So we've got everything we need. And, again, that  
6 will be at 1:30 when we strike that jury.

7 Deposition designations, any issues on those?

8 MR. PURIEFOY: Your Honor, we have, I believe, three.

9 THE COURT: Three issues or three designated?

10 MR. PURIEFOY: Three issues, yes, Your Honor.

11 THE COURT: Okay. Do y'all want to do those first?  
12 Or, I mean, I don't -- did y'all have something else y'all  
13 would rather talk about?

14 MR. PURIEFOY: We can do that. I think they'll be  
15 fairly straightforward.

16 THE COURT: Is this letter like a personal letter to  
17 me or is it ---

18 MR. ENGLISH: Yeah. It's the same thing we emailed.

19 THE COURT: Is there a check in it?

20 MR. ENGLISH: No. Sorry.

21 THE COURT: Cookies? No? Just checking. Okay. Your  
22 designations. All right.

23 I'll just start with this. Plaintiff, I'll let you  
24 tell me what issues you would like to address first.

25 MR. ENGLISH: Your Honor, first, just for the record,

1 I'm Greg English. I represent the plaintiff, Julia  
2 Sibley-Jones, who's the personal representative of the  
3 estate of Bill Sibley, and the third-party defendant, Joyce  
4 Featherstone.

5 First, for the record, I'd like to note that the  
6 parties have agreed on the admissibility of Plaintiff's  
7 Exhibits 1 through 12 and 16 through 20, and so if I need  
8 to formally move those into admission, I'd like to do that  
9 now.

10 THE COURT: All right. And y'all are in agreement  
11 with those?

12 MR. PURIEFOY: We are.

13 THE COURT: And y'all have already marked those and  
14 the court reporter has them?

15 MR. ENGLISH: Yes, Your Honor.

16 THE COURT: Well, then those are admitted by  
17 stipulation, Plaintiff's 1 through 12 and 16 through 20.

18 (WHEREUPON, Plaintiffs's Exhibit Numbers 1 through 12 and  
19 16 through 20 were admitted into evidence.)

20 THE COURT: All right.

21 MR. ENGLISH: Next, Your Honor, on the defendant's  
22 designations from the deposition of Bill Sibley -- and I've  
23 got a copy of that deposition if it would help Your Honor  
24 to hand that up.

25 THE COURT: Okay. All right.

1 MR. ENGLISH: The first defendant's designations we  
2 object to is on page 30 beginning at line 15. And there is  
3 discussion about a -- I'll let Your Honor get to it,  
4 page 30 beginning at line 15.

5 THE COURT: Okay.

6 MR. ENGLISH: There's a reference in there to a report  
7 by a third party called Generational Equity. It was an  
8 offer memorandum that was issued prior to the contract at  
9 issue in this case, which is a stock purchase agreement.  
10 So we would object to that -- discussion of that report  
11 coming in under the parole evidence rule. Also, it's  
12 hearsay.

13 THE COURT: All right.

14 MR. PURIEFOY: Beg the Court's indulgence one moment,  
15 Your Honor.

16 THE COURT: Okay.

17 MR. PURIEFOY: I'm pulling up that.

18 THE COURT: I assume that's one of these exhibits back  
19 here.

20 MR. ENGLISH: That's not one of the plaintiff's  
21 exhibits, Your Honor.

22 THE COURT: Okay. It wasn't one of the exhibits to  
23 this deposition.

24 MR. ENGLISH: Oh, I don't think so, Your Honor.

25 THE COURT: In looking at -- let me just, while you're

1 looking at that, looking at the previous question, this was  
2 an offer for this, I guess, stock by some other successor  
3 -- I mean by a previous person. Is that what ---

4 MR. ENGLISH: There was an offer which took the form  
5 of a letter of intent of March 17th, but this is actually  
6 referring to a prior document, which is what's called an  
7 offering memorandum. That was prepared by an outside party  
8 called Generational Equity.

9 THE COURT: Okay.

10 MR. PURIEFOY: Well, Your Honor, to begin, I don't  
11 believe this is -- it's not hearsay. And if you look at  
12 the question that begins on line 15, it says, "It was your  
13 understanding that the EBITDA in 2016 was 1.173 million."  
14 That is personal knowledge. This is not testifying to  
15 prove the truth of the matter asserted in the offering  
16 memorandum. It's simply asking what his understanding of  
17 that memorandum was. And if his answer was, "I don't know  
18 what that document is," and I delved into the document  
19 itself, that would certainly constitute hearsay. But the  
20 question that was posed was, "What was your understanding  
21 of that document?" I believe he's allowed to testify as to  
22 what his personal understanding of what that document is.

23 THE COURT: All right.

24 MR. ENGLISH: Well, but his answer was in that report,  
25 yeah. So, I mean, he's basically referring back to the

1 report that is the hearsay and is the parole evidence.

2 THE COURT: When do you expect that these deposition  
3 designations will be presented?

4 MR. ENGLISH: Judge, that, I guess, is another issue.  
5 We plan to maybe even read Mr. Sibley's deposition today,  
6 at least our designations. I don't know if Your Honor  
7 wants us to read their designations at the same time or let  
8 them read theirs as part of their case. So we could defer  
9 this till later if they're going to read their designations  
10 later.

11 MR. PURIEFOY: And we would prefer -- I think it's  
12 going to be easier for the jury, especially in our case in  
13 chief, for us to read our designations at the time that  
14 we're ready to read them, which would be at the beginning  
15 of our case in chief.

16 THE COURT: Okay. We're going to bore this jury to  
17 death. Well, there's nothing you can help on these kind of  
18 cases. I know that was no reflection on the attorney.

19 MS. THOMASON: We get it.

20 THE COURT: In dealing with these kind of cases, I  
21 know how sometimes you have to deal with that.

22 Let me just look at that. I'd like to kind of know a  
23 little bit more about the case, I think. I mean, if it's  
24 not going to prejudice you all, I would like to take that  
25 one under advisement. So okay.



1 MR. ENGLISH: And it's the same issue on the next  
2 page, Judge, page 31, again, lines 15 to 25. It's  
3 discussing that Generational Equity offering memorandum.

4 THE COURT: Okay. And same response.

5 MR. PURIEFOY: It would be the same response, Your  
6 Honor.

7 THE COURT: All right. Did you have another one?

8 MR. ENGLISH: And then the last one begins on page 37,  
9 line 24 and goes over onto page 38, line 9. It's a  
10 discussion of other employees, what they said about the  
11 defendant's vision for the company. And, again, that's  
12 hearsay. And one of those, Mr. Tim Clark, is deceased.

13 THE COURT: Mr. Puriefoy?

14 MR. PURIEFOY: Beg the Court's indulgence while I read  
15 that section.

16 THE COURT: Okay. You're fine.

17 (Pause in proceedings.)

18 MR. PURIEFOY: Your Honor, so we will stipulate to the  
19 removal of the portions of that designation that would  
20 constitute hearsay, which would be page 38, lines 5 through  
21 9. I believe the questions leading up to that do not give  
22 rise to hearsay.

23 THE COURT: Mr. English?

24 MR. ENGLISH: Well ---

25 THE COURT: I don't see any problem with 1 through 4.

1 MR. ENGLISH: Okay.

2 THE COURT: So therefore, you'll be doing page 37, 24,  
3 25 and 38, 1 through 4.

4 All right. Anything else from the plaintiff as far as  
5 deposition designations?

6 MR. ENGLISH: No, Your Honor.

7 THE COURT: Anything else from the plaintiff?

8 MR. ENGLISH: No, Your Honor.

9 THE COURT: All right. Be glad to hear from you,  
10 Mr. Puriefoy.

11 MR. PURIEFOY: Your Honor, we would object to  
12 defendant's designation page 61 beginning on line 2 through  
13 10.

14 THE COURT: 61 -- what lines?

15 MR. PURIEFOY: 2 through 10.

16 And, Your Honor, we'd simply ask that, under the rule  
17 of completeness, that the remaining portion of that  
18 response be also read into the record.

19 THE COURT: I think they've actually -- 1 through 5  
20 and then 9 through 11. Page 61?

21 MR. PURIEFOY: I had, Your Honor, 61, lines 2 through  
22 10. And if I'm mistaken, then I can certainly ---

23 THE COURT: They've got -- the letter that I've got is  
24 61, 1 through 5 and 9 through 11.

25 MR. ENGLISH: That's right, Your Honor.

1 MR. PURIEFOY: One moment, Your Honor.

2 THE COURT: That's fine.

3 (Pause in proceedings.)

4 MR. PURIEFOY: So, Your Honor, I apologize. So let me  
5 clarify. We were originally discussing the deposition  
6 designations of Mr. Bill Sibley. There are also deposition  
7 designations for Richard Bergeron pursuant to his 30(b)(6)  
8 deposition.

9 THE COURT: Oh, okay.

10 MR. PURIEFOY: And we're referring to that deposition,  
11 Your Honor. My apologies.

12 THE COURT: All right. And I do not have that  
13 deposition.

14 MR. ENGLISH: I can hand up a copy of that.

15 THE COURT: All right. Okay. And I've got this, 2  
16 through 10. And what's your response, Mr. English?

17 MR. ENGLISH: Well, clearly, if they want to  
18 counter-designate that, I think that's their prerogative.

19 THE COURT: All right. So we'll just add -- you'll be  
20 adding -- you want 2 through 9? What are you proposing to  
21 be added?

22 MR. PURIEFOY: Well, Your Honor, the rule under 611  
23 allows the party that's not submitting the designation  
24 request the Court instruct the reading party to give full  
25 context to either the question or the answer. We can

1 certainly designate it on our case in chief, but my concern  
2 is the likelihood of confusion to the jury because we'll be  
3 picking up in the middle of a sentence and continuing to  
4 read.

5 THE COURT: So you can either -- it will be up to you.  
6 You can either make him read it, or you can designate the  
7 full amount in yours, whatever you want to do.

8 MR. PURIEFOY: We can just do it in ours, Your Honor.

9 THE COURT: Okay. All right. Is that all right with  
10 you, Mr. English?

11 MR. ENGLISH: Yeah. And I don't mind while I'm up  
12 there just asking -- telling him to go ahead and read it  
13 all.

14 THE COURT: Okay. So what parts are we going to be  
15 reading?

16 MR. ENGLISH: Just adding 10 through 17, all of 10  
17 through 17.

18 THE COURT: I don't want to duplicate it, you know,  
19 too much in this trial.

20 All right. So that will be 2 through 19, basically.

21 MR. PURIEFOY: Your Honor, we would ask for the same  
22 to happen at page 68.

23 THE COURT: And they've got designated 11 through 19?

24 MR. PURIEFOY: Correct.

25 THE COURT: And you want what?

1 MR. PURIEFOY: Just the remaining portion of that  
2 sentence.

3 THE COURT: You're talking about adding "You declare  
4 it"?

5 MR. PURIEFOY: The -- my apologies, Your Honor. On my  
6 copy I have 11 through 14, but I'm seeing now it's 11  
7 through 19. So if the sentence is complete, then I have no  
8 problem with that. I may have just -- I may have just  
9 wrote this down incorrectly.

10 THE COURT: With all these I can understand.  
11 All right. So you're good with what -- the  
12 designation on page 68.

13 MR. PURIEFOY: 11 through 19.

14 THE COURT: Okay.

15 MR. PURIEFOY: Your Honor, then two more -- well,  
16 technically, I guess three. On page 95, 19 through 25.

17 THE COURT: 95 at 19 through 25. Okay.

18 MR. PURIEFOY: And then -- well, I'll do each one  
19 individually, Your Honor.

20 THE COURT: All right.

21 MR. PURIEFOY: 95, 19 through 25, it's our position  
22 that any reference to the personal net worth of  
23 Mr. Bergeron is irrelevant to this action and does not tend  
24 to make more or less likely any claim or defense that's  
25 been alleged in this suit. I don't understand why the

1 plaintiffs would need to speak about the personal wealth of  
2 Mr. Bergeron, and we would certainly argue that that's not  
3 relevant to this case.

4 MR. ENGLISH: Judge, we're not -- this doesn't go to  
5 his personal net worth. This goes to how much money he's  
6 taking out of the company.

7 Part of what you'll hear in the counterclaim is the  
8 defendant is claiming the company was damaged in value in  
9 part because of some employee bonuses that were paid and  
10 that that may have been intended to continue or was  
11 expected. And part of our counterargument to that is that  
12 he's been taking out more and more money out of the  
13 company. So that sort of undermines his claim that the  
14 company's not doing well. It is doing well. And to the  
15 extent money's coming out, it's going to him and not to  
16 these employees that he's complaining about.

17 MR. PURIEFOY: Your Honor, I think Mr. English is  
18 taking the allegations contained in our counterclaims too  
19 far. Our allegations certainly have alleged that the  
20 defendant in this case has been damaged; however, it's not  
21 damage that was the result of the company doing poorly  
22 financially following this transaction, rather the damage  
23 that was suffered was the lack of information on the front  
24 end that went into the valuation process that Mr. Bergeron  
25 utilized to value the business. And so we certainly are

1       damaged, and the payment of these bonuses, I believe the  
2       evidence and the testimony will show, would have changed  
3       the value of this business on the front end. However, any  
4       reference to Mr. Bergeron pulling money out of the company,  
5       which, of course, would be going to him personally, is not  
6       relevant to any claim or defense in this case.

7               MR. ENGLISH: But the way they value the company is to  
8       project the income or -- and earnings going forward, and  
9       he's claiming he has less earnings. And part of the reason  
10      -- well, that's not true because he's personally taking  
11      more and more out of the company. So I think it is  
12      relevant.

13             MR. PURIEFOY: It's not -- Your Honor, it's not  
14      projected earnings. The problem that we have with the  
15      bonuses that were being paid was that that would have been  
16      an additional expense that Mr. Bergeron would have had to  
17      take into account at the time that he was making an offer  
18      to purchase this business. So it certainly would have been  
19      important for his valuation metric at the front end of his  
20      valuation. Any money being taken out of the company speaks  
21      directly to the viability of the company, which we made no  
22      allegations that the company was harmed as a result of  
23      having to pay additional moneys to employees or anything  
24      along those lines. Our damage was strictly and directly  
25      tied to the failure to disclose these bonuses on the front

1 end which would have been an additional expense that  
2 Mr. Bergeron should have had the opportunity to take into  
3 consideration at the time he was valuing the business. So,  
4 again, to suggest that Mr. Bergeron pulling money out of  
5 the company somehow speaks to our argument of damages is  
6 incorrect.

7 THE COURT: I think I'm going to allow it, but I'll be  
8 subject to change my mind on that. How about that?

9 All right. And, I guess, probably your next one on 96  
10 is the same thing?

11 MR. PURIEFOY: It will be the same. It would be, Your  
12 Honor.

13 THE COURT: All right. Is your objection to 95, 19  
14 through 25 and 96, 1 through 25 and then 97, 1 through 9?

15 MR. PURIEFOY: That's correct, Your Honor.

16 THE COURT: All right. And right now I'm going to  
17 allow it. I guess you'll need to make an appropriate  
18 objection at the time.

19 MR. PURIEFOY: Yes, Your Honor.

20 THE COURT: And, I guess, is that a motion in limine?  
21 I take that as a motion in limine then.

22 MR. PURIEFOY: That's fine, Your Honor. We do have  
23 some additional motions in limine.

24 THE COURT: Right. And I'm going to deny that. But,  
25 again, make sure you preserve all your -- the record for



1       that.

2           All right. Anything else on designations?

3           MR. PURIEFOY: Not on the designations, Your Honor.

4           THE COURT: All right. Additional -- you said you had  
5       some additional motions?

6           MR. PURIEFOY: We do, Your Honor. We have some  
7       additional motions in limine. May I approach, Your Honor?

8           THE COURT: Do you want your depositions back,  
9       Mr. English?

10          MR. ENGLISH: Yes, sir.

11          THE COURT: All right. First of all, any agreement to  
12       the motion in limine, Mr. English?

13          MR. ENGLISH: I'm just now seeing this.

14          THE COURT: Oh, okay. You want to look at it for a  
15       second then?

16          MR. ENGLISH: Yeah.

17          THE COURT: I don't want to have to think unless I  
18       have to.

19          MR. ENGLISH: Right.

20          THE COURT: It's early Monday morning.

21          MR. ENGLISH: The first one, we don't plan to make any  
22       reference to any objections they made. We have put in  
23       evidence Plaintiff's Exhibit Number 19, which is their  
24       responses to request for admissions, but I don't think  
25       there were any objections in those.

1 THE COURT: Okay.

2 MR. ENGLISH: So we don't plan to do Number 1.

3 Number 2, we don't plan to -- you know, Number 2 we  
4 think should be mutual. We're going to read the deposition  
5 of Mr. Sibley, but beyond that, we think that should be all  
6 the testimony about what he said.

7 THE COURT: All right.

8 (Pause in proceedings.)

9 THE COURT: Are you pondering or ---

10 MR. ENGLISH: I thought you were pondering.

11 THE COURT: I was pondering whether you were  
12 pondering.

13 MR. ENGLISH: I apologize.

14 THE COURT: No. That's fine.

15 MR. ENGLISH: I think Number 2 is fine as long as it  
16 goes both ways.

17 THE COURT: All right. Any problem with that?

18 MR. PURIEFOY: No. That's fine.

19 THE COURT: How about Number 3?

20 MR. ENGLISH: On 3, the only thing, Mr. Sibley passed  
21 away following surgery last year. That's all we were going  
22 to say about it. I think when the jury hears somebody  
23 passed away, you know, they wonder was it COVID. And I  
24 just think we just have like a one-sentence statement about  
25 that.

1 THE COURT: Any problem with that?

2 MR. PURIEFOY: Your Honor, as long as it's just a  
3 general statement that he passed away and nothing regarding  
4 the specifics of any condition he may have suffered.

5 THE COURT: I mean, it wasn't in reference to like  
6 your cross-examination or something.

7 All right. Number 4?

8 MR. ENGLISH: We disagree with that. I think  
9 Mr. Bergeron and Decide4Action, there's evidence has a  
10 history of making claims like this against escrows when he  
11 buys a company, and I think it's sort of a part of a  
12 pattern. So I don't agree with Number 4.

13 THE COURT: All right.

14 MR. PURIEFOY: Your Honor, the litigation that's being  
15 referenced is over ten years ago, I believe. And although  
16 it was the only other lawsuit that he was involved in  
17 regarding these types of matters, he prevailed in that case  
18 when it was the exact same facts. However, that's really  
19 immaterial. I don't understand for what purpose the  
20 introduction of this evidence would serve. To the extent  
21 that this is being offered to show that Mr. Bergeron  
22 somehow acted in conformity with how he normally acts,  
23 that's character evidence, which, of course, is  
24 inadmissible. And so we would ask that any reference to  
25 that litigation, especially if it's being offered to

1 demonstrate some pattern and it was a single occurrence  
2 prior to this lawsuit, I don't think it finds its way  
3 around the propensity box under the character.

4 THE COURT: Mr. English?

5 MR. ENGLISH: Judge, I think this is the second time  
6 he's made a similar claim, and that is sufficient to show a  
7 pattern that the jury should consider the probative value  
8 of that.

9 THE COURT: And you're saying -- I mean, the result of  
10 that was he was successful in his litigation?

11 MR. PURIEFOY: That's correct, Your Honor. And,  
12 again, I don't believe under Rule 405 that this rises to  
13 the level of demonstrating some pattern in engaging in this  
14 type of conduct. And this certainly would be considered  
15 character evidence, especially if it's being offered for  
16 that reason. And so unless there can be some demonstration  
17 through cross-examination of Mr. Bergeron, I suppose that  
18 this does rise to the level of a pattern of practice, I  
19 don't see how this could be admissible.

20 THE COURT: All right. Let me look at that. I'll let  
21 y'all know what I come up with.

22 All right. Number 5?

23 MR. ENGLISH: Yeah. I agree. Neither side should  
24 refer to motions in limine.

25 THE COURT: Right. Okay.

1           Number 6 is kind of standard law, too, isn't it?

2           MR. ENGLISH: Yeah. We don't plan to do that.

3           THE COURT: Number 7?

4           MR. ENGLISH: Again, we don't plan to make any  
5 reference to his personal net worth. But the amounts he is  
6 taking out of the company, we think, do show the company is  
7 not doing as bad as he wants to claim.

8           THE COURT: But as far as net worth will not be  
9 brought in.

10          MR. ENGLISH: Net worth.

11          THE COURT: And Number 8?

12          MR. ENGLISH: Disagree with that.

13          And, again, you know, we don't know exactly how the  
14 defendant is going to try to prove what damages. But the  
15 facts are Mr. Bergeron paid -- or agreed to pay \$4.4  
16 million for this company. He paid 90 percent of that. So  
17 this is a fight over  
18 10 percent in escrow, that \$440,000.

19          They're saying there was a diminution in value of the  
20 company, and he got valuations. One showed it was worth  
21 \$7.3 million, and the other showed it was worth \$6 million.  
22 So I think it is relevant that the company is more than he  
23 paid for it -- or worth more based on, you know, his own  
24 positions.

25          MR. PURIEFOY: Your Honor, that would be substantially

1 more prejudicial than probative. The value that  
2 Mr. Bergeron placed on the business was based on his own  
3 valuation. He did not have to pay what the ultimate  
4 valuation number ended up being. He made an offer to  
5 purchase his business for \$4.4 million, and Mr. Sibley  
6 accepted that offer. To suggest to the jury that the  
7 business is valued at \$7 million would likely confuse them  
8 in so much that if they did render a verdict in our favor  
9 finding that there was liability, the chances are they  
10 would ultimately say although he may have been damaged, he  
11 actually got the company for a steal. That should play  
12 absolutely no part in the jury's deliberation in  
13 determining whether or not the plaintiff in this case is  
14 liable for the breach of contract that we have alleged, and  
15 it certainly shouldn't play a factor in determining the  
16 damages that have been alleged.

17 Again, there's been a misrepresentation of the  
18 allegations that we've made. We've alleged that there was  
19 a damage on the front end. Because Mr. Bergeron would have  
20 an opportunity to revalue that business at that time has  
21 nothing to do with the success of the business currently.  
22 So to offer to the jury the existing value or the value of  
23 that business at the time that it was actually purchased,  
24 which would have been a difference of approximately  
25 \$3 million, it is very likely that a jury will say, "In the

1 event liability is, in fact, established, he got the  
2 company for a steal," that is substantially more  
3 prejudicial than probative.

4 THE COURT: I'm not sure that I can make that  
5 determination in a pretrial, you know, motion in limine. I  
6 mean, I'll look at it, but I think I'm just going to have  
7 to wait until that comes up.

8 And I guess the caption should -- have y'all amended  
9 the caption?

10 MR. PURIEFOY: We've noticed that the caption should  
11 have been counterclaim and counterclaim defendants.

12 THE COURT: I'm talking about doesn't it have to be --  
13 isn't Mr. Sibley the one that passed away?

14 MR. ENGLISH: Yes. And I think the caption we've got  
15 shows that.

16 THE COURT: Oh, okay.

17 MR. PURIEFOY: It was amended, Your Honor. I just  
18 inadvertently used the wrong caption.

19 THE COURT: I'm just making sure. Yeah. Because it's  
20 like -- all right. I see that on some of it. Yeah.  
21 Right.

22 All right. So y'all really agreed on everything but 4  
23 and 8, and those are the ones -- I'm going to look at 4 and  
24 probably not be in a position to do 8; so is that correct?

25 MR. PURIEFOY: Yes, sir.

1           THE COURT: All right. Anything else from the  
2 defendant?

3           MR. PURIEFOY: Nothing from the defendant.

4           THE COURT: All right. Anything else from the  
5 plaintiff?

6           MR. ENGLISH: Judge, I do have a motion in limine. I  
7 can wait until before the defendant begins its case. It  
8 involves its counterclaim, and I don't know if you want to  
9 take that up now or wait.

10          THE COURT: Let's do it then. Then we'll have a  
11 little more grasp of the situation.

12          MR. ENGLISH: Do it now?

13          THE COURT: I mean do it at that time.

14          MR. ENGLISH: Okay. Yes.

15          THE COURT: Does that work for you?

16          MR. ENGLISH: Yeah. I think that makes sense.

17          THE COURT: Okay.

18          MS. THOMASON: Your Honor, We've also agreed on  
19 exhibits. Some are crossover ---

20          THE COURT: Okay.

21          MS. THOMASON: --- exhibits that will be duplicated.  
22 But we have ours as well.

23          MR. PURIEFOY: Your Honor, there is a single exhibit  
24 that I will give to the court reporter.

25          THE COURT: Everything else is already in through



1       there?

2               MR. PURIEFOY:   That's correct.

3               THE COURT:   Okay.   Except for Defendant's Exhibit ---

4               MR. PURIEFOY:   I believe this is going to be just  
5       Defense Exhibit 1.

6               THE COURT:   All right.   And that's one you've agreed  
7       to, Mr. English?

8               MR. ENGLISH:   Yes.   This is the email stream beginning  
9       May 3, 2017.

10              THE COURT:   All right.   And that's in without  
11       objection.   So that will be entered into evidence by  
12       stipulation.

13              (WHEREUPON, Defendant's Exhibit Number 1 was marked for  
14              identification and admitted into evidence.)

15              THE COURT:   All right.   Anything else?

16              MR. ENGLISH:   None from plaintiff.

17              MR. PURIEFOY:   Nothing from defendant, Your Honor.

18              THE COURT:   All right.   Second panel should be ready  
19       to go by 11:30, correct?

20              THE CLERK:   Yes, sir.   I can call later to see if  
21       they're ready.

22              THE COURT:   All right.   And then after that we'll have  
23       a break for lunch, and then should be able to strike the  
24       jury at 1:30.

25              (WHEREUPON, a recess is taken at 11:02 a.m.)

OPENING STATEMENTS

MR. ENGLISH: Thank you, Your Honor.

Good afternoon, ladies and gentlemen. My name is Greg English. I'm an attorney with the Wyche Law Firm here in town. With me is Larry Robertson. Larry will be posting the exhibits for you all to review as we go through this case. And we are proud to represent the plaintiff in this action, Julia Sibley-Jones. Julia is the personal representative of her father's estate. Her father, her late father was William -- Bill Sibley who passed away last year.

We also represent Ms. Joyce Featherstone who's sitting here with us. She is the widow of the late Ernie Featherstone.

This is an action against a corporation, the defendant which is named Decide4Action, Inc.

Now, this story started about 33 years ago in 1988 when the late Bill Sibley, Julia's father, and Ernie Featherstone formed a company called Computer Control + Integration. And I'm going to call that CC+I for simplicity throughout the case.

CC+I was in the business of providing software and computer systems for large manufacturing plants like textile manufacturing plants and even Coca-Cola. So they built up a pretty good business. And over the years, Bill

1 Sibley and Ernie Featherstone added four other shareholders  
2 to the company, and then they added several other  
3 employees, got up to nine other employees who were not  
4 shareholders.

5 In March of 2017, which is when this dispute really  
6 began, the defendant, Decide4Action, sent a nonbinding  
7 letter of intent to purchase the stock of Computer Control  
8 and Integration, or CC+I. A letter of intent, or LOI, as  
9 you may know, is not a contract, but it's an offer to  
10 negotiate a contract. And so that's when this all started.  
11 And that offer was to purchase CC+I for \$4.4 million  
12 excluding cash. Now, that last point is important,  
13 excluding cash, because what that meant is the owners of  
14 CC+I got to keep whatever cash the company had made at the  
15 point of sale.

16 By May 2017, though, about two months later, the LOI  
17 had expired, and it was not clear whether or not  
18 Decide4Action was going to go forward with the purchase of  
19 the stock.

20 Now, CC+I's fiscal year ended June 30 of 2017, June 30  
21 of every year. In that sense it was like the government  
22 fiscal year you may know runs from July 1 to June 30 of  
23 each year. Well, that was CC+I's fiscal year instead of a  
24 calendar fiscal year.

25 So they came to their fiscal year end, and they had a

1 good year in the year ending June 30, 2017. So the board  
2 of directors, including Mr. Sibley and two other  
3 shareholders who aren't parties, decided to pay bonuses not  
4 just to themselves, but to all the employees including the  
5 employees who were not shareholders. In other words,  
6 instead of keeping all the cash for themselves, they  
7 decided to share and give everybody big bonuses for a good  
8 year.

9 About four months later on October 13, 2017,  
10 Decide4Action agreed to purchase the stock of CC+I. And  
11 even though they weren't required to do so by the stock  
12 purchase agreement, the selling shareholders disclosed that  
13 they had paid employee bonuses back in June.

14 So Decide4Action went forward with the purchase and  
15 closed on October 16, 2017. But per the contract, they  
16 only paid 90 percent of that \$4.4 million purchase price.  
17 10 percent of that, or \$440,000, was placed in an escrow  
18 account with United Community Bank, UCB, right across the  
19 street here.

20 Now, pursuant to the contracts that were signed, that  
21 \$440,000 was to be released one year later on October 16,  
22 2018, unless the selling shareholders had breached the  
23 contract or had done something that cost Decide4Action  
24 money. But the selling shareholders didn't do anything  
25 like that, and so they were entitled to receive that

1 remaining \$440,000 in October of 2018.

2           However, just before the escrow release date, in late  
3 September 2018, Decide4Action's president, the sole  
4 shareholder and sole director, a man named Richard Bergeron  
5 who is sitting right over there, calls his lawyers here to  
6 file a claim against the escrow to stop payment of that  
7 \$440,000.

8           Now, when I tell you what his claim was, you may not  
9 believe me, but the evidence will bear this out.  
10 Decide4Action claimed that the sellers had damaged the  
11 value of the company when they paid about \$325,000 of bonus  
12 money to their employees back in June instead of just  
13 keeping the cash for themselves, even though the contract  
14 was clear that the shareholders, and Decide4Action admits  
15 the shareholders were entitled to keep that cash. And  
16 Decide4Action not only claimed to the escrow agent that  
17 they were entitled to recover the amount of the employee  
18 bonuses, they claimed they were entitled to recover nearly  
19 4 times that amount, or \$1.3 million is the claim they  
20 made. I promise I am not making this up.

21           Even after we wrote to the escrow agent and explained  
22 that the claim was invalid, you'll see evidence  
23 Decide4Action maintained its position, refused to release  
24 the escrow, and required Mr. Sibley to file this lawsuit to  
25 get the balance of the purchase price. And, of course, he

1 passed away before he ever got his share of that. That's  
2 why Ms. Sibley-Jones is in court today.

3 As you probably already gathered, the evidence will be  
4 clear that Decide4Action's claim was invalid, and it was  
5 invalid for at least that I can count five separate and  
6 independent reasons. First of all, when CC+I's board  
7 decided to pay these bonuses to employees, there was no  
8 binding contract in place. So they had no idea in June  
9 whether or not Decide4Action was even going to purchase the  
10 company.

11 Second, when the contracts were signed in October of  
12 2017, those contracts allowed the shareholders to keep the  
13 cash and do with it what they wanted. In fact, you'll hear  
14 evidence that Decide4Action admits that if the shareholders  
15 had just pocketed the money and not given it to their  
16 employees, they would have no claim. You'll hear an  
17 admission to that effect.

18 Third, the shareholders' generosity to their employees  
19 in no way damaged Decide4Action. CC+I gave these bonuses  
20 as a one-time discretionary bonus. They didn't give these  
21 employees contractual rights to receive bonuses on into the  
22 future. Decide4Action had no obligation to continue to do  
23 this year after year, and, in fact, they haven't.

24 Fourth, you'll see the stock purchase agreement  
25 disclosed that employee bonuses were paid, and CC+I's

1 shareholders gave Decide4Action all the information they  
2 requested.

3 And fifth, you'll also see a provision in the contract  
4 that explicitly and expressly prohibits the exact type of  
5 claim that Decide4Action made with the escrow agent and is  
6 maintaining through court today.

7 All of this means and the evidence will show that  
8 Decide4Action breached the stock purchase agreement and a  
9 separate indemnity escrow agreement and a separate  
10 agreement regarding application of funds which all mean  
11 that that escrow should have gone to the selling  
12 shareholders back in 2018. Moreover, the evidence will  
13 show that Decide4Action not only breached these contracts,  
14 but they did so with fraudulent acts to try to hold the  
15 seller's money hostage in hopes that they could get some of  
16 it back.

17 So accordingly, we'll ask you to award the plaintiffs  
18 not only the \$440- escrow, but also consider punitive  
19 damages in this case.

20 Accordingly, after hearing all of the evidence, we are  
21 confident that you'll render a verdict for Ms. Sibley-Jones  
22 and Ms. Featherstone for \$440,000 and whatever punitives  
23 you consider against Decide4Action.

24 I thank you for your time and your attention to what  
25 is a very important case to my clients. Thank you.

1 THE COURT: All right. Mr. Puriefoy?

2 MR. PURIEFOY: May it please the Court, Your Honor.

3 Ladies and gentlemen, my name is Devon Puriefoy, and  
4 I, along with my co-counsel, Kimberly Thomason, are here  
5 today on behalf of the defendant and counterclaimant,  
6 Decide4Action.

7 I would like to repeat some of the Court sentiments in  
8 thanking each and every one of you for being here today. I  
9 certainly understand that there are other places that you  
10 would prefer to be on a beautiful Monday afternoon, but  
11 your presence here today is extremely important to my  
12 client, Mr. Richard Bergeron, who is the representative and  
13 owner of Decide4Action.

14 Ladies and gentlemen, Mr. Richard Bergeron formed  
15 Decide4Action in 2014, and similar to CC+I, it was a  
16 software integration company. Mr. Bergeron had a single  
17 goal: to work hard, to build his business, and to expand  
18 both nationally and internationally. In between 2014 and  
19 2016, that's exactly what Mr. Bergeron did. He worked  
20 hard, he grinded, he put his nose to the grindstone and  
21 grew a very successful business.

22 In 2016, Mr. Bergeron was introduced to William  
23 Sibley, the late William Sibley. And at that time it  
24 seemed to be the perfect storm. Mr. Sibley was ready to  
25 reap the benefits of his hard work and move into



1 retirement. Mr. Bergeron was still continuing to grow his  
2 business, and it was a perfect opportunity for him to  
3 expand. And so as Mr. English pointed out to you earlier,  
4 the two parties who are -- and this is very important --  
5 very astute and sophisticated savvy businessmen began  
6 negotiations in 2016. And what those negotiations resulted  
7 in was the execution of the letter of intent.

8 Now, Mr. English stood before you a moment ago and  
9 indicated that that is not a contract, yet these parties  
10 signed their names to it. And what this letter of intent  
11 did was set the rules of the game. It set the rules that  
12 Mr. Bergeron was going to abide by. It set the rules that  
13 Mr. Sibley was going to abide by. They both discussed with  
14 each other what they could live with and what they could  
15 not live without. And as a direct result of these  
16 arm's-length negotiations, this letter of intent was  
17 created. And I ask you, throughout the course of this  
18 trial, to use that as your guidepost, because Mr. Bergeron  
19 relied on that letter of intent. The words that were  
20 contained therein were not ambiguous. They were not open  
21 to interpretation. They were very black and white, and  
22 they served as the rules of the game.

23 Fast forward to October of 2017. In October 2017,  
24 Mr. Bergeron and Mr. Sibley, after Mr. Bergeron had  
25 conducted an extensive due diligence -- and due diligence

1       for those that don't know is an opportunity for  
2       Mr. Bergeron to go into CC+I to look at the books and  
3       records, to ask specific questions about how this company  
4       was run, what its costs were, and specifically how much it  
5       paid its employees both in salaries and bonuses. What the  
6       evidence and testimony is going to demonstrate is that  
7       Mr. Bergeron, during his due diligence process,  
8       specifically asked these questions: please provide me with  
9       the salaries of your employees; please provide me with all  
10      bonuses paid to these employees. And the reason why  
11      Mr. Bergeron asked those questions is because the roadmap,  
12      the rules of the game specifically stated in the letter of  
13      intent that all cash of the company was to be paid to the  
14      shareholders. Not to the employees, but to the  
15      shareholders.

16           Now, the plaintiffs in this case I suspect will  
17      attempt to present evidence to you that, despite the plain  
18      language of the letter of intent, there was no harm, no  
19      foul. It was their cash and they could do whatever they  
20      wanted with it. But, ladies and gentlemen, remember  
21      throughout the course of this trial that the letter of  
22      intent set the rules of the game, and Mr. Sibley didn't  
23      have the ability or the authority to change those rules as  
24      he saw fit. And in November of 2017, after the execution  
25      of the stock purchase agreement which Mr. Sibley -- or,

1       excuse me, which Mr. English made a reference to just a  
2       moment ago, the stock purchase agreement consummated the  
3       transaction between Decide4Action and CC+I. And once  
4       again, the stock purchase agreement spoke to one very  
5       particular issue. It was Mr. Sibley's reaffirming that all  
6       cash of the company was paid to the owners. Not a dime was  
7       to be paid to the employees. And there's a very specific  
8       reason for that.

9               Ladies and gentlemen, Mr. Bergeron conducted the  
10       valuation in this case. He decided what he thought the  
11       business was worth, and he made an offer. Mr. Sibley  
12       accepted that offer, and there were some very important  
13       considerations that went into that valuation process, one  
14       of them being the salaries and the bonuses. And so  
15       Mr. Bergeron did not instruct CC+I to not pay bonuses  
16       because they did not think that the employees were worth  
17       it, but the rules of the game had already been set, and  
18       Mr. Sibley was bound by them. And he reaffirmed that he  
19       was going to continue and had been playing by those rules  
20       in the stock purchase agreement.

21              What the evidence and testimony is going to  
22       demonstrate, ladies and gentlemen, is in November of 2017,  
23       nearly two months after the execution of the stock purchase  
24       agreement, Mr. Bergeron made an absolutely horrifying  
25       discovery. For the first time, Mr. Bergeron was informed

1       that CC+I had paid nearly \$400,000 of bonuses to non-owner  
2       employees. There is uncontroverted evidence and testimony  
3       that you're going to hear today that demonstrates that  
4       fact. And I ask you, again, to remember what were the  
5       rules of the game, and did the payment of these bonuses  
6       violate the rules of the game. And what I am confident you  
7       will find is that they absolutely did.

8               Now, the plaintiff will likely stand before you today  
9       and argue that, although the rules of the game were written  
10      by his client, Mr. Sibley, it was okay if he changed them.  
11      I suspect that plaintiff will present to you that, although  
12      Mr. Sibley wrote the rules of the game, had Mr. Bergeron  
13      just dug a little deeper, he would have found out that,  
14      although Mr. Sibley wrote the rules of the game, had  
15      Mr. Bergeron been just a little bit smarter, he might have  
16      caught them. But what the evidence and testimony is going  
17      to make clear, the testimony of Mr. Sibley himself is going  
18      to make clear that it was not until November of 2017, two  
19      months after Mr. Sibley said, "I've been playing by the  
20      rules of the game," that Mr. Bergeron found out that he  
21      certainly had not. That is irrefutable.

22             At the conclusion of this case, ladies and gentlemen,  
23      the judge is going to read you the law of the case and then  
24      will instruct you to weigh the evidence and the testimony  
25      against the law. And unlike a criminal trial which we're

1       used to hearing the burden of proof beyond a reasonable  
2       doubt, in this courtroom today, the burden of proof is  
3       simply this: it's preponderance of the evidence. And the  
4       easiest way to make this demonstration, ladies and  
5       gentlemen, call in the scales of justice. And if you take  
6       everything that you heard from the plaintiff and you put it  
7       on this scale, all of the evidence, all of the testimony  
8       and the credibility of the witnesses, and then you take  
9       everything that you've heard from the defendant, all the  
10      evidence, all the testimony and the credibility of the  
11      witnesses, and if you decide that what the defendant,  
12      Decide4Action, has presented to you even ever so slightly  
13      outweighs the evidence being presented by the plaintiff,  
14      you must find in favor of the defendant.

15           Ladies and gentlemen, this case is not as complicated  
16      as the plaintiff has made it out to be. I ask you one  
17      thing when you step back into that deliberation. Ask  
18      yourself did the parties write the rules of the game and  
19      who followed the rules of the game. What I certainly  
20      understand and believe you will find is that the plaintiff,  
21      William Sibley, violated the rules of the game.

22           Thank you.

23           THE COURT: All right. Plaintiff, call your first  
24      witness.

25           MR. ENGLISH: Plaintiff calls Julia Sibley-Jones.

1 THE COURT: Ms. Jones, if you'll come around.

2 THE CLERK: Place your left hand on the Bible and  
3 raise your right hand.

4 WHEREUPON,

5 JULIA SIBLEY-JONES,

6 After having been duly sworn, testified as follows:

7 THE CLERK: Please state your name.

8 THE WITNESS: My name is Julia Sibley-Jones.

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: You can remove your mask while you're up  
11 here testifying.

12 DIRECT EXAMINATION

13 BY MR. ENGLISH:

14 Q Good afternoon. Ms. Sibley-Jones, can you tell the  
15 jury your full name?

16 A Sure. My name is Julia Wiley Sibley-Jones.

17 Q And can you raise the microphone so that you're  
18 speaking into it? You're a little quiet.

19 A Is that better?

20 Q It's a little better.

21 A Is that better?

22 Q Yeah. Just try to speak loud.

23 A Is it on?

24 THE COURT: I don't have those controls any more.

25 MR. ENGLISH: You need to tap it to make sure it's on.

1           THE COURT: Before we had all this computer stuff, I  
2 had those controls, but I don't any more.

3                           (Pause in proceedings.)

4           THE WITNESS: Julia Wiley Sibley-Jones.

5 BY MR. ENGLISH:

6 Q     Thank you. And where do you live?

7 A     I live in Greenville.

8 Q     For how long?

9 A     I've lived here for almost ten years now, and I was  
10 born here. I was born, and we moved away, and we moved  
11 back ten years ago.

12 Q     And are you married?

13 A     I am.

14 Q     To whom?

15 A     My husband is John Mark Sibley-Jones. He works at the  
16 South Carolina Governor's School for arts and humanities.  
17 He's a teacher there.

18 Q     How long have y'all been married?

19 A     19 years.

20 Q     Y'all have any children?

21 A     We have two children. We have a 13-year-old boy who's  
22 a rising eighth grader at Greenville Middle; and I was  
23 going to say 9, she's 8 years old, a rising third grader at  
24 Blythe Academy.

25 Q     Did you go to college?

1       A     I went to the University of the South in Sewanee,  
2       Tennessee, and then did a master's at the University of  
3       South Carolina in Columbia.

4       Q     And when did you get that?

5       A     The master's or the ---

6       Q     The master's.

7       A     The master's was in 1993.

8       Q     And do you work?

9       A     I do.

10      Q     Where?

11      A     I do. Right now I am the director of development for  
12      a nonprofit here called Upstate Fatherhood Coalition.

13      Q     Okay. What does it do?

14      A     We work to engage or re-engage men in the lives of  
15      their children and help them to overcome whatever barriers  
16      are keeping them from doing that. I wish I could tell you  
17      all about that, because that's really interesting. But  
18      that is what I do.

19      Q     And what did you do before that?

20      A     Before that I was the endowment administrator for  
21      Buncombe Street United Methodist Church.

22      Q     And are you active in any civic groups or  
23      organizations?

24      A     Right. So yes. Definitely both of the schools -- or  
25      actually all three schools because Governor's School as



1 well we're very involved with. We're involved at Fourth  
2 Presbyterian Church here in town among the session, and my  
3 husband sings in the choir. I'm on the development and  
4 foundation board at Montreat Conference Center in North  
5 Carolina, which is another Presbyterian affiliated  
6 organization.

7 Q All right. Let's talk about your father, William  
8 Sibley. You're the personal representative of your  
9 father's estate?

10 A That's correct.

11 Q What happened to your father?

12 A My father died on August 4, 2020, following a pretty  
13 complicated surgery in the hospital. And he did okay  
14 through the immediate, but died in the hospital about a  
15 week later.

16 Q And were you appointed personal representative under  
17 his will?

18 A I was.

19 Q Let me show you what we marked as Plaintiff's Exhibit  
20 Number 18. What is this document?

21 A This is -- this is the certificate of appointment for  
22 me to be the personal representative of the estate.

23 Q And what is your role regarding the estate's assets?

24 A To collect and manage and disburse whatever assets  
25 there are.

1 Q Do you have other siblings?

2 A I have two brothers. They're both in Atlanta.

3 Q Now, was one of the assets that Mr. Sibley owned stock  
4 in Computer Control + Integration, or CC+I we're calling  
5 it?

6 A It was, yes.

7 Q What did CC+I do?

8 A It designed computer software for manufacturing, and  
9 especially along assembly-line manufacturing.

10 Q Did Mr. Sibley sell that stock?

11 A He did.

12 Q To whom?

13 A To Decide4Action.

14 Q At the time of your father's death, had he collected  
15 all of the proceeds from the sale of that stock?

16 A No, he had not.

17 Q How much had not been paid by Decide4Action?

18 A 10 percent of the selling price, which was \$440,000,  
19 was not collected yet.

20 Q All right. Let me refer you to what we've marked as  
21 Plaintiff's Exhibit Number 1.

22 A Okay.

23 Q What is this document?

24 A This is the letter of intent to acquire CC+I.

25 Q And whose letterhead is this letter of intent on?

1 A It was from Decide4Action.

2 Q And what's the date of this?

3 A March 10, 2017.

4 Q Look under Section 1 on this first page, this first  
5 bullet point. What was the purchase price for CC+I?

6 A The purchase price was \$4,400,000.

7 Q Now look down at the fourth bullet point. How much of  
8 the purchase price was paid at closing versus put in  
9 escrow?

10 A 90 percent of the purchase price was paid in cash at  
11 the time, and then the remaining 10 percent was put in  
12 escrow.

13 Q Now look down at the last bullet point, the seventh  
14 bullet point. Did the purchase price exclude cash?

15 A Yes. It excluded the cash.

16 Q And what does that mean?

17 A That means that whatever cash was there was not part  
18 of the original purchase price.

19 Q Now look over to the last page of this. I'm sorry.  
20 The next to the last page. This is page 4 in Section 5.

21 MS. THOMASON: Object. Your Honor, can you give us  
22 just a minute. I think there may be some confusion on the  
23 document itself. I'm not sure this is ---

24 THE COURT: Can you take it down?

25 This would be a good time to take a break since we've

1       been going at it for a while. At this time, if you go back  
2       into your jury room, I'm going to give you an assignment,  
3       and that is, of the original 12, the alternate you cannot  
4       participate in this, but y'all need to select your  
5       foreperson of the jury. So y'all select between the 12 of  
6       you. And the foreperson is really somebody that just  
7       communicates with the Court and maybe leads discussion  
8       during deliberation.

9               Do not discuss the case, and we'll bring you back in  
10       just a few minutes.

11              (WHEREUPON, the jury exits the courtroom at 3:02 p.m.)

12              THE COURT. All right. And the witness cannot --  
13       you're in what I call my witness bubble. Once you started  
14       testifying, you cannot discuss with your attorneys anything  
15       about your testimony or get any coaching or anything like  
16       that.

17              THE WITNESS: Right.

18              THE COURT: So I'm going to let you step down.

19              All right. Discuss.

20              (WHEREUPON, a recess is taken at 3:03 p.m.)

21              (WHEREUPON, the jury entered the courtroom at 3:14 p.m.;  
22       Court's Exhibit Number 1 was marked for identification.)

23              THE COURT: All right. Ms. Durkin, I believe you've  
24       been appointed as the foreperson. I forgot to tell you you  
25       don't get any more pay for that. It's the same pay as

1 everybody else.

2 We just took a break. I just wanted to make sure  
3 everything was on the same page. This is something kind of  
4 new for us and we have all this new technology that allows  
5 y'all to see stuff. And that's why I'm a little bit -- not  
6 quite up to speed on some of this.

7 But anyway, Mr. English, you may continue your direct  
8 testimony.

9 MR. ENGLISH: Thank you, Judge.

10 BY MR. ENGLISH:

11 Q Ms. Sibley-Jones, we're back on Plaintiff's Exhibit 1  
12 and page 4 under Section 5, Other.

13 A Okay.

14 Q And we're on the third bullet point, if we can enlarge  
15 that. Read that to the jury, please.

16 A "The buyer and the seller shall have 90 days to agree  
17 on the SPA. If within that period the SPA is not  
18 essentially agreed, then this LOI shall be null and void."

19 Q All right. Now, does the SPA refer to a stock  
20 purchase agreement?

21 A Yes.

22 Q Now I'm going to ask you to do some math, and I  
23 apologize for that. But if you take 90 days from the date  
24 listed on the first page, go back to the first page, and  
25 that date is March 10th, when is 90 days?

1 A March, April, May -- June 10th.

2 Q Maybe June 8th because March and May have 31 days,  
3 right?

4 A Right.

5 Q Okay. So if these are the rules of the game -- who  
6 wrote this?

7 A Well, it came from Decide4Action and CC+I agreed to  
8 it. But it came from Decide4Action.

9 Q And so this LOI would have expired if the stock  
10 purchase agreement was not entered by June 8, 2017; is that  
11 right?

12 A Correct.

13 Q Was a stock purchase agreement entered by June 8,  
14 2017?

15 A It was not.

16 Q Okay. Let's look at what we marked as Plaintiff's  
17 Exhibit Number 8.

18 A Okay.

19 Q What is this document?

20 A This is the stock purchase agreement.

21 Q And what is it dated?

22 A It is dated October 13, 2017.

23 Q All right. Now I want you to turn to page 6. And I'm  
24 referring to the page numbers in the middle of the page.  
25 It's page 7 if you're looking at the bottom right corner.

1 A Okay.

2 Q And look at Subsection I. Read that to the jury,  
3 please.

4 A "Events subsequent to May 17, 2017. Except as set  
5 forth in Section 4(i) of the disclosure schedule, since  
6 May 17, 2017, there has not been any material adverse  
7 change, and target has conducted its business in the  
8 ordinary course of business."

9 Q Now I want you to turn to Section 4(i) of the  
10 disclosure schedule referenced here, which is the last page  
11 of the stock purchase agreement.

12 A Okay.

13 Q Schedule 4(i). And let's enlarge -- yeah, just that  
14 whole section.

15 So what is Schedule 4(i) called?

16 A This is Events Subsequent to May 17, 2017.

17 Q And then read Item 3.

18 A Item 3: "Target paid a fiscal year-end bonus and  
19 subsequently has paid special bonuses to employees on three  
20 occasions."

21 Q And who is target?

22 A CC+I, the sellers.

23 Q And when was CC+I's fiscal year end?

24 A On June 30 of every year. But June 30, 2017, in this  
25 case.

1 Q So did the stock purchase agreement disclose that CC+I  
2 had paid year-end bonuses around June 30, 2017?

3 A Absolutely.

4 Q Now look at what we've marked as Plaintiff's Exhibit  
5 Number 9. What is this document?

6 A This is Indemnity Escrow Agreement.

7 Q And what is it dated?

8 A It is dated October 16, 2017.

9 Q And who is this agreement between and among?

10 A It's among Decide4Action as the buyer, the seller is  
11 CC+I, and United Community Bank that was holding the escrow  
12 money.

13 Q Now, you look down in Section 1(a) and it refers to  
14 establishment of escrow. How much was placed in escrow?

15 A 10 percent of the purchase price, which was \$440,000.

16 Q Now look over to page 2, Item C. And read that first  
17 -- well, let me just ask it this way. When was the closing  
18 date referenced by this agreement?

19 A The closing date was October 16, 2017.

20 Q And so when was the escrow release date?

21 A A year from then, so October 16, 2018.

22 Q So -- and that's the reference to the first  
23 anniversary of the date of the closing date?

24 A Yes.

25 Q All right. Now look down to that same page at



1 Subsection D. Read the first three sentences into the  
2 record, please.

3 A "Disbursement on the indemnification escrow release  
4 date. On the first business day following the  
5 indemnification escrow release date, the escrow agent shall  
6 release the remaining balance of the escrow fund, less the  
7 aggregate amount of pending claims defined here and below  
8 to sellers. The escrow agent shall not distribute and will  
9 continue to hold the portion of the escrow fund equal to  
10 the aggregate amount of all pending claims, if any, against  
11 the escrow fund pursuant to the purchase agreement."

12 Continue? Or ---

13 Q Yes.

14 A "The escrow agent shall only continue to hold a  
15 portion of the escrow fund for the pending claims if buyer  
16 has provided to escrow agent and seller's representative no  
17 fewer than three business days prior to the indemnification  
18 escrow release date a written notice describing the pending  
19 claims in reasonable detail, indicating the estimated  
20 amount and methodology for determining the amount of  
21 pending claims, pending claims amount, and the provision or  
22 provisions under the purchase agreement upon which some  
23 such claim is based."

24 Q All right. Now look at what we marked as Plaintiff's  
25 Exhibit Number 10.

1 A Okay.

2 Q What is this document?

3 A This is a letter from Decide4Action's attorneys to the  
4 United Community Bank that was holding the escrow.

5 Q And what was this letter doing?

6 A This letter was saying that they wanted to maintain  
7 the escrow account and not release it.

8 Q And did this letter contain Decide4Action's claim on  
9 the last page?

10 A It does.

11 Q Let's look at the last page.

12 A Yes.

13 Q If you look down at the bottom, what is the claim that  
14 Decide4Action -- how much is the claim is Decide4Action  
15 making against the escrow?

16 A \$1,314,034.

17 Q Now, if you look up at the calculations immediately  
18 above that total, how does Decide4Action calculate this?

19 A Well, it looks as though they are taking the salaries  
20 and bonuses given ---

21 Q Yeah. Salaries and bonuses changed?

22 A In 7/17 and continuing that out as though it needed to  
23 happen every year with the multiple error effect at the  
24 bottom.

25 Q Now, I want you to look back at the stock purchase

1 agreement now, and specifically, that's Plaintiff's Exhibit  
2 Number 8, and look on page 21.

3 A Page 21. Okay.

4 Q And look down at subsection B, the last sentence.

5 A "In addition, in no event shall any seller be liable  
6 to buyer for any punitive, incidental, consequential,  
7 special or indirect damages including loss of future  
8 revenue or income, loss of business reputation or  
9 opportunity relating to the breach or alleged breach of  
10 this agreement or diminution of value or any damages based  
11 on any type of multiple."

12 Q Now, was the claim that we just looked at previously  
13 made by Decide4Action a claim of diminution of value based  
14 on a multiple?

15 A Yes.

16 Q Was that type of claim allowed by the stock purchase  
17 agreement?

18 A It was not.

19 Q So do you consider Decide4Action's claim against the  
20 escrow to be fraudulent?

21 A I do.

22 Q Why?

23 A Because they're doing exactly what this stock purchase  
24 agreement forbid and estimating some type of negative  
25 impact on the company based on a multiple error effective

1 of bonus that in no way needed to happen annually.

2 Q All right. Now look at what we marked as Plaintiff's  
3 Exhibit Number 11.

4 A Okay.

5 Q What is this document?

6 A This is a document from our attorneys to United  
7 Community Bank requesting that the escrow be released.

8 Q And can you read the last sentence on this page?

9 A "In sum, Decide4Action's claim against the escrow is  
10 invalid on its face."

11 Q No. I'm sorry. The last sentence.

12 A The very last. Sorry. "By" -- this one?

13 Q Yeah. "By copy."

14 A "By copy of this letter, I am requesting that  
15 Decide4Action's attorney, Kimberly Thomason, Esquire,  
16 confirm to you that the escrow should be released  
17 immediately to the selling shareholders."

18 Q Now look at what we marked as Plaintiff's Exhibit  
19 Number 12. What is this document?

20 A This is a letter from the Decide4Action's attorneys  
21 back to us saying that they refuse to release the escrow.

22 Q And what was that dated?

23 A December 13, 2018.

24 Q All right. Now look at what we've marked as  
25 Plaintiff's Exhibit Number 16.

1 A Okay.

2 Q What is this document?

3 A This is Agreement Regarding Application of Funds.

4 Q And what is it dated?

5 A This is also dated October 16, 2017, the closing date.

6 Q And who is it among?

7 A This is among Decide4Action and the sellers of CC+I.

8 Q Look at the second "whereas" clause.

9 A Okay.

10 Q How much does this agreement say that UCB has been  
11 holding in escrow since October 16, 2017?

12 A \$440,000.

13 Q All right. And look on the next page at the top,  
14 Section 5.

15 A Okay.

16 Q According to this section, to whom is that escrow --  
17 to whom is that escrow payable?

18 A It should be paid to the sellers.

19 Q Does that include your father?

20 A My father and Mr. Featherstone and the other  
21 shareholders.

22 Q Now look at what we marked as Plaintiff's Exhibit  
23 Number 17. What is this document?

24 A This is Contribution and Indemnification Agreement.

25 Q And what's the date of this?

1 A October 16, 2017.

2 Q And who is it among?

3 A It is among the sellers and Decide4Action -- no. Just  
4 among the sellers, the shareholders.

5 Q Right. Okay. Now look over to page 2 under  
6 Section 2, Notice and Defense of Third-party Claims, and  
7 look at Subsection B. And can you read the first sentence  
8 of Subsection B?

9 A "The selling party's representative defined in the  
10 following paragraph shall assume and control the defense  
11 with respect to any indemnification obligation or action  
12 with counsel to be chosen by the selling party's  
13 representative."

14 Q Was Decide4Action's claim against the escrow and  
15 indemnification obligation under this agreement?

16 A Yes.

17 Q And look on the next page, Subsection C, the first  
18 sentence.

19 A Okay. Sorry. Yes.

20 Q Who was designated to represent the selling  
21 shareholders in the event of an indemnification obligation  
22 like Decide4Action's claim?

23 A My father, William A.L. Sibley, Jr., was designated as  
24 the selling party's representative.

25 Q All right. And have you stepped in your father's

1 shoes in that role as selling party's representative?

2 A I have.

3 Q Look at what we marked as Plaintiff's Exhibit  
4 Number 20.

5 A Okay.

6 Q What is this document?

7 A This is the Appointment of Selling Party's  
8 Representative. And so this is the appointment of me as  
9 the representative now that my father is deceased.

10 Q Okay. All right. So as the selling party's  
11 representative, what are you asking this jury to do?

12 A I am asking the jury to award the sellers \$440,000  
13 that has been held in escrow since 2017.

14 Q And are you asking for that award to be made to you as  
15 the selling party's representative?

16 A To me as the representative, and then I will  
17 distribute it proportionally to the other shareholders.

18 MR. ENGLISH: Okay. Thank you, Ms. Sibley-Jones.  
19 Please answer any questions the defendant's attorneys have  
20 for you.

21 THE COURT: Cross-examination.

22 CROSS EXAMINATION

23 BY MS. THOMASON:

24 Q Hi, Ms. Sibley-Jones. How are you?

25 A Good. Thank you.

1 Q First, let me say we're very sorry for your loss. I  
2 know it's difficult to come here and testify in this way.  
3 So you have our sympathies.

4 Now, you testified regarding documents that you read  
5 from that were part of plaintiff's exhibits that have been  
6 premarked and admitted ---

7 A Correct.

8 Q --- to the Court; is that right?

9 A Correct, yes.

10 Q Now, did you ever work in the company?

11 A I did not.

12 Q And you weren't a part of the negotiations of the  
13 sale?

14 A I was not.

15 Q And you weren't a part of the negotiations that your  
16 dad had with the broker he had list the company for sale,  
17 were you?

18 A I was not.

19 Q Now, were you in any meetings where the terms were  
20 discussed or any of the circumstances surrounding the  
21 letter of intent were discussed?

22 A I was not.

23 Q So is it fair to say all of your knowledge here today  
24 is just based on you having read the documents?

25 A I have read the documents, yes.



1 Q Okay. Now, you are the PR, the personal rep on the  
2 estate, your dad's estate; is that correct?

3 A I am.

4 Q Now, are there other beneficiaries? Who are the other  
5 beneficiaries on this estate?

6 A I have two other brothers who -- I have two brothers.  
7 They are both in Atlanta.

8 Q Okay. And I believe there's a trust also that the  
9 will references. Are you the trustee ---

10 A I am.

11 Q --- as well of the family trust? Okay.

12 Now, have you had any conversations with the other  
13 shareholders, I'm not going to ask you specifically about  
14 them, since this has happened regarding the terms of the  
15 conditions for the sale?

16 A Mrs. Featherstone and I have been in conversation to  
17 prepare for this trial with the attorney.

18 Q To your knowledge, was Ms. Featherstone in any of  
19 those negotiations regarding the sale?

20 A That, I do not know.

21 Q Now, you've had a chance to review the letter of  
22 intent, and that is Plaintiff's Exhibit 1 that we were  
23 referring to. You read from that a moment ago regarding  
24 the fact that all of the cash was to come out of the  
25 savings and checking and go to the shareholders only. You

1 have no firsthand knowledge as to why that was an important  
2 term, do you?

3 A Well, it seems like this says that it excludes the  
4 cash at closing, but it doesn't say what needs to happen to  
5 it other than it's just not part of the selling price.

6 Q So can I have you turn to page 2 under Paragraph 3?

7 A (Witness complies.)

8 Q Do you see that third bullet point from the bottom?  
9 Well, actually, I'm looking up here. So if you look down  
10 to where it says "The cash at the time of closing," do you  
11 see that bullet point?

12 A Sure.

13 Q "The cash at the time of closing will be distributed  
14 to the current shareholders." Can you read the rest of  
15 that?

16 A Sure. "The cash at the time of closing will be  
17 distributed to the current shareholders prior to closing.  
18 Any cash not distributed prior to closing will be forfeited  
19 by the seller.

20 Q Now, does that give an indication of who had to  
21 receive the cash?

22 A That at the time of closing, everything left should be  
23 divided among the shareholders.

24 Q And the cash that it's referring to, you weren't a  
25 part of those negotiations, but all cash out of the

1 business is excluded and it's to be paid to shareholders,  
2 correct?

3 A At the time of closing, yes.

4 Q Or prior to closing.

5 A Prior to closing.

6 Q Okay. Did that happen? Did all the cash get paid to  
7 the shareholders prior to closing?

8 A I think prior to closing, all of the cash was  
9 distributed.

10 Q To shareholders only?

11 A The part that I think you're asking me to refer to is  
12 the bonuses that were paid at the end of -- prior to the  
13 fiscal year before closing. But after all -- after all of  
14 that, then at closing, yes, all was distributed to  
15 shareholders.

16 Q But you weren't a part of the negotiations.

17 A I was not.

18 Q So you don't -- you have no firsthand knowledge as to  
19 the reasons that all of the cash from the time this LOI was  
20 signed until due diligence was complete and the sale was  
21 consummated, you have no knowledge as to why that was to  
22 happen?

23 A I was not part of those negotiations, no.

24 Q Okay. Now, you testified also that the LOI -- to the  
25 date of the LOI, and that stock purchase agreement had to

1 be agreed upon within 90 days of the date of this LOI.

2 A Correct.

3 Q But you have no knowledge of any extensions, do you?

4 A I don't.

5 Q And so you have no knowledge that there were at least  
6 two extensions to this LOI that the parties agreed upon?

7 A I do not know.

8 Q And you have no knowledge that the -- that due  
9 diligence actually ended May 29th, do you?

10 A The question is whether or not I knew that before.  
11 No, I did not know that before.

12 Q And so you're really not certain when the LOI actually  
13 terminated or when it was consummated?

14 A This is what I have in front of me, and that is what  
15 I'm basing it on.

16 Q Fair enough.

17 Now, you also -- and I'll direct you to Plaintiff's  
18 Exhibit 8, the stock purchase agreement. And you  
19 referenced in here the disclosures on 4(i). So you go to  
20 the back. That's the last exhibit to this. Do you know  
21 why these disclosures are important to the stock purchase  
22 agreement?

23 A Yes.

24 Q Please let me expand. What is your understanding as  
25 to why they are important?

1       A     Because the sellers were disclosing everything the  
2       buyer needed to know prior to sale.

3       Q     And so there were reps and warranties saying we didn't  
4       do certain things; is that fair? Or at least that's what  
5       the document says. You don't have firsthand knowledge, but  
6       that's what the document says that you read from before?

7       A     I'm sorry. Could you repeat the question part of  
8       that?

9       Q     I'm going to go back to the reps and warranties and  
10      I'll start at the page we referred to originally. There's  
11      a list of reps and warranties that the sellers will agree  
12      on. If you turn to page 8.

13      A     Page 8 in the middle or page 8 on the right?

14      Q     Oh, I'm sorry. It's actually both. It's page 8 and  
15      then Exhibit 8.

16      A     Right. There's a page number in the middle of the  
17      page and there's a page number on the right hand.

18      Q     I see where you're going. Page 8, if you'll look at  
19      -- we'll just start at the top. Would you agree these are  
20      a list of things that the seller is saying they have not  
21      done, the target is saying they have not done?

22      A     Okay.

23      Q     They're warranting that these things did happen or  
24      these things didn't. And as a part of this, all the things  
25      that they are warranting that they didn't do, it's your

1 testimony then that any disclosure are them saying, well,  
2 we didn't do most, but we might have done this; is that  
3 fair?

4 A I think they are disclosing everything that they were  
5 needing to disclose.

6 Q Okay. When you go back to the last page of the  
7 exhibit, and I'm sorry having you flip back and forth, in  
8 4(i), would you read Paragraph 3 on page 51?

9 A "Target paid a fiscal year-end bonus and subsequently  
10 has paid special bonuses to employees on three occasions."

11 Q You don't have knowledge of what your dad defined as  
12 employees, do you?

13 A What he defined as employees?

14 Q Uh-huh.

15 A I think the employees were the nonshareholders.

16 Q Would you be surprised if that differed from your  
17 dad's testimony in his deposition?

18 MR. ENGLISH: Objection. Pitting.

19 THE COURT: I'm going to allow it.

20 BY MS. THOMASON:

21 Q If your dad testified that employees were both owners  
22 and nonowners, would that surprise you?

23 A It would not surprise me other than I don't -- I'm not  
24 part of this business and so I do not know what he was  
25 thinking at the time.

1 Q Okay. And then Exhibit 9 is the indemnity escrow  
2 agreement, Plaintiff's Exhibit 9.

3 A Yes.

4 Q Do you know who drafted this agreement?

5 A I don't.

6 Q Has the Wyche firm represented your dad for many  
7 years?

8 A I do not know how long they have represented my  
9 father.

10 Q So you have no knowledge if they drafted this  
11 agreement in particular or not?

12 A I don't know.

13 Q Okay. All right. The last thing is in regards to  
14 testimony regarding the multiplier, again, you don't really  
15 have knowledge about what was referenced when they were  
16 talking about a multiplier with regard to damages.

17 A True.

18 Q Okay. And nobody's discussed what that actually meant  
19 with you, and as you sit here today, you don't know what  
20 they were referencing there.

21 A I understand what it means, but if I -- if you're  
22 asking whether I was in all of it and did the negotiations  
23 and know precisely what it means, then no, I do not.

24 Q Okay. And, again, just to clarify, on Plaintiff's  
25 Exhibit 16, Agreement Regarding Application of Funds, as

1     you're sitting here today, you were not a party to  
2     negotiating the terms or what the parties discussed or the  
3     intent of the parties prior to executing this, are you?

4     A     I was not part of the negotiation or anything, no.

5     Q     Give me one minute. I might be done.

6             One more question. Going back to Plaintiff's  
7     Exhibit 8, that last page of that, I think it's page 51,  
8     assuming that the employees were both owners and nonowners  
9     for purposes of that, you can't tell from that description  
10    of what was paid out, how much was paid out to nonowners  
11    versus owners, can you?

12    A     No. My understanding is this would show that there  
13    were, and then if you were interested in it, then the  
14    sellers would provide whatever information.

15    Q     But you don't know that firsthand. I don't want you  
16    to tell me what your attorneys told you.

17    A     I don't know what was requested after this, but I know  
18    that that disclosure means that if there are any other  
19    questions, that they could request information for it.

20    Q     Actually, the disclosure, isn't it true it says we are  
21    disclosing payments were made out, year-end bonuses to  
22    employees?

23    A     I'm sorry. Was that a question?

24    Q     Doesn't it say that year-end bonuses were paid out to  
25    employees?



1 A Yes.

2 Q But as you sit here, you can't tell from that if they  
3 were nonowner employees or owner employees; is that fair?

4 A That's true. The disclosure shows that there was  
5 something if they had other questions.

6 MS. THOMASON: Thank you.

7 THE COURT: All right. Redirect?

8 You are through, aren't you? No more questions?

9 MS. THOMASON: No.

10 THE COURT: All right.

11 MR. ENGLISH: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. ENGLISH:

14 Q Ms. Sibley-Jones, Ms. Thomason asked you about  
15 Plaintiff's Exhibit Number 1, the letter of intent.  
16 Specifically, she asked you about page 2, Section 3. So  
17 this is Plaintiff's Exhibit 1, the letter of intent,  
18 page 2, Section 3. And Ms. Thomason was asking you about  
19 the ninth bullet point ---

20 A Yes.

21 Q --- where it says the cash at the time of closing will  
22 be distributed to the current shareholders prior to  
23 closing. Does this prohibit the current shareholders from  
24 distributing or doing with the cash what they want?

25 A It does not.

1 Q And then it says "the cash at the time of closing."  
2 When was the time of closing?

3 A In October 16, 2017.

4 MS. THOMASON: Objection, Your Honor. It's a  
5 mischaracterization. It says "prior to closing."

6 THE COURT: I'll allow it. Overruled.

7 BY MR. ENGLISH:

8 Q Ms. Sibley-Jones, when was the time of closing?

9 A October 16, 2017.

10 Q And at that time of closing, had this LOI expired on  
11 its own terms?

12 A It had.

13 MR. ENGLISH: Thank you. That's all.

14 THE COURT: All right. You may step down.

15 Everybody on the jury okay?

16 All right. All right. Call your next witness.

17 MR. ENGLISH: Thank you, Judge. At this time, we  
18 would read from the deposition of Mr. Bill Sibley.

19 THE COURT: Okay. Ladies and gentlemen, as I kind of  
20 mentioned in some of my preliminary remarks, sometimes  
21 parties take depositions in preparing for a case. And when  
22 they take a deposition, a deposition is set up just kind of  
23 like it is here. The person is placed under oath, there's  
24 a court reporter and the testimony is taken down by the  
25 court reporter and then a transcript prepared. In this

1 particular case, you are to consider this deposition  
2 testimony the same as if the person were present and live  
3 in a courtroom testifying. In this particular case -- this  
4 is Mr. ---

5 MR. ENGLISH: Sibley.

6 THE COURT: --- Sibley who is no longer with us, and  
7 this gentleman will be reading on his behalf.

8 And, again, just like all evidence, you are to give it  
9 the weight that you feel is appropriate.

10 All right. You may proceed.

11 MR. ENGLISH: Thank you, Judge.

12 DEPOSITION TESTIMONY OF WILLIAM SIBLEY, JR.

13 MR. ENGLISH: Beginning on page 5, line 23.

14 "Q All right. I know you just did this, but Mr. Sibley,  
15 could you give me your full name for the record?

16 "A Yes. William Augustus Longstreet Sibley, Jr.

17 "Q All right. Do you have any family members, adult  
18 children, wife that reside in Greenville County?

19 "A I have a daughter.

20 "Q And what's your daughter's name?

21 "A Julia Sibley-Jones. She's married to Mark Jones.

22 "Q And does she reside in Greenville County?

23 "A She does.

24 "Q Where were you born?

25 "A I was born in Spartanburg.

1 "Q In what year?

2 "A 1935.

3 "Q Did you attend high school in Spartanburg?

4 "A Union.

5 "Q What high school was that?

6 "A Union High.

7 "Q And what year did you graduate, or did you graduate?

8 "A '53.

9 "Q After high school did you attend any secondary  
10 schools?

11 "A Georgia Tech.

12 "Q And when did you graduate from Georgia Tech?

13 "A '57.

14 "Q What did you major in?

15 "A Textile engineering.

16 "Q And where was your first job?

17 "A West Point Manufacturing Company, West Point, Georgia.

18 "Q And what was your job title?

19 "A Trainee.

20 "Q So you graduated from Georgia Tech in 1957. Would you  
21 have started with West Point Manufacturing in 1957 as well?

22 "A No, because I spent some time with the U.S. Army.

23 "Q Okay. How long were you in the Army?

24 "A Six months active duty. So I started with West Point  
25 in '58.

1 "Q Were you discharged from the Army?

2 "A Yes. It was a program, a new program that had just  
3 been offered whereby you can go six months active duty and  
4 six and a half years in the reserves, and so you really  
5 didn't have to spend a whole lot of time on active duty.

6 "Q And did you spend those six years in the reserves?

7 "A I did, yes, while I was working.

8 "Q After West Point Manufacturing what was your next job?

9 "A I went with a textile chemical concern in East Point,  
10 Georgia known as Southern Sizing Company.

11 "Q And you said that you were with them for how long?

12 "A About two years. I went to work for J.P. Stevens next  
13 in '61 here in Greenville, came in July '61.

14 "Q And what was your job title with J.P. Stevens?

15 "A I was in the corporate engineering department as an  
16 engineer.

17 "Q How long were you with J.P. Stevens?

18 "A Twenty-seven years, till they got sold in July of '88.

19 "Q All right. After J.P. Stevens, is that when you  
20 formed Computer Controls?

21 "A It is.

22 "Q So at the time CCI is formed were you the only  
23 principal? Were you the only shareholder of the company?

24 "A No. Actually I gave away the stock to those other  
25 three, and then the fourth one came later and purchased

1 some stock from the others. I had 51 percent. I gave away  
2 49 percent to keep us all together. And the three of them  
3 gave up and sold a little bit of their stock for a fourth  
4 gentleman to join us, and so that again said that the four  
5 of them had 49 percent and I had 51.

6 "Q Who are those individuals?

7 "A Robert Leviner was the fourth one. The first one was  
8 Ernest Featherstone, Frank Starrett, Tim Clark, and the  
9 fourth was Robert Leviner. Then in 2000 we hired Scott  
10 Dozier, and at that time it worked out that I sold him five  
11 percent of my stock so that he could be a stockholder, and  
12 he came aboard in 2000, and at that point in time my stock  
13 percentage dropped from 51 to 46 because I sold him five  
14 percent.

15 "Q And you said that was in 2000?

16 "A 2000.

17 "Q And then at the time of the sale of CCI to  
18 Decide4Action it was the same shareholders?

19 "A Yes, except for the fact that Ernest Featherstone was  
20 deceased.

21 "Q When did he pass away?

22 "A December 16, 2016, and so -- the purchase of course  
23 occurred in '17. So he was deceased at that time.

24 "Q Following Mr. Featherstone's death did his wife play  
25 an active role in CCI at all?

1 "A No.

2 "Q Did you have any sort of buy-sell agreement with  
3 Mr. Featherstone? Was his estate paid any funds in  
4 exchange for the repurchase of his shares?

5 "A No. She inherited, so to speak, his stock.

6 "Q Okay. So she just took control of whatever his  
7 percentage was?

8 "A Yes.

9 "Q But she wasn't active in the business?

10 "A No.

11 "Q At what point did you decide or start really  
12 considering the potential sale of CCI and kind of what  
13 prompted that?

14 "A Well, I was getting very old.

15 "Q You're not old by any means.

16 "A Both Ernie and I were old and ready for retirement,  
17 and so we started thinking about selling the company I  
18 guess maybe as far back as 2005, 2006. My wife died in  
19 2006, and, again, that was a motivation, you know, to look  
20 for retirement.

21 "Q The financial condition of the company in 2014,  
22 strong, mediocre?

23 "A Coming back from being down, because the textile  
24 industry had exported itself offshore, so to speak, and so  
25 we were coming back and doing fairly well and the business

1 outlook was good. We had developed ourselves into a  
2 company that was specializing with the bottling industry  
3 and concentrating in that area as opposed to textiles.

4 "Q Now I'm going to show you what we've marked as  
5 Defendant's 1. Do you recognize this document?

6 "A Yes.

7 "Q And what is it that's been marked as Defendant's 1?  
8 What is this document?

9 "A What is it called?

10 "Q Yes.

11 "A A Letter of Intent.

12 "Q And if you'll just flip to the last page of the Letter  
13 of Intent, it looks like Mr. Bergeron, yourself,  
14 Mr. Dozier, Mr. Clark, Mr. Starrett, and Mr. Leviner all  
15 signed this Letter of Intent?

16 "A That's what it looks like.

17 "Q Do you know if Ms. Featherstone ever signed a  
18 counterpart to this? Was her signature ever required for  
19 this Letter of Intent?

20 "A I don't think her signature was required.

21 "Q Okay. If you look at the first page of this Letter of  
22 Intent, the first bullet point under paragraph one, Selling  
23 Price, it says that the purchase price was going to be for  
24 4.4 million for 100 percent of the CCI stock. Do you see  
25 that?



1 "A Yes.

2 "Q And it looks like the fourth bullet point, 90 percent  
3 of the purchase price will be paid in cash at closing with  
4 the remaining 10 percent to be put in escrow for 12 months.  
5 Do you see that provision?

6 "A Yes.

7 "Q All right. Do you recall how long the original due  
8 diligence period was for this? I'm sorry. Do you know how  
9 long the original due diligence that was allowed under the  
10 Letter of Intent lasted?

11 "A Seems like they may -- he had put a requirement in  
12 there.

13 "Q If you look at the fourth page, it looks like under  
14 paragraph five, it looks like there was a 90-day due  
15 diligence period. Do you see that?"

16 MR. ENGLISH: Fourth page, Plaintiff's 1.

17 "Q Fourth page, paragraph five, it looks like there was a  
18 90-day due diligence period. Do you see that?

19 "A Well, that was what I was thinking.

20 "Q Now, due diligence, it looks like this was executed in  
21 March of 2017. As I understand it, Generational Equity  
22 generated a virtual data room for the sharing of documents.  
23 Do you recall that?

24 "A Yes.

25 "Q So if you look at Defendant's Exhibit 4, this appears

1 to be an Excel spreadsheet for the fiscal year 2013 through  
2 2017, specifically April 28, 2017. Do you see that?

3 "A Yes.

4 "Q It looks like in 2016 Mr. Clark had an annual salary  
5 of 150,000, Mr. Dozier 103,888, Mr. Leviner 60,141,  
6 yourself 150, 150,000, Mr. Starrett 92,321, and  
7 Ms. Featherstone \$24,000?

8 "A Yes.

9 "Q Do you see that? It also looks like in 2015 and 2016  
10 there were also owner bonuses that were paid. Do you see  
11 those?

12 "A I do.

13 "Q How do you determine the frequency and amount of owner  
14 bonuses that were paid?

15 "A We would first consider whether or not the company was  
16 profitable. If the company were profitable and cash flow  
17 was permitting, we would use a bonus to reward performance.  
18 It was strictly discretionary in every respect every year.

19 "Q The decision to issue bonuses, owner businesses for  
20 '15 and '16, who have the final say, if anybody, in whether  
21 those bonuses were issued?

22 "A The directors.

23 "Q And by the directors, are you referring to the six  
24 shareholders?

25 "A No. The directors were myself, Tim Clark, and Scott

1 Dozier, three directors, determined the bonuses.

2 "Q When you were determining who was going to get a bonus  
3 and how much, what was the informal process for  
4 determining?

5 "A The three directors would discuss it.

6 "Q And what did y'all discuss specifically --

7 "A Performance.

8 "Q -- if you recall?

9 "A Performance and amount.

10 "Q Did your employees have target goals that they were  
11 supposed to hit that was ever, you know, formally given to  
12 them in any formal documentation?

13 "A No.

14 "Q How did you determine the salaries that were going to  
15 be used for those three individuals?

16 "A We used a national search, employee search firm, and  
17 they found the candidates for us, and they recommended the  
18 starting salaries.

19 "Q Who was that firm that you used?

20 "A Modus.

21 "Q And they made the original suggestion on their  
22 starting salaries?

23 "A Yes.

24 "Q Okay. Now at some point during the due diligence  
25 process do you recall Mr. Bergeron and a CPA doing a site

1 inspection?

2 "A Yes. They were -- they were here. His CPA came with  
3 him I believe the second physical meeting when he came to  
4 Greenville he brought his CPA with him.

5 "Q And I believe that occurred on May 17, 2017?

6 "A I presume, yes. I can't remember exactly. I was in a  
7 wheelchair.

8 "Q And so I guess that kind of is a segue into my next  
9 question. Were you present when he was on-site --

10 "A Yes.

11 "Q -- at CCI? Can you kind of walk me through what that  
12 inspection kind of entailed?

13 "A It was financial with his CPA, requesting financials  
14 from us also with conversation with our CPA.

15 "Q Who was your CPA?

16 "A Cherry Bekaert.

17 "Q The financials that he was reviewing at that site  
18 inspection, was that in addition to financials that had  
19 already been uploaded to that data room?

20 "A I think there were some of both. I think there were  
21 some extras as well as some that had been uploaded.

22 "Q At the time of the site inspection on May 17th --

23 "A The site inspection?

24 "Q When Mr. Bergeron came --

25 "A Yeah, yeah.

1 "Q -- to CCI, would that have been within the scope of  
2 the original due diligence period?

3 "A Well, I presume the Letter of Intent established that,  
4 did it not?

5 "Q And so I believe the original 90-day period would have  
6 been from March 10th to June 10th, which would have been a  
7 90-day period. Is that your understanding?

8 "A You know, I never thought about it.

9 "Q Let me ask you this then. At the time, would you have  
10 been of the belief that the bonuses were allowed to be  
11 paid?

12 "A The bonuses were strictly discretionary. The  
13 discretions were activated if the company was profitable  
14 and if performance of employees warranted it. It was -- it  
15 was ordinary business. We had been doing it for years,  
16 taking that same procedure, and we were following that same  
17 procedure in '17 like we had done in '16 and '15 and '14  
18 and '13 and '12 and 2011, all the way back to when we  
19 started.

20 "Q Do you recall other than 2016 any instance where  
21 non-owner bonuses were paid?

22 "A Absolutely, yes.

23 "Q So I guess my direct question was did you believe that  
24 they were allowed to be issued, and I guess that  
25 response --

1 "A Why not?

2 "Q -- would be yes?

3 "A Yes. It was normal business."

4 MR. ENGLISH: And on page 81, line 2.

5 "Q I'm going to show you what's been marked as  
6 Defendant's Exhibit 13. Was the increase of \$2500 to  
7 Ms. French's salary part of the ordinary course of business  
8 as you understand it?

9 "A Yes.

10 "Q Was her bonus payment also part of the ordinary course  
11 of business?

12 "A Yes.

13 "Q All right, Mr. Sibley, we're back on the record. If  
14 you would look at what's in front of you as attached to the  
15 Stock Purchase Agreement Schedule 4(i), Events Subsequent  
16 to May 17, 2017, do you see that?

17 "A I do.

18 "Q Do you see paragraph three under Schedule 4(i) of the  
19 Stock Purchase Agreement and the Disclosure Schedule?

20 "A Yes.

21 "Q And could you read that?

22 "A You want me to read it?

23 "Q Yes, please.

24 "A 'Target paid a fiscal year-end bonus and subsequently  
25 has paid special bonuses to employees on three occasions.'

1 "Q And this disclosure schedule 4(i) was a disclosure  
2 schedule attached to the Stock Purchase Agreement?

3 "A It was.

4 "Q Do you recall if the bonus letters that were sent to  
5 each of the employees was ever forwarded to Mr. Bergeron?  
6 Did he receive a copy of that?

7 "A Before closing?

8 "Q When was he first made aware that those bonuses were  
9 paid out? Do you know?

10 "A He was first made aware in August when we had  
11 requested in July, late July, a P&L statement that was from  
12 July 1, '16 through June 30 of '17, our most recent fiscal  
13 year. He had requested a P&L statement.

14 "Q And in that P&L statement --

15 "A Salaries and --

16 "Q -- it specifically stated salaries and bonuses?

17 "A Yes.

18 "Q Did it break out who those bonuses were paid to?

19 "A No.

20 "Q Simply that the bonuses were issued?

21 "A Correct.

22 "Q Correct, but, again, not who it was paid to?

23 "A That's correct. He also got the fiscal 2017 federal  
24 tax return. That federal tax return on the first page,  
25 rows 11 and 12, I believe -- you're familiar with that?

1 "Q I am.

2 "A -- breaks it out between those officers and  
3 non-officers.

4 "Q And this was provided to Mr. Bergeron when?

5 "A September, late September. It was filed by Cherry  
6 Bekaert late September.

7 "Q Okay. I'm going to mark this as Defendant's 14. So  
8 if you flip to the fourth page, this looks like a cover  
9 letter dated September 21, 2017, to Computer Control Plus  
10 Integration from Cherry Bekaert?

11 "A Correct.

12 "Q So this tax return is for the year ending June 30,  
13 2017?

14 "A Correct.

15 "Q And I believe you previously indicated that looking at  
16 I believe it's lines 12 --

17 "A 12 and 13.

18 "Q -- to 13 --

19 "A Yes.

20 "Q -- of this tax return?

21 "A Correct.

22 "Q Can you tell me where this breaks out bonuses that  
23 would have been paid to the employees of CCI?

24 "A It's in line 13.

25 "Q And what does line 13 --



1 "A The employees' salaries and wages.

2 "Q \$687,405?

3 "A Correct.

4 "Q When you add up all the employees wages, does it come  
5 to this number, or is this number inclusive of bonuses as  
6 well?

7 "A Inclusive.

8 "Q So of the three documents that we've referred to, the  
9 disclosure schedule, the P&L statement, and the year-end  
10 June 30, 2017 tax return, none of them specifically  
11 detailed who bonuses were paid to?

12 "A Not individually, but in total.

13 "Q And the disclosure schedule that I made reference to,  
14 schedule 4(i), Events Subsequent to May 17, 2017, was  
15 included in that closing, the Stock Purchase Agreement?

16 "A It was part of the Stock Purchase Agreement. I think  
17 the Stock Purchase Agreement was signed on October 13, I  
18 believe.

19 "Q And the closing took place on October 16?

20 "A That's as I recall.

21 "Q Okay. I'm going to show you what we'll mark as  
22 Defendant's 16. Have you had a chance to review this?

23 "A Yes.

24 "Q And what is this document?

25 "A And what?

1 "Q What is this document you're looking at?

2 "A What is this document?

3 "Q Yes.

4 "A Says Agreement Regarding Application of Funds.

5 "Q And what do you understand the purpose of this  
6 document to be?

7 "A Escrow, setting up an escrow account.

8 "Q Specifically paragraph five of this agreement, that  
9 escrow was to be held for a period of 12 months?

10 "A Yes.

11 "Q And upon the expiration of that 12 months, whatever  
12 funds remained in that escrow account would be distributed  
13 to the shareholders?

14 "A Yes.

15 "Q My question to you is at what point did you decide to  
16 move forward with legal action against Mr. Bergeron?

17 "A Oh, okay. When the time of escrow payment passed,  
18 which was 12 months after closing, and we waited until  
19 November to see if there would be any changes or any  
20 alterations, and no action from Richard had been received.  
21 So we proceeded to pursue legal action.

22 "Q When did you first become aware that Mr. Bergeron  
23 voiced concerns with the escrow agent about payment of  
24 those funds?

25 "A Well, I got a copy of his letter to her.

1 "Q Do you recall when that was?

2 "A Prior to October 16th. Probably -- probably late  
3 September or early October of --

4 "Q Of 2018?

5 "A Yes.

6 "Q Under your first cause of action you allege breach of  
7 contract. What contract are you alleging Mr. Bergeron  
8 breached?

9 "A Well, we're challenging his claim on the escrow.

10 "Q And what was the fraudulent act?

11 "A Stopping the payment on the escrow.

12 "Q So is it your position that his claim of damages is  
13 fraudulent?

14 "A Yeah.

15 "Q Mr. Sibley, let me ask you about some provisions of  
16 documents that Mr. Puriefoy did not ask you about. First,  
17 look at Defendant's Exhibit 1, the Letter of Intent. If  
18 you'll look on the first page, the last bullet point, what  
19 does that say about cash?

20 "A 'The offer excludes the cash at closing for both  
21 checking and savings account and includes the balance of  
22 accounts receivable and accounts payable at closing.'

23 "Q So the offer that Decide4Action made back in March was  
24 4.4 million excluding cash?

25 "A Correct.

1 "Q And the selling shareholders would get to keep the  
2 cash?

3 "A Correct.

4 "Q All right. Now look at the Stock Purchase Agreement  
5 on page 17, and on page 17, section (c), Cash. What does  
6 that first phrase say about cash?

7 "A 'Sellers shall ensure that all target cash is  
8 distributed or otherwise made out to sellers no later than  
9 closing.'

10 "Q Did it require for the seller -- did it require for  
11 the sellers to ensure that all CC+I cash is distributed or  
12 otherwise paid out to sellers no later than closing?

13 "A Right.

14 "Q And is that what you all did?

15 "A Yes.

16 "Q Now look at Defendant's Exhibit 4. This is the  
17 spreadsheet you gave to Mr. Bergeron in May of 2017 that  
18 outlined the employees' 2017 salaries as of April 28, 2017.  
19 Is that right?

20 "A Correct.

21 "Q So if Mr. Bergeron had added up the non-owner salaries  
22 and annualized them, he would have seen that they would  
23 have been receiving annual salaries of under 330,000 per  
24 year?

25 "A Correct.

1 "Q Now if you look at Defendant's Exhibit 14, the tax  
2 return that you say provided -- you provided to  
3 Mr. Bergeron, under line 13, salaries and wages, what's the  
4 amount listed there for non-owner salary and wages?

5 "A 687,405.

6 "Q So if Mr. Bergeron cared about how much in bonuses had  
7 been paid to the non-owner employees, would it have been  
8 readily apparent from the tax return that you all paid out  
9 around \$350,000 in bonuses?

10 "A Absolutely. Can I just point out one other thing?

11 "Q Sure.

12 "A He also knows from this what the stockholders were  
13 paid.

14 "Q Right. But the stockholders -- on the tax return, the  
15 compensation of officers in line 12 is a separate line item  
16 for shareholders.

17 "A True, true.

18 "Q Now, these employee bonuses, I think you testified,  
19 were paid out on June 26, 2017. Is that right?

20 "A That was the last -- I think that was the last payroll  
21 day, yes.

22 "Q And when these non-owner employee bonuses were paid,  
23 you did not have a signed Stock Purchase Agreement with  
24 Decide4Action, did you?

25 "A Had never seen it.

1 "Q You didn't even have a draft of the Stock Purchase  
2 Agreement from Decide4Action at that point, did you?

3 "A Had never seen anything but the Letter of Intent.

4 "Q And when you paid these employee bonuses, there was no  
5 guarantee that Decide4Action was going to purchase CC+I,  
6 was there?

7 "A There was a lot of doubt that we were going to buy it  
8 -- that we were going to sell until we found out more about  
9 Decide4Action.

10 "Q And even if you were not going to sell CC+I but you  
11 were going to keep the company, would you have still paid  
12 these non-owner employee bonuses?

13 "A Absolutely.

14 "Q In the same amount?

15 "A In the same amount.

16 "Q Why?

17 "A Because we were greatly appreciative of the extra  
18 effort that they had put forth to help us have a stellar  
19 sales year.

20 "Q Mr. Puriefoy asked you about page 21 of the Stock  
21 Purchase Agreement and specifically subsection (b) on  
22 Indemnification Provisions for Buyer's Benefit, but he  
23 didn't ask you about the last sentence. Read that last  
24 sentence beginning with 'in addition.'

25 "A 'In addition, in no event shall any seller be liable

1 to buyer for any punitive, incidental, consequential,  
2 special, or indirect damages, including loss of future  
3 revenue or income, loss of business reputation or  
4 opportunity relating to the breach or alleged breach of  
5 this agreement, diminution of value of any damages based on  
6 any type of multiple.'

7 "Q Now, when you met with Mr. Bergeron in May of 2018 and  
8 he had a spreadsheet claiming that he had been damaged, was  
9 his calculation of damages based on a multiple of EBITDA?

10 "A It was.

11 "Q And was he claiming that the company based on a  
12 multiple of EBITDA was not or had been diminished in value  
13 by paying of these employee bonuses?

14 "A He did.

15 "Q Is that sort of claim allowed under the Stock Purchase  
16 Agreement?

17 "A Not that I know of.

18 "Q Now, you also had -- aside from the Stock Purchase  
19 Agreement, you had an indemnity escrow agreement with  
20 Decide4Action and United Community Bank. Right?

21 "A Correct.

22 "Q And that agreement allowed for claims against the  
23 escrow but only as authorized by the Stock Purchase  
24 Agreement. Is that right?

25 "A Correct.

1 "Q Was Mr. Bergeron's claim against the escrow authorized  
2 by the Stock Purchase Agreement?

3 "A I don't think so.

4 "Q Was it in fact prohibited by the Stock Purchase  
5 Agreement?

6 "A I think it was.

7 "Q Do you consider that a fraudulent act by Mr. Bergeron,  
8 to make a claim that was prohibited by the Stock Purchase  
9 Agreement in order to keep UCB from releasing the escrow to  
10 the selling shareholders?

11 "A Yes.

12 "Q That's all I've got for you, Mr. Sibley."

13 THE COURT: All right. You may step down.

14 Will counsel approach?

15 (WHEREUPON, a bench conference was held off the record.)

16 THE COURT: We're just conferring on our schedule over  
17 here. We agree it's time to take a break for the day.

18 All right. Ladies and gentlemen, I'm going to --  
19 you're going to hear -- every time you break, this is going  
20 to be your rules, okay? One, do not discuss the case among  
21 yourselves or your family members. I know it's tough to go  
22 home and they say, "What have you been doing all day?" and  
23 you say, "That mean old judge told me I could not talk  
24 about the case."

25 Also, don't do any type of research on this. Don't



1 google the parties. Don't google anything about anything  
2 you've heard or that may apply. That's not appropriate.  
3 You'll get all the law and all the information you'll need  
4 from this courtroom.

5 Do not pay any attention to any media coverage. I'm  
6 not aware of any, but, you know, social media, any type of  
7 media. Do not have -- do not pay any intention to that.

8 And I've never had this happen but I always say this,  
9 if you're contacted by anybody other than somebody from the  
10 clerk's office, please let the bailiff know that when you  
11 get it in the morning.

12 Is 9:30 good for everybody? 9:30 in the morning. All  
13 right. We'll see y'all back at 9:30 and we'll continue  
14 with the plaintiff's case. Y'all have a good evening.

15 (WHEREUPON, the jury exits the courtroom at 4:15 p.m.)

16 THE COURT: All right. So I think that -- they're  
17 already locked in those little booths, and I think if you  
18 read another deposition, then we may have a mutiny.

19 So anything else from the plaintiff before we break  
20 for the day?

21 MR. ENGLISH: No. Again, I have a motion in limine,  
22 but it can wait till before the defendant's case.

23 THE COURT: All right. Anything else?

24 MR. PURIEFOY: Nothing from the defense, Your Honor.

25 THE COURT: And so whatever witnesses do you have?

1 MR. ENGLISH: We've got the deposition of  
2 Decide4Action, we've got Ms. Featherstone, and we've got  
3 Ms. Sharon Whitney from UCB. And then I've listed  
4 Mr. Coburn. I might wait and call him in rebuttal if  
5 necessary.

6 THE COURT: Okay. It sounds like we're moving along  
7 pretty good. I was just checking.

8 MR. ENGLISH: Yeah. I definitely think we'll be in a  
9 position to rest tomorrow.

10 THE COURT: All right. We'll see everybody in the  
11 morning. Be ready to go at 9:30.

12 (Pause in proceedings; Juror Number 62 enters the  
13 courtroom.)

14 THE COURT: I'm just going to put this on the record.  
15 He recognized -- he told me he recognized the name as it  
16 was written up there.

17 First of all, your name and number again?

18 JUROR NUMBER 62: Travis Ware, 62.

19 THE COURT: All right. And I believe you indicated  
20 that once the documents got up there, you recognized one of  
21 the names. And who was that?

22 JUROR NUMBER 62: Robert Leviner.

23 THE COURT: Okay. And I believe you said you didn't  
24 know him, but you knew somebody.

25 JUROR NUMBER 62: He's got a son by the same name.

1 I've been knowing his son for 15 years.

2 THE COURT: All right. And the fact that you may know  
3 his son, can you still be fair and impartial in the trial  
4 of this case?

5 JUROR NUMBER 62: I'm sure I could.

6 THE COURT: All right. You can still listen to the  
7 facts and still hear the case and make your decision based  
8 on the facts.

9 JUROR NUMBER 62: Sure.

10 THE COURT: All right. Thank you very much. We'll  
11 see you in the morning.

12 All right. Anything further from the parties in light  
13 of that information?

14 MR. ENGLISH: None from the plaintiff.

15 MR. PURIEFOY: Nothing, Your Honor.

16 THE COURT: All right. Okay. I'll see y'all in the  
17 morning.

18 (WHEREUPON, proceedings recessed at 4:20 p.m.)  
19  
20  
21  
22  
23  
24  
25

1                                    TUESDAY, JULY 25, 2021

2                    (WHEREUPON, proceedings reconvened at 9:25 a.m.)

3            MS. THOMASON: Yesterday there was testimony, and  
4            Mr. English referenced it in his opening also as to  
5            breaches of other documents. And Mr. English pled very  
6            specifically breach of the escrow agreement only, and  
7            breach of company by a fraudulent act of the escrow  
8            agreement. So it's only -- he's only pled one breach -- or  
9            a breach of one document. So to the extent that we need to  
10           -- limiting when dealing with jury instruction or whatever,  
11           I just want to bring it to the Court's attention.

12           THE COURT: All right. Mr. English?

13           MR. ENGLISH: Judge, as I mentioned in opening and as  
14           the evidence shows, there are actually three contracts that  
15           are at play here. There's the stock purchase agreement,  
16           there is the indemnity agreement, and then there is the  
17           agreement regarding application of funds. And I think the  
18           jury could find that any or all of those three contracts  
19           were breached by the defendant's behavior. And as you  
20           know, breach of contract accompanied by a fraudulent act  
21           requires some act separate from the breach, and so I think  
22           they could find a breach of, for example, the escrow  
23           agreement, but find that the claim under the stock purchase  
24           agreement was a fraudulent act. And I think the pleading  
25           is broad enough to allow for that interpretation. To the

1 extent it's not, I'd ask for an amendment to the complaint  
2 to conform to the evidence, and there'd be no prejudice to  
3 the defendants from that because they've known and we've  
4 had discovery about all of these contracts.

5 THE COURT: When you say "escrow agreement," what  
6 exactly is the escrow agreement?

7 MS. THOMASON: There's a stock purchase ---

8 THE COURT: All right. I've got it. Let me get out  
9 my little exhibit book here.

10 MS. THOMASON: So there is the stock purchase  
11 agreement, and then there's the indemnity escrow agreement.

12 THE COURT: Which is Plaintiff's 8. All right.  
13 Indemnity escrow is 9. And then what's the other?

14 MS. THOMASON: And then there is the fund application  
15 agreement.

16 MR. ENGLISH: Which is 16.

17 MS. THOMASON: They have pled breach of the escrow  
18 agreement itself, and they pled -- and as, Your Honor, the  
19 Court's aware, you have to plead the fraud very  
20 specifically. And they specifically pled that there was  
21 fraud in ordering the escrow agent not to release the funds  
22 in violation of the escrow agreement. I mean, he had two  
23 very specific claims throughout this. And we have done  
24 discovery, and it's all been based on those two claims.  
25 Now, we have counterclaims as it relates to the stock

1 purchase agreement, but throughout the course of this, from  
2 the time it was, you know, filed on and even through an  
3 amendment, it's been those two claims. And there's no  
4 allegation of fraud as it relates to the stock purchase.  
5 The fraud alleged is general fraud as it relates to telling  
6 the escrow agent not to pay. And we agree. We think the  
7 fraud is the breach. You know, they're alleging no  
8 separate act.

9 MR. ENGLISH: Your Honor, that mischaracterizes, I  
10 think, the law and the complaint. The law is that breach  
11 of contract accompanied by a fraudulent act is not the same  
12 as common-law fraud. It doesn't have the same  
13 particularity requirements as common-law fraud. So that's  
14 a misstatement of the law.

15 It's also a misstatement of the complaint that  
16 paragraph 23 says in addition to breaches of the contract,  
17 which is defined as the escrow agreement by Decide4Action,  
18 the circumstances described herein accompanying the breach  
19 show a pattern of behavior and moderm that demonstrates both  
20 fraudulent intent and fraudulent acts. So we did plead  
21 specifically in addition to breaching that escrow  
22 agreement, there were other breaches or other fraudulent  
23 acts that the jury could use to find breach of contract  
24 accompanied by a fraudulent act.

25 THE COURT: I guess ---

1 MS. THOMASON: But the law -- I'm sorry, Your Honor.

2 THE COURT: Yeah. Go ahead.

3 MS. THOMASON: The law does require that the fraud be  
4 a separate act as it relates, and here the allegation is a  
5 pattern as it relates to telling the escrow agent not to  
6 release the funds. As a matter of fact, that is what we  
7 were talking about when we were talking about referencing  
8 other lawsuits where we're trying to -- we had a motion to  
9 exclude that testimony was to show a pattern of behavior,  
10 that was Mr. English's position, as it relates to holding  
11 escrow funds.

12 THE COURT: Does this relate to any portion of the  
13 deposition that is here to be read? All right. Because  
14 what I'd like to do is review the complaint.

15 MS. THOMASON: Okay. All right.

16 THE COURT: All right. Was there two matters?

17 MR. PURIEFOY: There was, Your Honor. And Mr. English  
18 and I have stipulated to the admission of Defendant's  
19 Exhibits 3 through 9, which are certain bonus letters that  
20 were attached to and referenced in Mr. Sibley's deposition.  
21 I believe they're being admitted without objection.

22 MR. ENGLISH: That's right.

23 THE COURT: So Defendant's 3 through 9.

24 (WHEREUPON, Defendant's Exhibit Numbers 3 through 9 were  
25 admitted into evidence.)

1 THE COURT: What -- again, do we have Defendant's  
2 Exhibit 1 and then 3 through 9? We do not have 2, right?

3 MR. PURIEFOY: There's going to be a 2, Your Honor,  
4 but the second exhibit is an offering memorandum that's  
5 like going to be objected ---

6 THE COURT: Right. I just want to make sure that I  
7 didn't admit something there.

8 All right. We've got them all?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. Anything else before I bring  
11 the jury in?

12 MR. ENGLISH: No, Your Honor.

13 MR. PURIEFOY: Nothing, Your Honor.

14 THE COURT: All right. Bring the jury in.

15 (WHEREUPON, the jury entered the courtroom at 9:33 a.m.)

16 THE COURT: Good morning, ladies and gentlemen. I  
17 hope everybody had a good evening, and we will now resume  
18 the case. As you recall, the plaintiff is still in their  
19 case in chief.

20 So, Mr. English, if you'll call your next witness.

21 MR. ENGLISH: Your Honor, at this time we would like  
22 to read from the Rule 30(b)(6) deposition of the defendant,  
23 Decide4Action.

24 THE COURT: All right. And as I told you yesterday, a  
25 deposition is to be considered, for your purposes, the same



1 as if the person were testifying live.

2 DEPOSITION TESTIMONY OF RICHARD BERGERON

3 MR. ENGLISH: All right. And I'm beginning on page 5.  
4 Beginning at page 5, line 21.

5 "Q Good morning, Mr. Bergeron. My name is Greg English,  
6 and I represent the plaintiff in this action. It will be  
7 Mr. Sibley's estate.

8 We're here today to take the 30(b)(6) deposition of  
9 defendant Decide4Action. I understand that you have been  
10 designated to testify for Decide4Action; is that right?

11 "A Yes.

12 "Q Now, this case concerns Decide4Action's purchase of  
13 the stock of Computer Control + Integration; is that right?

14 "A Yes.

15 "Q I'm going to call Computer Control + Integration as  
16 CCI. Is that okay?

17 "A Yes.

18 "Q I believe that acquisition or purchase of the stock  
19 was closed on October 16 of 2017; is that right?

20 "A Well, we're not so sure if it was 16 or 17, but one of  
21 those two dates.

22 "Q Either October 16 or October 17 of 2017; is that  
23 right?

24 "A Yeah.

25 "Q That's when the purchase was completed?

1 "A Yes.

2 "Q All right. First of all, where were you born?

3 "A In Quebec City, Canada, 1964.

4 "Q Where did you go to school?

5 "A Laval University in Quebec.

6 "Q And when did you graduate?

7 "A 1988.

8 "Q What was your degree in?

9 "A Mechanical engineering.

10 "Q And after your -- is that an undergraduate degree?

11 "A Well, the educational system doesn't work the same  
12 way. They call it the equivalent to a Master's here  
13 basically.

14 "Q So you have experience in growing and managing  
15 businesses?

16 "A Of course, yes.

17 "Q Let's talk now about Decide4Action. I believe it's a  
18 corporation. What state is Decide4Action incorporated in?

19 "A It's an S Corporation in Florida.

20 "Q When was it incorporated?

21 "A 2011, under RV Consulting Engineering Services, Inc.

22 "Q What do you mean under?

23 "A That was the name at the time.

24 "Q So we changed names to Decide4Action?

25 "A Yes.

1 "Q Who were the shareholders of Decide4Action?

2 "A I am.

3 "Q One hundred percent?

4 "A Yes.

5 "Q Who are the directors of Decide4Action?

6 "A I am.

7 "Q Are you the sole director?

8 "A I think so.

9 "Q And what offices do you hold at Decide4Action? Are  
10 you the president?

11 "A I'm CEO.

12 "Q Does Decide4Action have any other corporate officers  
13 besides you?

14 "A No.

15 "Q I believe you said earlier that you began discussions  
16 with CCI, or the owners of CCI, about purchasing their  
17 stock in 2015; is that right?

18 "A I believe so.

19 "Q Why were you looking to buy a company?

20 "A Because that -- do I need a reason for that?

21 "Q I'm asking why.

22 "A Because that's what I do.

23 "Q You buy companies?

24 "A Well, I was interested. I told you -- I told you you  
25 left my role at Exxelia in 2014. I was too young to

1 retire. I don't work very well -- I work better when I  
2 make my own decisions and I didn't want to start from  
3 scratch. So the best route is to buy an existing company.

4 "Q Let me show you what we're marking as Exhibit  
5 Number 1. All right. Look at this. All right. Let's  
6 look at this and tell me if these were the terms that you  
7 offered? First of all, under the selling price was the  
8 purchase price for one hundred percent of the stock of CCI  
9 to be four point four million dollars?

10 "A Yes, it was.

11 "Q If you look at the fourth bullet point, was ninety  
12 percent of that purchase price to be paid in cash at  
13 closing?

14 "A Yes.

15 "Q Was the remaining ten percent to be put in escrow for  
16 twelve months with interest for the sellers?

17 "A Yes.

18 "Q If you look at the last bullet point, does the offer  
19 exclude the cash at closing for both checking and savings  
20 accounts?

21 "A Yes.

22 "Q In other words, the owners of CCI were not selling the  
23 cash as part of the four point four million, they were  
24 entitled to keep the cash and do whatever they wanted to do  
25 with it, right?

1 "A No.

2 "Q Why is that wrong?

3 "A You said that they were entitled to keep the cash.  
4 That is a true statement. The second thing, you said they  
5 were entitled to do whatever they want to do with it. That  
6 is not a true statement.

7 "Q If you'll look over to the fourth page, Section 5,  
8 Other, was it correct in the first bullet that  
9 Decide4Action was to have forty-five days after the  
10 signature of the LOI to complete its due diligence?

11 "A This is correct but it was extended at least once if  
12 not twice.

13 "Q So the forty-five days from March 10th would have been  
14 roughly April 25th of 2017. When do you think the due  
15 diligence deadline was extended to?

16 "A Don't quote me but I think we had about -- the due  
17 diligence was done I think in May, but I'm not sure one  
18 hundred percent. We had to obtain a report from the CPA  
19 and we had to submit that to the Small Business  
20 Administration. We did all of that within the compass of  
21 time.

22 "Q Let me show you what we're marking as Plaintiff's #2.  
23 Is this a list of CCI employees' salaries and bonuses that  
24 you received as part of due diligence?

25 "A It appears to be. It's very difficult to make sure in

1 the limited time that it was not modified in any way  
2 because it has no signatures -- signature and it was not  
3 the original, but it appears to be, yes.

4 "Q If you look in the first column, it says CC+I Fiscal  
5 2017 as of April 28, 2017. So based on that do you think  
6 it's fair to say that due diligence -- that Decide4Action  
7 was still doing due diligence as of April 28th, 2017?

8 "A Yes. Well, hold on. April 28th was still -- yeah,  
9 yeah, it was.

10 "Q Now, based on this document, do you understand that  
11 CCI paid employees bonuses in its fiscal year 2016?

12 "A Yeah, thirty thousand dollars. No, twenty-five  
13 thousand dollars. No, thirty-five.

14 "Q The owner employees also received bonuses in fiscal  
15 year 2016, correct?

16 "A Yes.

17 "Q The fiscal year ended on June 30th of each year; is  
18 that right?

19 "A Yes, that's correct.

20 "Q So at the time you were looking at this, you were  
21 nearing the June 30, 2017 fiscal year end of CCI; is that  
22 right?

23 "A Yes.

24 "Q But on Plaintiff's Exhibit 2, there was a column for  
25 bonuses for fiscal year 2017, correct?

1 "A It's a blank. A zero is a zero.

2 "Q Zeros are not in that column for 2017, are they?

3 "A What's the point?

4 "Q There is a column for bonuses, right?

5 "A There is a column for bonuses.

6 "Q And if you look at the column for 2017 annual  
7 salaries, it looks like the total owner salaries as of  
8 April 28th, 2017 total about four hundred and fifty  
9 thousand dollars. Does that look right to you?

10 "A I trust your math. I did not do the addition.

11 "Q Then if you went to the non-owner employees, it looks  
12 like their salaries total about two hundred and fifty  
13 thousand dollars. Do you agree with that?

14 "A If you say so, I believe you.

15 "Q If you look at the total annual salaries listed on  
16 Plaintiff's Exhibit 2 as of April 28th, 2017 it's a total  
17 of around seven hundred thousand dollars. Would you agree  
18 with that?

19 "A You do the math better than I do, yes.

20 "Q Let me show you what I marked as Plaintiff's  
21 Exhibit 3. Did you send a CPA to CCI to perform due  
22 diligence?

23 "A Yes, I did.

24 "Q Was that Dan Carlton?

25 "A Yes.

1 "Q Is this his report to you about due diligence?

2 "A It looks like it.

3 "Q It says 'This report outlines the results of the due  
4 diligence activities performed May 2nd [sic] and 17, 2017  
5 during our visit to CCI'; is that right?

6 "A Yes.

7 "Q So is that when Decide4Action performed its due  
8 diligence?

9 "A Yes, it is.

10 "Q Let me show you what's been marked Plaintiff's  
11 Exhibit #5. What is this document?

12 "A It's a P&L.

13 "Q Of what?

14 "A Of CCI.

15 "Q As of what date?

16 "A As of July 2017.

17 "Q You see at the top there are some signatures. Do you  
18 recognize those signatures?

19 "A I don't but I could compare them to the other people.  
20 Personally I don't recognize signatures very well.

21 "Q Did you know that Mr. Sibley, Jr., was one of the  
22 selling shareholders?

23 "A Of course I did.

24 "Q Was Tim Clark another selling shareholder?

25 "A Yes, he was.



1 "Q Do you think that's Mr. Clark's signature on this?

2 "A It's probably his but I'm not sure a hundred percent.

3 "Q And this version was signed by Mr. Clark and  
4 Mr. Sibley?

5 "A It looks like it.

6 "Q If you look under expenses, the third category,  
7 salary, wages and bonuses?

8 "A Yeah.

9 "Q The total for that is seventy-six thousand six hundred  
10 and fifty-three dollars for July of 2017; is that right?

11 "A Yeah.

12 "Q Now look at what we're looking at, Plaintiff's  
13 Exhibit 6. What is this document?

14 "A It's a P&L.

15 "Q Of CCI?

16 "A Yes.

17 "Q As of what date?

18 "A As of June 2017.

19 "Q Is this also signed by Mr. Clark and Mr. Sibley?

20 "A It is.

21 "Q Did you receive Exhibit 6 before closing?

22 "A Probably, yes.

23 "Q And if you look at Exhibit 6, what does it show  
24 salaries, wages and bonuses were?

25 "A Two million four hundred sixty-eight eight-sixty-one

1 and seventy-eight cents.

2 "Q So this is significantly higher for June 2017 than it  
3 was for the following month in July of 2017, right?

4 "A Of course. I fully expected that.

5 "Q You fully expected higher salaries, wages and bonuses?

6 "A I expected a very large amount of bonuses. They were  
7 supposed to take care -- they were supposed to take the  
8 bonuses out as owners. I fully expected that. That's what  
9 they were supposed to do, to take it out as cash as owners.  
10 There's a reason for that if you care to know.

11 "Q We'll come to that in a minute.

12 "Let me show you what we're marking as Plaintiff's 7.  
13 What is this document?

14 "A The tax return.

15 "Q Of CCI for 2016?

16 "A Yeah.

17 "Q And is that year end as of June 30, 2017; is that  
18 right?

19 "A Yeah.

20 "Q Is this a document that you received before closing?

21 "A Like a day before closing because they were really  
22 late producing it.

23 "Q And if you look on line twelve, compensation of  
24 officers is listed at a little over two point five million;  
25 is that right?

1 "A Yeah.

2 "Q Below that salaries and wages are listed at six  
3 hundred and eighty-seven thousand dollars; is that right?

4 "A Yeah, that's right.

5 "Q Look at Plaintiff's Exhibit #2 and tell me what the  
6 total non-owner salaries were as of April 28, 2017?

7 "A You want me to calculate again?

8 "Q Mr. Bergeron, isn't it true that CCI's selling  
9 shareholders told you that as of April 28th, 2017 the  
10 non-owner employees had been paid approximately two hundred  
11 and fifty thousand dollars?

12 "A I don't think so.

13 "Q Isn't that what Plaintiff's Exhibit 2 shows?

14 "A I don't think so.

15 "Q Well, then if you look at Plaintiff's Exhibit 7, the  
16 tax return as of June 30, 2017, two months later the  
17 salaries and wages is six hundred and eighty-seven thousand  
18 dollars, correct?

19 "A Two months later?

20 "Q Yes.

21 "A Two months of what?

22 "Q Between Plaintiff's Exhibit 2 of April 28th, 2017, and  
23 Plaintiff's Exhibit 7, the tax return ending June 30, 2017?

24 "A There's no link between this and this. What Exhibit 7  
25 shows is that for fiscal year 2016, the plaintiff spent six

1 hundred eight-seven thousand four hundred and five dollars  
2 in line thirteen in the tax return, which is salary and  
3 wage less employment credit. That's all it does say. It  
4 doesn't define what it is. I don't know what this is. I  
5 never knew what was included in that line.

6 "Q You knew that compensation of owners was not included  
7 because that was on line twelve, right?

8 "A If you say so, but I don't think if they pay some kind  
9 of bonus it is legal to include that in that line. I'm not  
10 a CPA. I didn't prepare the tax return. So I'm not going  
11 to make conclusions from something I don't know.

12 "Q You were not required to close, were you? You had no  
13 legal obligation to purchase the stock, did you?

14 "A No.

15 "Q You could have backed out at any time?

16 "A I could have.

17 "Q Is Plaintiff's Exhibit 8 a copy of that Stock Purchase  
18 Agreement?

19 "A It looks like it is.

20 "Q It looks like that Decide4Action is the buyer and then  
21 the selling stockholders are Mr. Sibley, Ms. Featherstone,  
22 Mr. Clark, Mr. Starrett, Mr. Dozier and Mr. Leviner; is  
23 that right?

24 "A Yes.

25 "Q If you look on page six of the Stock Purchase

1 Agreement, and actually it's -- I'm referring to the page  
2 numbers in the middle so it's one page back. Page six of  
3 the Stock Purchase Agreement at the bottom there's a  
4 subsection, I believe it's 4(i). It says 'Events  
5 Subsequent to May 17, 2017.' Then it begins 'Except as set  
6 forth in 4(i) of the Disclosure Schedule, since May 17,  
7 2017, there has not been any Material Adverse Change,'  
8 correct?

9 "A Yes.

10 "Q Now, if you look at the last page of Plaintiff's  
11 Exhibit 8, is that the -- it's page fifty-one, at the top  
12 it says 'Schedule 4(i). Events Subsequent to May 17,  
13 2017'?

14 "A Yes.

15 "Q Read what number three says?

16 "A 'Target paid a fiscal year-end bonus and subsequently  
17 has paid special bonuses to employees on three occasions.'

18 "Q So you knew that bonuses had been paid after May 17,  
19 2017, correct?

20 "A Yes, I did.

21 "Q Item three, the first part of that sentence before it  
22 talks about three occasions, the first says 'Target paid a  
23 fiscal year-end bonus,' right?

24 "A I don't read that the same way. It says 'Target paid  
25 a fiscal year-end bonus.' So the three bonuses are

1 consequences of the year-end bonus.

2 "Q It says 'Target paid a fiscal year-end bonus and  
3 subsequently has paid special bonuses to employees on three  
4 occasions,' right?

5 "A Yes, from the consequence of the fiscal year-end bonus  
6 -- bonuses is the three bonuses.

7 "Q It says 'Target paid a fiscal year-end bonus.' A  
8 fiscal year-end bonus would be as of June 30, 2017, right?

9 "A Right.

10 "Q And that bonus would be included in the tax return on  
11 Plaintiff's Exhibit 7 for non-owner employees in line  
12 thirteen, right?

13 "A No. Because you say employee. The owners are  
14 employees as well. They were on the payroll. They were  
15 making a distinction between employees that are owners and  
16 non-owners. This doesn't say that.

17 "Q You knew when you signed the Stock Purchase Agreement  
18 that CCI had paid a fiscal year-end bonus after May 17,  
19 2017, correct?

20 "A To owners, I know that. To owners, I know that.  
21 Here's -- here when they asked the question verbally, they  
22 say 'I assume that you've already seen it,'" which is this,  
23 but they did not define what it was. They just did it.  
24 Mr. Sibley in his testimony said -- say it was three  
25 occasions they give bonuses to owners. So I don't know.

1 "Q But you said you thought the three occasions were 2016  
2 bonuses on Plaintiff's Exhibit 2?

3 "A I thought that.

4 "Q Even though this sechedule is called Events Subsequent  
5 to May 17th, 2017?

6 "A That's right.

7 "Q I understand your position that a bonus was paid but  
8 why do you say that it was a plan, contract or commitment?

9 "A A plan, contract or a commitment?

10 "Q Or was it -- was paying that bonus a plan, contract or  
11 commitment to pay a bonus in the future?

12 "A I would not know that. There's no way for me to prove  
13 any of that. That's the reason in all the clauses in there  
14 we made sure it did not happen. So those bonuses were  
15 given without me knowing about it. The employee told me  
16 verbally, 'The bonus is a thing we have to do every year.'  
17 Are they saying the truth, lying, I don't know. They say,  
18 'Well, no bonus I'm leaving.'

19 "Q Let me show you what we're marking is Plaintiff's  
20 Exhibit 9. This is an Indemnity Escrow Agreement that the  
21 selling shareholders entered with Decide4Action as of  
22 October 16, 2017?

23 "A Yes, sir.

24 "Q Now, if you look in Section 1(a), there is a reference  
25 to establishment of an escrow. Was that four hundred and

1       forty thousand dollars that was deposited with UCB?

2       "A    Yes.

3       "Q    And if you look at page two in Subsection C, was that  
4       four hundred and forty thousand dollars to be released from  
5       the escrow to the selling shareholders on the first  
6       anniversary of the closing date, or by October 17, 2018?

7       "A    Well, any escrow is there to be released if there's no  
8       dispute.  Because we have a dispute it was not released.

9       "Q    Specifically you say dispute, but if you look in  
10       Subsection D, the escrow would not be released if you  
11       asserted something referred to as a pending claim; is that  
12       right?

13       "A    I think it's correct.

14       "Q    Is it correct that in order to stop the release of the  
15       escrow of any claim -- stop the release of the escrow any  
16       claim, or pending claim, would need to be a legitimate  
17       claim?

18       "A    I'm not sure what you said.  Of course a claim -- is  
19       there an illegitimate claim?

20       "Q    Right.  In other words, a pending claim needs to be a  
21       legitimate claim as opposed to an illegitimate claim,  
22       right?

23       "A    I'm not a lawyer.  I don't know.  I can't answer that  
24       question.  I don't -- I don't know what you're talking  
25       about.



1 "Q Would you agree with me that if you asserted a claim  
2 against the escrow in bad faith, that that would be a  
3 breach of this Indemnity Escrow Agreement?

4 "A In bad faith? Is it like -- I guess if it were -- if  
5 it was in bad faith and if -- and if it had no grounds  
6 whatsoever, the claim would be dismissed in court and then  
7 the people that suffered the consequence of the bad faith  
8 would be entitled to damage. Is that what you're asking?

9 "Q Yes, thank you.

10 "And if you look on page five, the escrow agent was  
11 United Community Bank; is that right?

12 "A I believe so.

13 "Q And any notice of any pending claims would have to be  
14 made to the attention of Sharon Whitney at United Community  
15 Bank; is that right?

16 "A I guess so. I'm not the one to decide this.

17 "Q Let me show you what we've marked as Plaintiff's  
18 Exhibit 10. What is this document?

19 "A This is a letter from my lawyer to Sharon Whitney.

20 "Q At United Community Bank?

21 "A Yes.

22 "Q Did you have your lawyer send this letter to  
23 Ms. Whitney at United Community Bank?

24 "A Yes.

25 "Q Was the purpose of this letter to -- for Decide4Action

1 to assert a pending claim against the escrow?

2 "A Yes, that was the case then.

3 "Q It says at the end of the first paragraph that  
4 Decide4Action requests that United Community Bank, the  
5 escrow agent, hold all funds in escrow until written notice  
6 from all parties showing the pending claim has been  
7 resolved?

8 "A Right.

9 "Q So you wanted to keep the selling shareholders from  
10 getting the escrow money on the one-year anniversary under  
11 the Escrow Indemnity Agreement, right?

12 "A Yeah.

13 "Q Now, if you look on page two under the pending claims,  
14 this asserts that on June 22nd, 2017 and June 26 of 2017,  
15 the selling shareholders increased one non-owner equity  
16 salary, and paid seven bonuses to non-owner employees; is  
17 that right?

18 "A That's right.

19 "Q And Decide4Action claims this was in breach of the  
20 Stock Purchase Agreement?

21 "A Yes.

22 "Q And specifically Decide4Action claims at the end of  
23 that paragraph under section one that sellers failed to  
24 disclose the bonuses to the buyer prior to the closing on  
25 October 16, 2017?

1 "A Yes.

2 "Q Is that Decide4Action's position?

3 "A Yeah.

4 "Q Decide4Action's position was that the sellers breached  
5 the SPA by failing to disclose the bonuses to Decide4Action  
6 prior to the closing on October 16, 2017?

7 "A No, no.

8 "Q That's not right?

9 "A No, it's not right. The seller breached the SPA by  
10 giving two hundred fifty thousand dollars in bonuses to  
11 non-owners.

12 "Q And in what document did the selling shareholders  
13 agree not to pay bonuses to the non-shareholder employees?

14 "A In the SPA.

15 "Q What's the date of the SPA?

16 "A October 16th or 17th.

17 "Q Of 2017?

18 "A Yes.

19 "Q At that point the bonuses had already been paid?

20 "A Yes.

21 "Q Okay.

22 "A And the seller knew that.

23 "Q Then this letter to the escrow agent references the  
24 three subsections of Section 4(i)?

25 "A Yes. Fifteen, sixteen, seventeen.

1 "Q Then on page three it says 'Sellers directly breached  
2 the above warranties when they awarded non-owner employees  
3 with bonuses and increased one non-owner employee's salary  
4 after failing to disclose these material adverse changes,'  
5 right?

6 "A Yeah.

7 "Q Now it says that the calculation of damages is  
8 included as Exhibit A. If you look at the last page of  
9 Plaintiff's Exhibit 10, were those the damage calculations  
10 that Decide4Action gave to United Community Bank?

11 "A Yes.

12 "Q I'm trying to understand your calculation. If you  
13 look back at the top where there is a calculation of  
14 EBITDA, which is earnings before interest, taxes,  
15 depreciation and amortization; is that right?

16 "A Yes.

17 "Q It says EBITDA, CCI, was one million one hundred and  
18 seventy-three thousand, and there's a reference to page  
19 four. Page four of what?

20 "A Page four of the sellers issuing offering memorandum.

21 "Q So that was a document that you looked at before you  
22 issued the Letter of Intent and before the Stock Purchase  
23 Agreement was signed; is that right?

24 "A Yes.

25 "Q But regardless, if you divide the purchase price of

1 four point four million by the EBITDA number, you believe  
2 one point one seven three million, that gives you an EBITDA  
3 multiple of three point seven five; is that right?

4 "A It does, right.

5 "Q And then you subtracted the twenty-five hundred dollar  
6 salary and these bonuses along with payroll taxes from the  
7 EBITDA to come up with the one point one seven three to  
8 come up with a new EBITDA number; is that right?

9 "A With a potential number, yeah.

10 "Q That was what you called actual EBITDA of eight  
11 hundred and twenty-two thousand; is that right?

12 "A Yeah.

13 "Q Then you multiplied that earnings number times the  
14 three point seven five multiple and came up with a claim  
15 for the reduction of the company value of one point three  
16 million dollars; is that right?

17 "A An estimate of what a claim would be, but that's not  
18 the claim. That's not -- that's not a claim. This letter  
19 was a request to add the escrow and the claim is in the  
20 lawsuit.

21 "Q That was the pending claim that was described to UCB  
22 in order to have them hold the escrow, right?

23 "A They would not hold it unless we would give them an  
24 idea that this was not a twenty thousand -- twenty thousand  
25 dollars claim, for instance.

1 "Q Let me show you what we've marked as Plaintiff's  
2 Exhibit 11. Have you seen this copy of my letter to UCB  
3 dated October 30, 2018?

4 "A Yes, I did.

5 "Q Did you read the affidavits from the three employees  
6 that you claim had left because they did not receive a  
7 bonus?

8 "A Of course I did.

9 "Q And did you read these affidavits that they left the  
10 employment of CCI not because they" --

11 MR. PURIEFOY: Objection. Objection, Your Honor.  
12 This is cause for hearsay. He's reading the depositions or  
13 the affidavits of individuals that were out of court  
14 statements that are being offered to prove the truth of the  
15 matter asserted. That certainly rises to the level of  
16 hearsay.

17 THE COURT: Didn't we discuss all this in the  
18 designation of deposition? I mean, this isn't anything  
19 different then when he designated, is it?

20 MR. PURIEFOY: If it's not different, Your Honor, then  
21 I'll allow it.

22 MR. ENGLISH: It's the same, yes.

23 THE COURT: Okay.

24 MR. ENGLISH: Back on line 6.

25 "Q Did you read the affidavits of the three employees

1       that you claim had left because they did not receive a  
2       bonus?

3       "A     Of course I did.

4       "Q     And did you read these affidavits that they left the  
5       employment of CCI not because they didn't receive a bonus,  
6       but because they didn't enjoy working with you?

7       "A     That's not what they say when they left.

8       "Q     So does that mean you didn't believe the affidavits  
9       they signed?

10      "A     So was it taken out of context? Was part of not  
11      liking to work with me? Absolutely, I believe that. I  
12      believe they did not like to work with me, and there's a  
13      lot of reasons why they would not like to work with me.  
14      Those guys were not hired for the -- they advertise  
15      themselves as software designers. All three of them, they  
16      really were not software designers. They go from site to  
17      site installing equipment. We ask them to write code.  
18      Their ability was -- their ability was really, really low.  
19      So they couldn't do the job they were supposed to do.

20             Of course, when someone asked you to do a job that you  
21      can't do because the sales were really low, then of course  
22      they didn't like working with me because I asked them to do  
23      a job they couldn't do. Of course they didn't like it.

24             Did they leave because of that, I don't know. Is what  
25      they -- is what they told me? No. So which -- which one

1 is it? I'm not the one to make the decision -- the  
2 decision here.

3 "Q Let me show you what we're marking as Plaintiff's  
4 Exhibit 12. Is it true that despite my letter and the  
5 employee affidavits that Decide4Action refused to allow UCB  
6 to release the escrow to the shareholders?

7 "A Yeah. We chose not to do it until the whole issue was  
8 resolved.

9 "Q So is Decide4Action claiming different damages in this  
10 case than it notified the escrow agent of?

11 "A Yes."

12 MR. ENGLISH: Page 95, line 19.

13 "Q In 2017 did you receive a W-2 salary from  
14 Decide4Action?

15 "A Yes. Like I said, about a hundred thousand dollars.

16 "Q Then did you receive any other payments or  
17 distributions?

18 "A I did.

19 "Q How much?

20 "A I don't remember. I'll have to check.

21 "Q What would be shown on your K-1?

22 "A Yeah, that's -- that's a Schedule K-1 that I would  
23 have to pull out for the -- for that year.

24 "Q What about 2018?

25 "A The seller is the same. I would have to pull out the



1 Schedule K.

2 "Q What about 2019?

3 "A Yeah, it's also a hundred thousand dollars and I would  
4 have to pull out the Schedule K.

5 "Q I don't -- I know you don't have the W-2, K-1 for  
6 2020. What would be the salary?

7 "A Hundred thousand dollars a year.

8 "Q So does CCI pay for anything other than management  
9 fees since you've been in control?

10 "A Yeah, there's a financing agreement.

11 "Q What does CCI pay for under that?

12 "A Basically it's a loan to pay. I don't know where it  
13 appears in there, but it's about four hundred fifty  
14 thousand dollars. I don't know where it is. I don't know.  
15 I would have to check with my accountant which line they  
16 put that in.

17 "Q So the payments from CCI to Decide4Action come in the  
18 form of management fees, loan payments and then dividends;  
19 is that right?

20 "A It comes in the form of -- there was a financing  
21 agreement in-between the company to repay the loan. There  
22 is -- the rest is all dividends.

23 "Q Or management fees because management fees are  
24 deductible, right?

25 "A Yeah. Income from one -- from one company but income

1 to the other company.

2 "Q Now, have you hired any new employees since you took  
3 over the company in October 2017?

4 "A Yes.

5 "Q Who's that?

6 "A I have my son.

7 "Q How much do you pay him?

8 "A Now or then?

9 "Q Then and now?

10 "A I think he was hired at sixty-five to seventy. I  
11 think he's making eighty-five now.

12 "Q My question was how many new employees have you hired  
13 in addition to your son?

14 "A That are still working in the company or total?

15 "Q Total.

16 "A Maybe a total of fifteen to twenty.

17 "Q Did you hire anybody specific to replace Mr. Herrmann?

18 "A You hire to do a job you have -- you hire to do a job  
19 you have to do code. You don't hire to replace a person.

20 "Q Was Mr. Herrmann able to do the coding like you  
21 wanted?

22 "A Mr. Herrmann was a very, very junior programmer. I  
23 don't think he was capable of writing any code whatsoever.  
24 I don't think he wrote code when he was at CC+I. I was  
25 told that he did not work any code.

1 "Q What about Mr. Joseph Taylor?

2 "A Joseph Taylor is a programmer. He was able to write  
3 code but it was not very good.

4 "Q Did you hire anybody specific to replace Mr. Taylor?

5 "A We don't replace -- coding is not.

6 "Q And then we know Mr. Pavette is no longer there. Was  
7 he a programmer?

8 "A Yes, sir, he was.

9 "Q Was he able to program what you wanted him to?

10 "A The short answer is no.

11 "Q Did you hire anybody specific to replace Mr. Pavatte?

12 "A Same answer.

13 "Q What efforts have you made to improve the value of  
14 CCI?

15 "A I replaced all those people with people that could  
16 actually code."

17 MR. ENGLISH: I'm on page 119.

18 "Q Let me make sure I understand your position in this  
19 case on behalf of Decide4Action. Decide4Action's position  
20 is that if the selling shareholders had paid out all the  
21 cash to themselves instead of paying some of that cash as  
22 bonuses to the other employees, Decide4Action would have no  
23 claim?

24 "A Absolutely.

25 "Q That's correct?

1 "A Yes.

2 "Q As of June 2017 you had no obligation to purchase CCI,  
3 did you?

4 "A No.

5 "Q Mr. English showed you Plaintiff's Exhibit 7 which is  
6 the 2016 tax return for CC+I?

7 "A Yes.

8 "Q When did you say you received this document? I think  
9 you testified earlier that it may have been one or two days  
10 before?"

11 MR. ENGLISH: Page 130, line 1.

12 "A It might be a week, but it was not a long time before.

13 "Q Mr. English asked you about Plaintiff's Exhibit 6  
14 which is a Profit & Loss statement dated June of 2017. On  
15 the Profit & Loss statement under expenses, it shows  
16 salaries, wages and bonuses of two point four million  
17 dollars. I believe Mr. English represented that it was  
18 executed by Mr. Tim Clark and Mr. Sibley. Do you recall  
19 being asked about Plaintiff's Exhibit 6?

20 "A Yes, I do recall.

21 "Q Did it appear to be out of the ordinary in any way?

22 "A Of course, it's a large sum being paid. We know -- we  
23 know there was a lot of cash left, and it was the last  
24 month to take it out. So they took it out in bonuses that  
25 last month. So that amount makes a lot of sense to take it

1 out just before -- what was there -- what was there  
2 supposed to do, take all the cash out?

3 "Q Mr. Puriefoy asked you about the employees who left  
4 after the Stock Purchase Agreement, and you named  
5 Mr. Pavatte, Mr. Herrmann and Mr. Taylor. As I understood  
6 your earlier testimony it was a good thing they left  
7 because they weren't able to do the job?

8 "A It's not a good thing they left, but because when I  
9 bought the company I was hoping -- my son was really young.  
10 I was hoping to have a team of programmers that would help  
11 him learn the trade. But of course when they realized that  
12 they were not capable of writing that, I guess -- that --  
13 after that I guess it was a good thing. After that I guess  
14 was it a good thing? It would have been better if they  
15 would have agreed to stay at the salary that they were  
16 supposed to be paid and they would have start learning the  
17 programming. I would have been very willing to entertain  
18 that.

19 "Q So if the selling shareholders of CC+I had paid that  
20 three hundred and sixty thousand to themselves instead of  
21 -- instead of taking on other employees, then Decide4Action  
22 wouldn't have a claim?

23 "A That's correct."

24 MR. ENGLISH: Your Honor, that's all from the  
25 deposition of Decide4Action.

1           At this point I would like to publish to the jury  
2 Plaintiff's Exhibit 19, the defendant's request for  
3 admission, through Mr. Robertson.

4           Let me hand up Plaintiff's Exhibit 19 to you. If  
5 you'll go to page 2.

6           PUBLICATION OF PLAINTIFF'S EXHIBIT NUMBER 19

7           MR. ENGLISH: "Admit that plaintiff's exhibit to the  
8 deposition of Decide4Action taken on September 29, 2020,  
9 Plaintiff's Exhibit Number 1 attached hereto, is an  
10 authentic and genuine copy of the letter of intent dated  
11 March 10, 2017, signed by Decide4Action and the selling  
12 shareholders of Computer Control + Integration, or CC+I."

13          MR. ROBERTSON: "Admit."

14          MR. ENGLISH: "Admit that Plaintiff's Exhibit Number 2  
15 attached hereto is an authentic and genuine copy of a  
16 summary of CC+I employee salaries and bonuses as of  
17 April 28, 2017, given to Decide4Action by one or more of  
18 the selling shareholders before Decide4Action purchased the  
19 stock of CC+I."

20          MR. ROBERTSON: "Admit."

21          MR. ENGLISH: "Admit that Plaintiff's Exhibit Number 5  
22 attached hereto is an authentic and genuine copy of CC+I  
23 profit and loss statement for July 2017 given to  
24 Decide4Action by one or more of the selling shareholders  
25 before Decide4Action purchased the stock of CC+I."

1 MR. ROBERTSON: "Admit."

2 MR. ENGLISH: "Admit Plaintiff's Exhibit Number 6  
3 attached hereto is an authentic and genuine copy of CC+I  
4 profit and loss statement for July 2017 given to  
5 Decide4Action by one or more of the selling shareholders  
6 before Decide4Action purchased the stock of CC+I."

7 MR. ROBERTSON: "Admit."

8 MR. ENGLISH: "Admit Plaintiff's Exhibit Number 7  
9 attached hereto is an authentic and genuine copy of page 1  
10 of the CC+I tax return for the tax year ending June 30,  
11 2017, given to Decide4Action by one or more of the selling  
12 shareholders before Decide4Action purchased the stock of  
13 CC+I."

14 MR. ROBERTSON: "Admit."

15 THE COURT: Is he ready to step down?

16 MR. ENGLISH: Yes, Your Honor.

17 THE COURT: You can step down.

18 MR. ENGLISH: Your Honor, my next witness is supposed  
19 to be out in the hall.

20 THE COURT: Okay.

21 MR. ENGLISH: Your Honor, at this time, plaintiff  
22 calls Ms. Sharon Whitney.

23 THE COURT: All right. Ms. Whitney, if you would come  
24 forward and be sworn.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand.

2 WHEREUPON,

3 SHARON WHITNEY,

4 After having been duly sworn, testified as follows:

5 THE CLERK: State your name, please.

6 THE WITNESS: Sharon Whitney.

7 THE CLERK: Thank you. You may be seated.

8 DIRECT EXAMINATION

9 BY MR. ENGLISH:

10 Q Ms. Whitney, could you state your full name for the  
11 jury?

12 A Sharon Whitney.

13 Q And you may take your mask off when you testify.

14 A Okay. Wonderful.

15 Q Let me hand up some exhibits. I'm going to ask you  
16 about a couple of them. But first, tell the jury where you  
17 work.

18 A United Community Bank.

19 Q And where do you live?

20 A In Simpsonville, South Carolina.

21 Q For how long?

22 A 19 years.

23 Q And how long have you worked at United Community Bank?

24 A Eight years.

25 Q Let's talk about an escrow fund from the sale of



1 Computer Control + Integration stock to Decide4Action. Do  
2 you understand that the shareholders of CC+I, as we're  
3 calling it, sold their stock to Decide4Action?

4 A Yes.

5 Q And 10 percent of that purchase price of 4.4 million  
6 or 440,000, was that placed into an escrow with UCB?

7 A Yes.

8 Q Look at what we've marked as Plaintiff's Exhibit  
9 Number 9 in that stack of exhibits, please. And they're in  
10 order, so you'll have to get down to Number 9.

11 A Okay.

12 Q Now, is that an indemnity escrow agreement that you  
13 signed for United Community Bank?

14 A Yes, it is.

15 Q And was this the agreement pursuant to which the  
16 \$440,000 escrow was placed with UCB?

17 A Yes.

18 Q Now let me refer you to the next exhibit, what we  
19 marked as Plaintiff's Exhibit Number 10. Is this a claim  
20 against the escrow that you received from the Law Offices  
21 of Truluck and Thomason on behalf of Decide4Action on or  
22 about September 19 of 2018?

23 A Yes.

24 Q And if you'll look at the last page of Exhibit 10, the  
25 very bottom line, what's the total amount of the claim made

1 by Decide4Action?

2 A \$1,314,034.

3 Q And what was UCB's response to this notice?

4 A Just to let them know the -- about the approximate  
5 figure that we were holding.

6 Q And what was UCB's reaction to receiving a claim of  
7 this magnitude with regard to the escrow?

8 A I don't really have a comment on that.

9 Q Based on the making of the claim, would UCB release  
10 the escrow at that point?

11 A With proper -- with the proper approvals.

12 Q And what approvals would UCB need to release the  
13 escrow?

14 A Well, I believe that would be something that would be  
15 from the Court in showing that there's been a decision  
16 made.

17 Q And other than a court decision, the parties would  
18 have to agree?

19 A Yes.

20 Q Look on what we've marked as Plaintiff's Exhibit 11.  
21 Is this my response to Decide4Action's claim against the  
22 escrow that I sent to you on October 30, 2018?

23 A Yes.

24 Q Did you receive this?

25 A Yes.

1 Q And on the last sentence, do you see that I requested  
2 Decide4Action's attorney Kimberly Thomason to confirm to  
3 you that the escrow should be released immediately to the  
4 selling shareholders?

5 A Yes.

6 Q Did she do that?

7 A I do not recall that.

8 Q Does UCB still -- well, let me show you what we've  
9 marked as Plaintiff's Exhibit 12. Is that a letter from  
10 Ms. Thomason refusing to release any of the escrow?

11 A Yes.

12 Q And did she copy you on this letter?

13 A Yes.

14 Q So does UCB currently still have the money in escrow?

15 A Yes, we do.

16 Q Do you have documents showing how much that is?

17 A Yes.

18 Q Let me -- may I mark those documents as an exhibit for  
19 the jury?

20 MS. THOMASON: Your Honor, we haven't seen this yet.

21 THE COURT: Let her look at it.

22 MR. ENGLISH: I will, Your Honor.

23 BY MR. ENGLISH:

24 Q All of these?

25 A Yes. There's the most current statement and then the

1 most current balance.

2 MR. ENGLISH: Your Honor, I'm going to try to use  
3 this.

4 THE COURT: I think I have to do something up here.

5 (WHEREUPON, Plaintiff's Exhibit Number 21 was marked for  
6 identification.)

7 MR. ENGLISH: Your Honor, we would move Plaintiff's  
8 Exhibit 21 to be admitted in evidence.

9 THE COURT: Any objection?

10 MS. THOMASON: No, Your Honor. I was just  
11 double-checking to make sure it doesn't have a social or  
12 anything on it. No objection.

13 THE COURT: All right.

14 (WHEREUPON, Plaintiff's Exhibit Number 21 was admitted into  
15 evidence.)

16 BY MR. ENGLISH:

17 Q Can you see this, Ms. Whitney?

18 THE COURT: I think you have a screen right here next  
19 -- right here. It might be a little bit easier.

20 THE WITNESS: Yes.

21 BY MR. ENGLISH:

22 Q So what is the total amount in the escrow account  
23 today?

24 A \$443,831.73.

25 Q Okay. Well, that looks like what it was June 15.

1 What is it as of July 16, 2021? Right here.

2 A \$443,869.43.

3 Q And so what does UCB need in order to release this  
4 escrow?

5 A We would need agreeance of the parties ---

6 Q Or an order ---

7 A -- or the Court approval.

8 MR. ENGLISH: Thank you, Ms. Whitney. Please answer  
9 any questions Decide4Action's attorneys have for you.

10 CROSS EXAMINATION

11 BY MS. THOMASON:

12 Q I just have a couple of questions, Ms. Whitney.

13 Now, you weren't a part of the negotiation between the  
14 parties; is that correct?

15 A No. Correct.

16 Q And is it your understanding that the escrow account  
17 was set up in case there were disagreements between the  
18 parties?

19 A Yes. I would have assumed that.

20 Q Okay. And as a matter of fact, no moneys have been  
21 released to anybody ---

22 A No.

23 Q --- pending resolution of the dispute that we're here  
24 about; is that right?

25 A Correct.

1 MS. THOMASON: Thank you.

2 THE COURT: Any redirect?

3 MR. ENGLISH: No, Your Honor.

4 THE COURT: All right. You may step down.

5 All right. Ladies and gentlemen, we're going to take  
6 a break now. How about that?

7 Don't discuss the case and we'll bring you back out in  
8 just a few minutes.

9 (WHEREUPON, the jury exits the courtroom at 10:24 a.m.)

10 THE COURT: We'll take a ten-minute break.

11 (WHEREUPON, a recess is taken at 10:24 a.m.)

12 THE COURT: We had another witness inquiry from the  
13 jury. Number 44, Kieonna Peake, indicated she knew the  
14 last witness, Ms. Whitney. I talked to her out in the  
15 hall with the clerk and the bailiff and asked her if she  
16 could still be fair and impartial. I didn't kind of go to  
17 the extent we did before because she basically was a  
18 records custodian. I mean, any further inquiry from the  
19 plaintiff?

20 MR. ENGLISH: No, Your Honor.

21 THE COURT: Or the defendant?

22 MS. THOMASON: (Shakes head negatively.)

23 THE COURT: And she said she can be fair and  
24 impartial.

25 They're just looking for a way to get out of this

1 case.

2 MS. THOMASON: We really are boring them to death.

3 THE COURT: But anyway, okay. Just wanted to bring  
4 that to your attention. So that's kind of what I thought.

5 MR. PURIEFOY: Your Honor, just logistically, we're  
6 probably going to be done. I think Mr. English has one  
7 more witness and then we're going to read in our case in  
8 chief some deposition designations before we call  
9 Mr. Bergeron. We are going to have somebody sit and read.  
10 Is that going to be before or after lunch, were you  
11 thinking?

12 THE COURT: How long is your next witness?

13 MR. ENGLISH: Very brief. Maybe ten minutes.

14 THE COURT: All right. So probably before lunch. I  
15 hate to do the kindergarten lunch.

16 MR. ENGLISH: No doubt. We do have, I think, three  
17 motions before they begin their case. So I don't know how  
18 long motions will take after we rest.

19 THE COURT: Can you have him over here just in case?

20 MR. PURIEFOY: Yes.

21 THE COURT: I can't promise we'll get to him before  
22 lunch.

23 MR. PURIEFOY: He's in our office. That's okay.

24 THE COURT: All right. It's not some expert just  
25 getting out of surgery or something.

1 Are you all ready for the jury?

2 MR. ENGLISH: Yes, Your Honor.

3 (WHEREUPON, the jury entered the courtroom at 10:37 a.m.)

4 THE COURT: You know, that jury box was pretty small  
5 even before they added these little dividers there, so I do  
6 apologize. On the break I was upstairs in the other  
7 courtroom, and it's got a much bigger jury room, so we  
8 probably should have put them up there. I know that's kind  
9 of tight. It looked all cramped in there. But I apologize  
10 for that. It's one of those things about COVID, so -- but  
11 I appreciate your patience with us.

12 All right. Mr. English, I believe you can call your  
13 next witness.

14 MR. ENGLISH: Your Honor, at this time the plaintiff  
15 calls Ms. Joyce Featherstone.

16 THE COURT: All right. Ms. Featherstone, if you will  
17 come forward to be sworn.

18 THE CLERK: Place your left hand on the Bible and  
19 raise your right hand.

20 WHEREUPON,

21 JOYCE FEATHERSTONE,

22 After having been duly sworn, testified as follows:

23 THE CLERK: State your name please. State your name.

24 THE WITNESS: Joyce Featherstone.

25 THE CLERK: Thank you. You may be seated.



DIRECT EXAMINATION

BY MR. ENGLISH:

Q Ms. Featherstone, can you hear me?

A Yes.

Q Okay. If you'll make sure to speak into the microphone. I know you speak softly.

A Okay.

Q All right. Tell the jury your full name.

A Joyce L. Featherstone.

Q And where do you live?

A In Mauldin.

Q How long have you lived there?

A 36 years.

Q Are you married or widowed?

A Widowed.

Q Who was your husband?

A Ernest H. Featherstone.

Q How long were y'all married?

A 59 years.

Q Where did you grow up?

A In Belmont, North Carolina.

Q Did you go to high school there?

A Yes.

Q Do you have any college?

A No.

1 Q And did your husband, Ernest Featherstone, start CC+I  
2 with Bill Sibley?

3 A Yes.

4 Q When was that?

5 A In 2088 -- no. 1988.

6 Q 1988. Okay.

7 Now, did your husband, Ernie Featherstone, own stock  
8 in CC+I?

9 A Yes.

10 Q When he passed away, what happened to the stock?

11 A It was sent to me.

12 Q And how much or what percentage of CC+I do you now  
13 own?

14 A 17.66.

15 Q And did you sell your stock in CC+I?

16 A Yes.

17 Q To whom?

18 A To Decide4Action.

19 Q All right. Ms. Featherstone, I've placed up beside  
20 you what we've marked as Plaintiff's Exhibit Number 8.

21 A I'm sorry?

22 Q Plaintiff's Exhibit 8 is there beside you. Just grab  
23 both of those. Yes. And the large document.

24 A Okay. All right.

25 Q Is this the stock purchase agreement that you signed?

1 A Yes.

2 Q And what's the date of this? Look at the top two  
3 lines.

4 A What page am I supposed to be on?

5 Q The first page, the very top, what's the date?

6 A October 13, 2017.

7 Q Right. Now, you've heard testimony about employee  
8 bonuses that were paid in June of 2017.

9 A I have heard testimony.

10 Q And so do you believe -- did you have any involvement  
11 in the decision of whether those bonuses were to be paid?

12 A No, I did not.

13 Q Do you think CC+I was within its rights to pay those  
14 bonuses?

15 A Yes.

16 Q Do you think that payment of those bonuses in any way  
17 -- in June of 2017 in any way violated this stock purchase  
18 agreement you signed in October of 2017?

19 A Repeat that.

20 Q Do you think that the payment of those bonuses in June  
21 of 2017 in any way violated the agreement you signed in  
22 October of 2017?

23 A No. I don't think so.

24 Q Now look at the last page of Plaintiff's Exhibit 8.

25 A Okay.

1 Q Do you see Item Number 3 that says "Target paid a  
2 fiscal year-end bonus"?

3 A Yes.

4 Q Was the target CC+I that paid the fiscal year-end  
5 bonus?

6 A Yes.

7 Q So did this document that you signed show to  
8 Decide4Action that a fiscal year-end bonus had been paid?

9 A I think so.

10 Q All right. Now look at what we've marked as  
11 Plaintiff's Exhibit 17. Sorry I didn't pull that.

12 Now, Ms. Featherstone, is this a contribution and  
13 indemnification agreement that you signed?

14 A Yes.

15 Q And look on page 3.

16 A Yes.

17 Q And look in Item C.

18 A Uh-huh. Okay.

19 Q Who did you appoint as your representative in any  
20 dispute concerning the escrow in this matter?

21 A I represented my husband.

22 Q Okay. But in this dispute, look at Item C. What does  
23 it say?

24 A "William A.L. Sibley, Jr. is hereby designated by the  
25 parties hereto as the selling party's representative."

1 Q So did you sign this document appointing Mr. Sibley as  
2 your representative concerning the escrow?

3 A Yes.

4 Q Now, after Mr. Sibley passed away, did you enter what  
5 we marked as Plaintiff's Exhibit Number 20, which is --  
6 should be up in front of you?

7 A I'm sorry. I didn't catch that.

8 Q Plaintiff's Exhibit Number 20, do you see that up  
9 there? It's a different document. Do you see it?

10 A Yes. Appointment of the selling party's  
11 representative.

12 Q Did you sign that?

13 A Yes.

14 Q Okay. And by this document, were you appointing Julia  
15 Sibley-Jones as your representative?

16 A Yes.

17 Q Do you feel like you've done anything wrong to  
18 Decide4Action?

19 A No. I don't feel I've done anything wrong.

20 Q So what are you asking Julia Sibley-Jones to do?

21 A To give us our dues, and Julie will distribute.

22 Q What are you asking this jury to do?

23 A To give us our escrow monies.

24 MR. ENGLISH: Ms. Featherstone, that's all I have for  
25 you. Please answer any questions the defendant's attorneys

1 have for you.

2 THE COURT: Cross-examination.

3 CROSS EXAMINATION

4 BY MS. THOMASON:

5 Q I just have a few questions. Were you a part of  
6 negotiations surrounding the stock purchase agreement?

7 A No.

8 Q Were you a part of the due diligence process?

9 A No.

10 Q In fact, you had no interaction with Mr. Bergeron at  
11 the time of the execution of the LOI?

12 A I had no what?

13 Q You had no part, no interaction with Mr. Bergeron  
14 during the course of due diligence or the ---

15 A No.

16 Q --- execution of the stock purchase agreement?

17 A No.

18 Q I think you said your husband started the company with  
19 Mr. Sibley.

20 A Yes.

21 Q And they worked side-by-side for all those years?

22 A Yes.

23 Q Building the company?

24 A Until my husband retired.

25 Q And he retired in what year?

1 A Ma'am?

2 Q What year did your husband retire?

3 A He retired in 2013.

4 Q Okay. Now, I think you said that you owned  
5 17.6 percent of the company.

6 A Uh-huh.

7 Q I apologize. I keep stepping away.

8 And so for the proceeds from the \$4.4 million sale  
9 price, you would receive about a little over \$700,000; is  
10 that correct?

11 A Yes.

12 Q And so are you aware of how much is being held in  
13 escrow, how much of your funds are currently being held?  
14 Is it about \$71,000 in the escrow funds?

15 A 77.

16 Q Okay. All right. Now, is there a reason --  
17 Mr. English actually referred you to Exhibit 8 which was  
18 the stock purchase agreement. Now, you expressly were  
19 excluded from making the reps and warranties in the stock  
20 purchase agreement; isn't that right?

21 A I had no part of the business. I inherited the stock.

22 Q And so when they were making the representations and  
23 warranties in the stock purchase agreement, they expressly  
24 excluded you as one of the shareholders warranting and ---

25 A No. They did not exclude me.

1 Q No. I'm not saying from receiving under the stock  
2 purchase. I'm saying you weren't making the reps and  
3 warranties, representations as to what the company had done  
4 since May 17th or any of the other representations.

5 A I'm not sure I understand what you're asking.

6 Q I was just asking you -- let me see if I can do that  
7 again so it's clear. I'm just asking in the stock purchase  
8 agreement that was signed, it has a provision that says  
9 these are the warranties and representations of the  
10 shareholders with the exception of Ms. Featherstone, who is  
11 not expressly warranting and repping.

12 A I only signed a few documents.

13 Q Okay. But it would make sense that they left you out  
14 of the reps and warranties because you did not have  
15 knowledge to make representations and warranties; is that  
16 right?

17 A I had nothing to do with the business part of it.

18 Q Okay. Now -- and just a couple more questions. So  
19 you received your 17.6 percent from the 4.4 million with  
20 the exception of the disputed amount; is that right?

21 A Right.

22 Q Now, I think you testified that you had no knowledge  
23 about the bonuses, that you weren't consulted prior to  
24 paying them out?

25 A At the time I didn't know.



1 Q Okay. Now, I think you were in the courtroom when the  
2 tax returns were put up for the jury, and it's been  
3 represented that \$2.5 million in bonuses were paid to the  
4 shareholders. Did you receive any part of that?

5 A No.

6 Q And so if those funds had come out as distributions or  
7 dividends to the shareholders, you would have gotten  
8 17.6 percent of that cash; isn't that correct?

9 A If it had been given to us, yes.

10 Q And you weren't consulted prior to them deciding to  
11 give the cash to others.

12 A I had nothing to do with the business part of the  
13 company.

14 Q Okay. Are you aware that a 5 percent owner received  
15 an additional \$861,000 from the bonuses?

16 A Repeat that.

17 Q An owner who owned 5 percent, are you aware that he  
18 received \$861,000 from the bonuses?

19 A No, I do not.

20 Q Because you didn't receive any from the cash in the  
21 business; is that right?

22 A I didn't receive any bonuses.

23 Q Okay. Now, we referenced, I think it's been marked as  
24 Plaintiff's Exhibit 17, the contribution and  
25 indemnification agreement. Is Mr. Sibley and the seller,

1 are they indemnifying you for any loss that results from  
2 this?

3 A I have no idea.

4 Q So they've not discussed, nobody's talked to you about  
5 the fact that they're covering any losses you have?

6 A I have had no losses.

7 Q Okay. If the 71,000, if this jury were to decide that  
8 there were representations that were breached and they  
9 awarded damages, are you aware that those damages, any  
10 damages attributed to you would be covered by sellers?

11 A No.

12 Q Okay. So the contribution agreement that's been  
13 presented to the jury allowing that, you've not reviewed  
14 that?

15 MS. THOMASON: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MS. THOMASON:

18 Q That's Exhibit 17. And so in that agreement is what  
19 I'm referencing. Have you seen that before?

20 A Yes. I've seen it before. Yes. I've seen it before.

21 Q But you're not aware that it basically says that the  
22 other shareholders have to cover any losses you have  
23 because you weren't a part of the decision-making?

24 A I was not a part of this decision-making.

25 Q Okay. When did you learn that bonuses were paid out

1 to owners and nonowners?

2 A When I received all this info concerning court.

3 Q Okay. That's the first you learned that ---

4 A Yes. I have nothing to do with the business.

5 Q I understand that. I'm not trying to accuse you of  
6 it. I just wanted to make sure that I had the timeline  
7 down, because you weren't aware of any bonuses to  
8 shareholders.

9 A No. I had nothing to do with the business ---

10 Q Okay.

11 A --- except for being a spouse.

12 Q Do you know how much you would have received of that  
13 bonus if it had come out in dividends to the owners?

14 A I have no answer for that.

15 Q Well, you would have gotten 17.6 percent of  
16 2.5 million.

17 A What about it?

18 Q I just was asking if you're aware if it had come out  
19 in dividends, that's how much ---

20 A I'm aware.

21 Q But the other shareholders didn't share that with you,  
22 correct?

23 A I don't understand what you're asking.

24 Q I'm just asking no other shareholder let you know  
25 that.

1 MR. ENGLISH: Objection. Irrelevant.

2 THE COURT: All right. I'm going to let her answer  
3 it, if she knows.

4 BY MS. THOMASON:

5 Q No other shareholder told you that you could have  
6 received a portion of that cash?

7 A No other shareholder asked me what?

8 Q No other shareholder informed you that you would have  
9 been entitled to 17.6 percent of that cash?

10 A No. I knew how much stock my husband had in the  
11 company.

12 Q But you didn't know how much cash they were paying out  
13 to all the shareholders prior to the closing.

14 A To the shareholders. They were paying out to the  
15 people who ran the business.

16 MS. THOMASON: Okay. All right. Thank you. Nothing  
17 further.

18 THE COURT: Redirect?

19 MR. ENGLISH: No redirect.

20 THE COURT: All right. You may step down.

21 MR. ENGLISH: Your Honor, the plaintiff rests.

22 THE COURT: All right. Ladies and gentlemen, the  
23 plaintiff has rested which means he has put forth his  
24 evidence in his case in chief. There's some things that I  
25 have to go over with the attorneys right now before the

1 defendant starts their case. So if you go back in your  
2 jury room, this may take 20, 30 minutes, so just relax.  
3 And do not discuss the case, and we'll bring you back out  
4 just as soon as we're ready.

5 (WHEREUPON, the jury exits the courtroom at 10:55 a.m.)

6 THE COURT: All right. First we'll start off with  
7 defendant's motions.

8 MS. THOMASON: Your Honor, at this time defendant  
9 moves for a directed verdict on plaintiff's claims: on  
10 Count 1 for breach of contract, and Count 2 for breach of  
11 contract accompanied by a fraudulent act. There has been  
12 testimony that they paid out nonemployee -- or nonowner  
13 bonuses. As an admission, that was a breach of the  
14 contract, and so there's no evidence otherwise. They did,  
15 by their own admission, breach the contract in paying  
16 nonowner employee bonuses prior to the closing after  
17 May 17th.

18 The other -- and then with regard to the second claim,  
19 breach of contract with -- accompanied by a fraudulent act,  
20 they've alleged that the claim -- filing the claim, which  
21 was allowed under the escrow agreement, expressly is the  
22 fraud. That's basically the claim. There's no separate  
23 action. They're saying that filing the claim in and of  
24 itself -- they -- their breach of contract claim, though,  
25 was tied to the escrow agreement only. And so under the

1 breach of contract claim, we had a valid pending claim.  
2 They claimed that by filing it was the breach. It was the  
3 remedy under the stock purchase agreement. If there was a  
4 breach, there was only one way that it could be resolved,  
5 and that was by noticing the claim and then going forward  
6 on the action.

7 THE COURT: I believe there's sufficient evidence to  
8 go forward on the breach of contract.

9 Mr. English, I want to hear on your second cause of  
10 action there.

11 MR. ENGLISH: Yes, Your Honor. On the second cause of  
12 action, the claim that there was no separate act is wrong,  
13 or the jury, certainly, under the evidence -- and, of  
14 course, you know, you've got to assume the jury could take  
15 any inference it wanted from the evidence and review this  
16 broadly in favor of the nonmovant. And here the jury could  
17 find that the breach of contract was the making of the  
18 claim against the selling shareholders and that the -- but  
19 the sending it to the escrow agent as Plaintiff's  
20 Exhibit 10 was a separate and fraudulent act. So involving  
21 the escrow agent would be one thing the jury could find.

22 A second thing the jury could find is a fraudulent act  
23 is even if the filing of the claim with the escrow agent  
24 the jury finds was the breach of contract, then after --  
25 and that's Plaintiff's Exhibit 10. After we sent

1 Plaintiff's Exhibit 11 outlining that the claims were  
2 unfounded, the employee affidavits contradicted what was  
3 stated in the claim, and then the defendant sent  
4 Plaintiff's Exhibit Number 12 and maintained that claim in  
5 the face of that evidence, the jury could find that is a  
6 separate and fraudulent act.

7 So I think there are multiple ways a jury could  
8 conclude that there was not only a breach of contract, but  
9 that it was accompanied by a fraudulent act, especially in  
10 light of the fact that the stock purchase agreement in this  
11 Section 8(b) expressly prohibited the type of claim that  
12 was made. So I think the evidence is sufficient to uphold  
13 a verdict on that.

14 MS. THOMASON: Your Honor, again, he's just  
15 articulated what he is alleging is the breach, making the  
16 claim. And then it allows specific provisions for how to  
17 make the claim. You had to send written notice. That  
18 can't be a separate act. And where's the fraud in  
19 maintaining what we believe is a legitimate claim and, in  
20 fact, have counterclaims?

21 THE COURT: I'm going to think about that one. I'm  
22 not going to rule. But I have ruled that the breach of  
23 contract, I deny your motion on that. But I'm going to  
24 consider the second cause of action.

25 All right. Any additional motions?

1 MR. PURIEFOY: Nothing from the defendant, Your Honor.

2 THE COURT: All right. I believe you had some  
3 motions.

4 MR. ENGLISH: Yes, Your Honor. I've got some motions  
5 in limine that pertain to the defendant's case. First is a  
6 motion in limine to exclude any evidence regarding any  
7 damages claimed by the defendant. And basically, there are  
8 three reasons for this, and we've laid this out in this  
9 memorandum with the attachments.

10 First, the first reason set forth on page 2 is that  
11 the counterclaims in the answer are not pled with  
12 sufficient specificity in terms of special damages. And  
13 we're actually not even sure what sort of damages the  
14 defendant is claiming in this case. Rule 9(g) requires  
15 things like lost profits to be spelled out with  
16 specificity, but the counterclaims just refer to lost  
17 profits with no specificity. So first of all, we think  
18 they shouldn't be allowed to claim damages under Rule 9(g)  
19 of the South Carolina Rules of Civil Procedure.

20 Second reason is on the third page of our memo is we  
21 specifically asked, because the counterclaims were not  
22 clear, we served Decide4Action with interrogatories asking  
23 them to spell out what damages they claimed to have  
24 suffered and the methods of computation in detail. And  
25 that's our Exhibit A shows their response. And their only



1 response was that they will rely on the valuations that had  
2 been produced in response to plaintiff's first and/or  
3 second request for production. It was a very vague  
4 response. And so we pressed them on that. We said we need  
5 to know exactly what you're talking about and what damages  
6 you're claiming. And so they didn't respond, so we filed a  
7 motion to compel on Plaintiff's Interrogatory Number 25.  
8 And Your Honor signed an order in response to that motion  
9 to compel. They admitted that their answer was not  
10 sufficient, and they consented to an order compelling  
11 discovery that I've attached as Exhibit B. And the first  
12 thing Your Honor ordered is that they needed to fully  
13 answer our Interrogatory 25 and set forth that itemized  
14 statement of all damages.

15 And then after that, despite that, they didn't do it.  
16 And I wrote them on multiple occasions, and I've attached  
17 as Plaintiff's Exhibit C all of my efforts both before and  
18 after the motion to compel to get them to answer that  
19 interrogatory fully, and they failed to do that. And under  
20 the Reed vs. Clark case and the Morgan vs. Carolina Door  
21 case that we cite on page 3, a party is appropriately  
22 limited to the amounts they set forth in their  
23 interrogatory answer for damages, and here it's zero.

24 And finally, the third reason to grant this motion in  
25 limine is because the contract prohibits the kind of claims

1       that they're making. Mr. Bergeron submitted these  
2       calculations to the escrow agent claiming a diminution of  
3       value of the company based on multiples of EBITDA, and  
4       Section -- page 21, Subsection 8(b) of the contract, which  
5       is Plaintiff's Exhibit 8, expressly prohibits that type of  
6       claim. So for those reasons, we think Decide4Action should  
7       not be allowed to submit evidence or argue for damages in  
8       this case.

9               THE COURT: Mr. Puriefoy?

10              MR. PURIEFOY: Your Honor, working backwards, the  
11       reference that's being made is the stock purchase agreement  
12       where the damage figure was calculated on some multiple of  
13       a EBITDA. However, that was an attachment to what I  
14       believe was plaintiff's Exhibit 11 or 12 that was sent to  
15       the United Community Bank. That was not incorporated or  
16       made a part of our pleadings in this case. That was a  
17       rough damage calculation that was provided by Mr. Bergeron  
18       to set forth the legitimacy of the claims that we are  
19       making and the harm that he thought that he may have  
20       suffered at the initial stages of this what ultimately  
21       became litigation. Since the filing of this suit, however,  
22       we have not set forth any damage calculation based on a  
23       multiple that would be in violation of the stock purchase  
24       agreement. We've set forth damages based on the  
25       misrepresentations that we've alleged in our counterclaims,

1 and Mr. Bergeron is the sole party that's going to be  
2 determining what he valued the business at.

3 What the testimony is going to be when Mr. Bergeron  
4 gets on the stand is that he is who performed the  
5 valuation. In not having the full picture on the payment  
6 of the nonowner bonuses, he will be able to explain to the  
7 jury how he calculates his damage figure. So there has  
8 been no representation to this court through any formal  
9 pleading that they're using some impermissible valuation  
10 metric for determining the damages, i.e., the use of some  
11 EBITDA multiple for purposes of that calculation. So we  
12 believe that that motion in limine should certainly be  
13 denied.

14 THE COURT: I mean, it sounds like you agree with that  
15 because you're not going to be producing it. All right.

16 MR. PURIEFOY: We have no -- we have no intent on  
17 presenting that, Your Honor.

18 THE COURT: Okay.

19 MR. PURIEFOY: As it relates to the -- and I don't  
20 know if we need -- if Mr. English wants to respond to that.

21 THE COURT: I mean, it sounds like you're not  
22 producing damages on that, so I don't think they're ---

23 MR. PURIEFOY: We aren't, Your Honor.

24 MR. ENGLISH: So there are no damages. There's been  
25 nothing disclosed in discovery or in their counterclaims.

1 THE COURT: All right.

2 MR. PURIEFOY: Well, Your Honor, that's incorrect.  
3 When the motion to compel was filed, it was filed by  
4 Mr. English saying that it was an incomplete response, not  
5 that no response had been provided. What we had alleged in  
6 our response to interrogatories was that we were going to  
7 be relying on all valuations that were used in determining  
8 the value of the business, both Mr. Bergeron's calculation  
9 as well as there were a Patent and Associates valuation  
10 that had been conducted as well. Although we do not intend  
11 on introducing that into evidence, that is what we relied  
12 upon. To the extent that Mr. English then asked for some  
13 further clarification, he certainly had the tools available  
14 to him to either file a rule to show cause to demonstrate  
15 why we have not satisfied the obligations of this court's  
16 order. But to take it ---

17 THE COURT: Let me ask you this. Since January the  
18 8th of 2021, have you fully set forth an itemized statement  
19 of all damages, describe in detail all damages, claims and  
20 methods of computation including the amounts and period for  
21 which the loss is claimed?

22 MR. PURIEFOY: I believe we have, Your Honor, in so  
23 much that it would be Mr. Bergeron's testimony that's going  
24 to establish those damages. We have not -- we have not  
25 done a calculation based on this EBITDA.

1           THE COURT: Have you done an answer to  
2 interrogatories?

3           MR. PURIEFOY: We have, Your Honor, yes.

4           THE COURT: Okay. They covered that. All right.

5           MR. PURIEFOY: We did.

6           MR. ENGLISH: They haven't, Your Honor. That's just  
7 not true. The answer to the interrogatory is set forth in  
8 our Exhibit A. That was submitted on November 3, 2020. We  
9 filed the motion to compel. They agreed in the order  
10 entered January 2021, and since then they have not  
11 answered.

12          THE COURT: I mean, you agreed to an order that said  
13 after January 18th -- well, this was entered January the  
14 8th, that in ten days you would provide an answer to  
15 interrogatory adding this stuff. Do you have a copy of  
16 that?

17          MR. PURIEFOY: Your Honor, there was no supplemental  
18 response that was provided to Mr. English. There was an  
19 original response that the Court found did not completely  
20 satisfy ---

21          THE COURT: The Court didn't find that. Y'all agreed.

22          MR. PURIEFOY: That's correct, Your Honor.

23          THE COURT: Yeah. This is a consent order.

24          MR. PURIEFOY: That's correct, Your Honor.

25          THE COURT: So you didn't answer -- you did not

1 provide a -- even though you agree and the Court ordered  
2 that you would fully answer Interrogatory 25, you've not  
3 done that.

4 MR. PURIEFOY: Nothing in addition to what was already  
5 provided, Your Honor. That's correct.

6 Your Honor, could we have a moment to check our file  
7 to make sure that there's not been anything submitted?

8 THE COURT: Yeah. Y'all just take a few minutes then.

9 MR. PURIEFOY: Yes, Your Honor.

10 THE COURT: Let's go off the record.

11 (WHEREUPON, a recess is taken at 11:09 a.m.)

12 THE COURT: All right. I guess when -- we left off  
13 with determining what the response was to the January 8,  
14 2021, order.

15 MR. PURIEFOY: Yes, Your Honor. So there was  
16 supplemental discovery that was sent, and we agreed through  
17 that order to produce certain documents and then  
18 interrogatory response, I believe, which is the response  
19 that Mr. English is referring to, Interrogatory 25. The  
20 defendants produced all documents including valuations that  
21 were used to calculate our damages at that time.

22 I see -- admittedly, Your Honor, I see an email  
23 correspondence from Mr. English back in February, where he  
24 is requesting the Interrogatory 25. I'm looking at a draft  
25 email where I was emailing a response to that that was

1 never sent, and that was last on February 8th of 2021.

2 Your Honor, beyond the original interrogatory  
3 responses and the request for production that set forth the  
4 damage calculation very specifically, there were two  
5 independent reports that very clearly and concisely laid  
6 out the damages that we had been seeking since the  
7 beginning of this trial. Beyond that, Your Honor, in the  
8 original interrogatory response, the unfortunate reality is  
9 I do not see an additional interrogatory response to  
10 Number 25.

11 THE COURT: So -- but did you receive some kind of  
12 summary that sets forth their damages?

13 MR. ENGLISH: No, Your Honor.

14 THE COURT: What's this -- I mean report?

15 MR. PURIEFOY: That's not true, Your Honor. There  
16 were two Patton reports that I can pull for the Court if it  
17 would like. There were two individual reports. There was  
18 a report that was created by a valuation expert firm in  
19 Utah that detailed the damages that Mr. Bergeron had  
20 suffered as a result of -- let me back up. There was an  
21 original valuation that was created that Mr. Bergeron had  
22 that valued the company. There was a subsequent valuation  
23 that was conducted by Mr. Bergeron at his request after he  
24 determined that the bonuses had been paid to nonowner  
25 employees. The Patton & Associates report then calculated

1 a damage amount based on the payment of those damages.  
2 That -- those were the damages that we were originally  
3 relying upon in this case. And that was submitted to  
4 Mr. English. Both of those reports were submitted to  
5 Mr. English through the discovery process.

6 THE COURT: When was Mr. Bergeron's deposition taken?

7 MR. PURIEFOY: It was after ---

8 MR. ENGLISH: I've got a copy. It was September 29,  
9 2020.

10 THE COURT: Does it have those reports in here?

11 MR. ENGLISH: Yes, Your Honor. But I disagree with  
12 the characterization of those reports. Specifically, there  
13 were two reports. There was one. I can't remember the  
14 date of it. And then there was a second one. But those  
15 reports did not calculate damages. They set forth two  
16 different values of the company. And the purpose of  
17 Interrogatory 25 was for the defendants to tell us what  
18 damages are you claiming from those two reports, because  
19 the reports themselves don't set forth damages.

20 MR. PURIEFOY: Well, they do, Your Honor. This entire  
21 case has been made about inferences. There was a valuation  
22 that was conducted at the time that Mr. Bergeron was  
23 purchasing CC+I. There was a subsequent valuation that was  
24 done after he learned about the payment of the nonowner  
25 bonuses. In fact, the sole purpose of the creation of that



1 second report was to show the value or the decrease in  
2 value of CC+I had Mr. Bergeron known about the payment of  
3 those wages -- or those bonuses. Excuse me. And it's  
4 spelled out. It could not be spelled out any more clearly.  
5 Mr. English has had that in his possession since the  
6 discovery process has been going on. There's no denying  
7 that those documents were certainly produced to  
8 Mr. English.

9 THE COURT: What damages does he testify to in his  
10 deposition?

11 MR. ENGLISH: He says he doesn't know. And this  
12 actually relates to my second motion which I won't move  
13 into but I would like to hand up because I've got his  
14 statements about that in my second motion.

15 If you'll look on page 2 at the bottom, I've  
16 summarized what Mr. Bergeron's testimony was in his  
17 deposition about the value of the company. Basically, he  
18 said he couldn't do it. He was not qualified. So he  
19 really gave me no useful information or no final damage  
20 claim in his deposition. And basically, that testimony is  
21 on pages 80 to 88.

22 THE COURT: All right.

23 MS. THOMASON: I'm pulling the deposition, Your Honor.  
24 We -- but we're going -- depending on what the Court  
25 determines to do, we're going to request leave to formulate

1 formal responses to the motion. But as it relates to  
2 inadmissible expert opinions, Mr. Bergeron will be able to  
3 testify. It won't be ---

4 THE COURT: I don't think -- we haven't quite gotten  
5 into the motion. He just -- it's my understanding he just  
6 wanted -- in response to my question about what he said in  
7 his deposition.

8 MS. THOMASON: Oh, I apologize.

9 THE COURT: That's fine.

10 Well, let's just go into the second motion. I'm going  
11 to have to look at all this, think about it.

12 MR. ENGLISH: Thank you, Your Honor.

13 The second motion is a motion in limine to exclude  
14 Decide4Action from admitting any expert opinions in this  
15 case. And this motion is made for two reasons. And the  
16 first one is set forth on page 2 of the memo, and that is  
17 in answer to discovery, Decide4Action never identified an  
18 expert. And I've attached Exhibit A to the motion which is  
19 their interrogatory answers. And it's Interrogatory Answer  
20 Number 4 that basically says they've not retained any  
21 expert witness for the purpose of trial but reserve the  
22 right to do so. But they never -- they never identify  
23 anybody. And, again, under the Reed vs. Clark case and  
24 also Bensch vs. Davidson, parties should not be able to  
25 call somebody as an expert they haven't identified as a

1 witness in the case.

2 And second, we would ask the Court to prevent  
3 Mr. Bergeron from offering any expert opinions because he  
4 testified in his deposition that he is not qualified to do  
5 so. He said the only way to value a company is with a  
6 valuation expert. He's hired Patton & Associates, the ones  
7 to do that because he doesn't understand the process. He  
8 does not have an opinion on what the right valuation number  
9 is. There's a reason why these valuation experts would not  
10 take his word for evaluation. And it would be experts'  
11 opinions, not his, about the valuation that counts. So we  
12 would object and ask the Court to exclude any expert  
13 opinions from being offered in Decide4Action's case for its  
14 counterclaims.

15 THE COURT: All right.

16 MR. PURIEFOY: Your Honor, to the extent Mr. Bergeron,  
17 it's been a position throughout the course of this trial  
18 that Mr. Bergeron himself is who valued the business, there  
19 were two Patton & Associates reports that certainly would  
20 be considered expert opinion. However, the first expert --  
21 the first report was created for one purpose. It was for  
22 purposes of closing the SBA loan that was a requirement of  
23 that loan.

24 The second report that was created was Mr. Bergeron's  
25 request to see the difference in value between the business

1 had he known about those damages and had he not.

2       However, again, the questions that will be asked of  
3 Mr. Bergeron is not what are Patton & Associates damages --  
4 of course, that was a valuation that was done and you could  
5 deduce damages based on that -- but to ask Mr. Bergeron had  
6 he known about the existence of the payment of the bonuses,  
7 how would that have impacted his determination in his  
8 valuing of the company. He's who did the valuation at the  
9 beginning. It was not Patton & Associates or any other  
10 party that determined the value that he was willing to pay  
11 for CC+I of \$4.4 million. That was his valuation. In  
12 fact, the testimony of Mr. Sibley makes clear that  
13 Mr. Bergeron, the buyer, set the purchase price based on  
14 whatever his valuation metrics were.

15       So we have no intention on offering any evidence of  
16 Mr. Bergeron relying on an expert in setting the valuation,  
17 simply that evaluation was done, but ultimately, the  
18 valuation and the value that he placed on the business was  
19 of his own creation.

20       THE COURT: Well, he says in his deposition he does  
21 not have an opinion of what the right valuation number is.

22       MR. PURIEFOY: Well, Your Honor, and so I believe that  
23 was being asked in a -- against the backdrop of the Patton  
24 & Associates report. He cannot speak to the same facts and  
25 the inferences and assumptions that were made within that

1 report. So I believe that's being taken out of context.

2 THE COURT: Here's another. The only way to value a  
3 company is with a valuation expert.

4 MR. PURIEFOY: I apologize, Your Honor.

5 THE COURT: I said, then he has another -- the only  
6 way to value a company is with a valuation expert.

7 MR. PURIEFOY: Again, Your Honor, that's against the  
8 backdrop of the introduction of this Patton & Associates  
9 report. What his deposition also indicated was that he is  
10 who set the purchase price.

11 THE COURT: Well, okay. Let me go by this. That's  
12 why he goes back. He has a consent order that says how do  
13 you come up with your valuation. We want -- okay. But  
14 he's not saying this and he's going to come up with a  
15 valuation. We have a consent order that says how'd you  
16 come up with it if you're not relying on this.

17 MR. PURIEFOY: Your Honor, and I'm not going to back  
18 track on the interrogatory. I certainly understand that  
19 the interrogatory itself was not provided. However, I  
20 believe that the more appropriate course of action would  
21 have been the filing of a rule to show cause in violation.

22 THE COURT: Let me back up here. In response to that  
23 you said, well, he had the valuation because we sent him  
24 these two reports. But now you're saying we're not using  
25 those reports. We're going to rely on his testimony. He

1 cannot have it both ways, Mr. Puriefoy.

2 MR. PURIEFOY: Your Honor, and so if I may clarify.  
3 The only valuation that we've ever used in this case, the  
4 only -- the only calculation and metric that has ever been  
5 used in this case was the Patton & Associates. That is not  
6 -- that did not speak to how the company was originally  
7 valued. Mr. Bergeron originally valued the business at  
8 \$4.4 million, which ended up being the purchase price.

9 There was discovery that was conducted that sought to  
10 discover if there had ever been any other valuations and  
11 how those valuations panned out. Mr. Bergeron produced  
12 those reports to Mr. English, and, of course, indicated  
13 that this was how Patton & Associates broke down the value  
14 of the business. But I believe they're two separate  
15 issues.

16 And I certainly agree that if Patton & Associates  
17 report is not going to be the valuation that we use, then  
18 Mr. Bergeron would have had to have articulated the method  
19 that he would have used, although there would have been no  
20 method. It would have been based on his years of  
21 experience in the industry, how he would have personally  
22 valued that business going forward had he known about the  
23 payment of those bonuses. I don't believe that there is  
24 any mathematical equation, nor is Mr. Bergeron an expert in  
25 that regard. He could simply testify to what it is he

1 would have done had he known about the existence of those  
2 bonuses.

3 THE COURT: All right. Mr. English.

4 MR. ENGLISH: Your Honor, it's all stated in terms of  
5 value of the company. The company he thought was one  
6 value, now his opinion is it's worth less. But he's  
7 acknowledged he's not an expert to give such opinions to  
8 value a company.

9 And I'll say that, under South Carolina law, the  
10 Santee Oil Case, the Supreme Court has very specific rules  
11 about valuation requiring experts to consider adjusted net  
12 asset approach, earnings approach, market approach. That  
13 has not been done by Mr. Bergeron. And when I probed that  
14 area in the deposition in September, he told me, you know,  
15 he couldn't answer those questions because he wasn't an  
16 expert, which made sense, which is why I pressed for  
17 multiple times. And probably five or six different times  
18 by email before and after the motion to compel in the  
19 order, I asked them tell me what your damages are so we can  
20 prepare to defend them, and I never got an answer.

21 MR. PURIEFOY: Well, Your Honor, then to that extent,  
22 I mean, the Patton report obviously was submitted to  
23 Mr. English. And if the question here is whether or not  
24 there's not been any calculation or formulation submitted  
25 to Mr. English for making the determination of the value or

1 the damage that was suffered by Mr. Bergeron, we can  
2 certainly have Mr. Bergeron speak to the document that was  
3 produced.

4 I'm confused as to how there's an argument that  
5 Mr. Bergeron did not give Mr. English -- or our office,  
6 excuse me, did not give Mr. English any -- any scope of  
7 value.

8 THE COURT: Well, you've got two issues here. There's  
9 that issue too, and then what damages are you going to be  
10 allowed to put on the stand. I mean, you can't put the --  
11 you're saying, well, we gave him our damages. He had these  
12 two reports. But you don't have those people here.  
13 They've not been identified as an expert. Oh, but we're  
14 not going to use those anyway. We're going to let  
15 Mr. Bergeron testify even though in his deposition he said  
16 he couldn't.

17 MR. PURIEFOY: Correct, Your Honor. Then I guess the  
18 question becomes to Mr. Bergeron, in reliance on those  
19 Patton reports, speak to what he believes the valuation to  
20 be based on those reports.

21 THE COURT: Well, I can definitely say that would be  
22 hearsay, and I don't see how -- I mean, I'm sure that's his  
23 -- I mean, I don't see how he can do that.

24 All right. Any other motions? I'm going to take a  
25 look at this. We're going to take a break for lunch. I'm



1 going to have to look at all this.

2 MR. ENGLISH: Yes, sir. One other, and this is a  
3 motion in limine concerning evidence of restraining orders.  
4 The defendants have indicated they intend to call  
5 Mr. Justin Pavatte, who was one of the former employees who  
6 received a bonus, and then a year later, after  
7 Decide4Action, left. And in his deposition testimony, he  
8 testified that he had been the subject of a couple of  
9 restraining orders, and as a result of those, had spent  
10 some -- violating those had spent some time in jail. We  
11 want that evidence excluded under Rule 608(b) as well as  
12 Rule 609 because the violating a restraining order doesn't  
13 rise to the level -- first of all, he was never convicted  
14 of a crime so there's no conviction. Second of all, it's  
15 not probative of truthfulness. It's not like a crime of  
16 moral turpitude or anything. And third, you know, it's not  
17 a crime for which he could receive imprisonment in excess  
18 of a year.

19 THE COURT: And these restraining orders have nothing  
20 to do with this case.

21 MR. ENGLISH: Correct.

22 THE COURT: Okay.

23 MR. PURIEFOY: Nor do we intend on bringing them in,  
24 Your Honor.

25 THE COURT: All right. I was going to say, golly, I

1 had an easy one. You took it from me.

2 All right. Anything else then?

3 MR. ENGLISH: None from plaintiff.

4 THE COURT: Anything else from the defendant?

5 I mean, I need to look at this, and it's 20 till  
6 12:00. We'll start back at 1:00. I'm going to bring the  
7 jury back out.

8 Have the jury come in.

9 We are getting the kindergarten lunch.

10 (WHEREUPON, the jury entered the courtroom at 11:39 a.m.)

11 THE COURT: All right. Ladies and gentlemen, as I  
12 said, we had some issues we had to go over. I thought we  
13 were going to be able to get through these before lunch,  
14 but it doesn't look like we are going to be able to. It's  
15 going to take us a few more minutes, and I realize it's  
16 getting close to lunchtime anyway. So for your purposes,  
17 I'm going to go ahead and let y'all go to lunch. And be  
18 ready to come back at 1:00.

19 And, again, my four rules: don't discuss the case  
20 among yourself or with anybody; don't do any type of  
21 independent research; do not pay any attention to any media  
22 coverage, social media or other type; and if anybody  
23 contacts you other than anybody from the clerk's office,  
24 please let the bailiffs know. Otherwise, y'all have a good  
25 lunch.

1 (WHEREUPON, the jury exits the courtroom at 11:40 a.m.)

2 THE COURT: All right. Counsel will be back in here  
3 at 12:45 and we can ---

4 MR. ENGLISH: One housekeeping matter, Your Honor.

5 THE COURT: Yes.

6 MR. ENGLISH: I've got a rebuttal -- a potential  
7 witness for my rebuttal case, and I wonder if we think that  
8 we'll get to that today.

9 THE COURT: I don't know how long they're -- yeah. I  
10 don't know.

11 All right. See y'all back in a little bit.

12 (WHEREUPON, a recess is taken at 11:41 a.m.)

13 THE COURT: All right. Anything else I need to  
14 consider on the various motions that we had before lunch?  
15 Anything else you want me to consider?

16 MR. PURIEFOY: Yes, Your Honor.

17 THE COURT: Come up with any grand ideas, either side?

18 MR. PURIEFOY: So, Your Honor, I do want to just  
19 clarify a couple of things because I obviously was a bit  
20 caught off guard by the position that damages cannot be  
21 introduced at this trial.

22 And so just to give a little bit of background as to  
23 how this kind of played out, the plaintiffs in this case  
24 filed a motion to compel. I responded to that motion to  
25 compel based on, I believe, a number of documents that were

1 outstanding and then the Interrogatory Number 25. I  
2 responded to Mr. English that we were comfortable using the  
3 difference in the evaluations of the Patton report as the  
4 damage amount, but not the methodology of calculation,  
5 simply that the damage of 1.3 -- the difference of  
6 \$1.3 million that was contained in the Patton report we  
7 were sufficient -- or we were satisfied with using that  
8 number. Mr. English then followed up one day later and  
9 said, "Thank you for your reply. I need all of these  
10 documents, and then, if you could, provide me a formal  
11 calculation of those damages."

12 Your Honor, from that day, the very next day our  
13 office hand delivered every document that Mr. English had  
14 requested. And how Interrogatory 25 was not produced as a  
15 part of that production is beyond me.

16 THE COURT: But wasn't all that done really before the  
17 consent order?

18 MR. PURIEFOY: Well, no, Your Honor. There were still  
19 additional documents -- a significant amount of additional  
20 documents that were requested by Mr. English based on my  
21 representation that the difference in the values between  
22 the Patton & Associates reports was going to form the basis  
23 of our damage number, and it was as a result of that  
24 information being provided to Mr. English that he then  
25 said, "Well, then I'm entitled to a plethora of other

1 documents." And so over the course of the next day or two,  
2 we provided all of those documents to Mr. English.

3 And then, Your Honor, additionally, what we know in  
4 this case is that Mr. English has presented to the jury, as  
5 part of his exhibit to the United Community Bank notice, a  
6 calculation of damages that was created by Mr. Bergeron  
7 that has been admitted throughout the course of this trial  
8 where he did a very comprehensive breakdown of that damage  
9 calculation. Essentially, Your Honor, what he did, which  
10 is very clear based on the document that was attached to  
11 that letter, was he took the amount of bonuses that were  
12 paid, and he used a multiple. To the extent that we are  
13 precluded for some reason from using a multiple under the  
14 stock purchase agreement, we know certainly of \$350,000 of  
15 damages, which has been spelled out and presented to the  
16 jury on a number of occasions.

17 And the only -- our courts have held repeatedly that  
18 the purpose of providing a damage calculation is to inform  
19 opposing party and the jury as to some reasonable  
20 estimation of the damages. They have already considered,  
21 through three separate witnesses, the spreadsheet that was  
22 created that broke down with scientific particularity the  
23 damage calculation itself. And so to the extent that the  
24 Court finds that -- or the jury finds that the utilization  
25 of this multiple was prohibited under the stock purchase

1       agreement, we have certainly provided Mr. English and the  
2       jury with a very basic breakdown of the damages, \$350,000,  
3       which constitutes the amount of bonuses paid to nonowners  
4       which has been admitted throughout this case.

5               Additionally, because we have a fraud claim, Your  
6       Honor, if the jury were to find that there was fraud in the  
7       inducement related to the stock purchase agreement and they  
8       determined that we were fraudulently induced in executing  
9       that document, our position would be the multiple  
10      preclusion would not be permitted to be submitted -- or,  
11      excuse me -- that the use of the multiple would be  
12      permitted, and if that is the case, then the 1.3 million  
13      that was included in that spreadsheet that was attached to  
14      the United Community Bank letter can certainly be  
15      considered by the jury.

16             I don't think that there is any argument that can be  
17      made that Mr. English did not have any idea, nor could  
18      there be any idea of damages presented to the jury in this  
19      case. To the extent that the Court feels inclined to  
20      prevent the defendants from presenting any evidence of  
21      damages in this case, we certainly would ask that we be  
22      permitted an opportunity to submit a post-trial brief as it  
23      relates to Mr. English's motion in limine.

24             THE COURT: Anything further, Mr. English?

25             MR. ENGLISH: Yes, Your Honor. First of all, in

1        regard to Mr. Puriefoy's statement about his January 5th  
2        email to me, I immediately replied the same day. And I  
3        said, "We do need the formal damages calculation and answer  
4        to Interrogatory 25 to make sure we're preparing to defend  
5        the correct number at trial. Also, because it sounds like  
6        you'll be relying upon some difference in the Patton  
7        valuations of CC+I, which are based on projections from  
8        2018 to 2027, we need these additional documents." And so  
9        -- and then I said, "Please let me know if you will agree  
10       to provide the balance of discovery or if we need to go  
11       forward with the contested hearing on Thursday."

12           And so based on that, they agreed to the consent order  
13       to specifically and formally answer Interrogatory 25 which  
14       required them to spell out exactly how they were claiming  
15       damages. I, to this day, don't know what their damage  
16       claim is, the amount or how they arrived at it. And so I  
17       think the correspondence makes clear that they did not  
18       comply with the consent order.

19           Second, he said that Mr. Bergeron did do this  
20       calculation that was submitted to UCB, but he testified in  
21       his deposition and it was read to the jury that that's not  
22       his damages calculation. That's not what he claims. And  
23       then he went on to say that he's not qualified to give an  
24       opinion on the value of the company. But then Mr. Puriefoy  
25       argues that -- and notes that these calculations are based

1 on a multiple of earnings, are based on a valuation of the  
2 company, both of which are prohibited by Section 8(b) of  
3 the stock purchase agreement. And they never disclosed to  
4 us that they were going to use the UCB claim as their  
5 damage calculation. In fact, they disclaimed that both  
6 during deposition and even in this argument they said they  
7 weren't going to use that.

8 And then finally, he says the fraud claim isn't  
9 limited by the contract. But it is because they're not  
10 seeking rescission of the contract. When you allege fraud  
11 in a contract, you've got a choice. You've either got to  
12 elect to disclaim the contract, seek termination and  
13 rescind it, and they have not pled that. The alternative  
14 is then you're seeking damages under the contract of the  
15 difference between what was allowed or what you thought you  
16 were going to get under the contract and what you did. In  
17 that case, they've got to take the whole contract. They  
18 can't just ignore the limitation on damages in  
19 Section 8(b).

20 So no matter how you cut it, whether it's on  
21 disclosure, or whether it's on lack of qualification, or  
22 whether it's on what the parties admit was the stock  
23 purchase agreement between two sophisticated parties,  
24 they've got no basis for seeking damages on their  
25 counterclaims.



1           MR. PURIEFOY: Your Honor, so I believe that there's  
2 an improper conflation of the Patton & Associates report  
3 and the United Community Bank spreadsheet that was created.  
4 The Patton & Associates report went through a comprehensive  
5 valuation approach. They did not use just some multiple.  
6 Essentially, what Mr. Bergeron did and what was provided to  
7 Mr. English, which he has presented to this jury on  
8 numerous occasions, was Mr. Bergeron took the amount of  
9 bonuses that were paid, including the taxes that would be  
10 associated with that, and then he did it based on a  
11 multiple. There's no question about that. But that is an  
12 ancillary issue.

13           The question before the Court, I believe, is whether  
14 or not in accordance with the rules of this state and what  
15 our case law has expounded upon on numerous occasions,  
16 which is what is the purpose of providing a damage figure  
17 to opposing counsel. And our courts have repeatedly said  
18 it serves one useful purpose in providing opposing counsel  
19 with at least a general idea of the damages as well as  
20 being able to present some generalized damage figure to the  
21 jury. In fact, our courts have taken it a step further to  
22 state that you do not have to plead your damages with any  
23 scientific specificity. You certainly do not.

24           The exhibit that Mr. English has made reference to  
25 throughout the course of this trial demonstrates that at

1 the very least he was aware back in September of 2018 that  
2 Mr. Bergeron created that spreadsheet, that it had nothing  
3 to do with the valuation that was created by Patton &  
4 Associates, and at the very least, \$350,000 of damages was  
5 being alleged based on the failure to pay -- or based on  
6 the payment of the bonus. Whether or not some multiple of  
7 that number is used at some later date to me seems  
8 inconsequential. The \$350,000 is highlighted in bright red  
9 as the damage amount that is tied directly to the payment  
10 of those bonuses.

11 I don't think it's a good-faith argument to argue that  
12 the plaintiff in this case has absolutely no idea what the  
13 damage amount is. And I think that that's something that  
14 could be very easily presented to a jury. In fact, they  
15 would only have to make reference to a document that  
16 they've seen now probably three or four different times.

17 THE COURT: Here's my evaluation of this. I'm looking  
18 at the deposition of Mr. Bergeron taken on September 29th,  
19 and it's a very clear question: What damages is  
20 Decide4Action claiming in this case? And he goes on to say  
21 that he doesn't know, he's not an expert, he needs an  
22 expert. But then it's clarified, and this is on page 80.  
23 "So you're saying that Decide4Action's damages is the value  
24 determined by Patton?"

25 And he goes, "The loss of value."

1           And he goes, "The loss of value based on Patton &  
2 Associates different calculations?"

3           And his answer was, "Yes."

4           All right. And in your reference to one of his emails  
5 was we're going to rely on the Patton & Associates  
6 valuation for our damage calculation.

7           Then -- that was on January 5th. And I know that the  
8 Court gives certain leeway, but in an order that I didn't  
9 come up with, that you came up with, that you consented to  
10 is that you would fully answer -- because, in my mind,  
11 there's still very major issues of exactly what your  
12 damages are here, that on January the 8th, you agreed  
13 within ten days to set forth an itemized statement of all  
14 damages claimed describing in detail the damages claimed  
15 and method of computation including the amounts and period  
16 for which the loss is claimed, how the amounts and subject  
17 valuation will be used at trial, and what the total damages  
18 claim is. You said you've given a bunch of documents,  
19 you've given this Patton & Associates, and on top of that,  
20 I don't believe that this individual is qualified to  
21 testify about the value of a company. And based on -- and  
22 he says in his deposition it was based on this Patton &  
23 Associates. Well, Patton & Associates aren't here. You  
24 don't have an expert to testify for any of this.

25           I don't believe -- I mean, and I think under not only

1 the Rule 37, but I think on -- based on his motion in  
2 limine, I don't believe there's a basis for you presenting  
3 your damages, and therefore, I grant his motion in limine  
4 in that regard.

5 MR. ENGLISH: Your Honor, in light of that, the  
6 plaintiffs would move for a directed verdict on their  
7 breach of contract claim. And we know that UCB has the  
8 \$440,000 in escrow. It wouldn't be right for that money to  
9 just sit there with UCB forever, so it's got to go  
10 somewhere. Because the defendants can't prove damages,  
11 they've got no right to that money at UCB, so the only  
12 consequence is that under our plaintiff's breach of  
13 contract claim, that \$440,000 escrow amount should come to  
14 the plaintiff.

15 MR. PURIEFOY: Your Honor, to the extent that  
16 Mr. English is moving for a directed verdict, obviously,  
17 there are multiple claims that have been alleged: the  
18 breach of contract, the fraud, the misrepresentation.  
19 However, there is no good-faith argument that we made if  
20 the Court has ruled that we are not allowed to present any  
21 testimony whatsoever related to damages and therefore could  
22 never satisfy any damage calculation ---

23 THE COURT: You want to take a minute?

24 MS. THOMASON: Yes, Your Honor. Just one second.

25 MR. PURIEFOY: Yes, Your Honor.

1 (Pause in proceedings.)

2 MR. PURIEFOY: Your Honor, to the extent that  
3 Mr. English is moving for a directed verdict as it relates  
4 to each and every claim, we just ask that the Court specify  
5 that the Court is alleging -- or it's ordering that we not  
6 be able to present any testimony related to actual damages  
7 beyond the special damages as I believe the motion in  
8 limine was related to special damages under the case law  
9 that was cited, and I need to -- I believe that was the  
10 case. And forgive me if that's a misrepresentation, but  
11 that's how I understand it. But I ---

12 THE COURT: My ruling was all damages.

13 MR. PURIEFOY: It was on all.

14 THE COURT: Yeah. All damages.

15 MR. PURIEFOY: Okay. And, Your Honor, that's going to  
16 be ruled on all causes of action, not only the breach of  
17 contract, but the ---

18 THE COURT: Amount and -- and I haven't specifically  
19 looked through, but, I mean, what were your damages or  
20 difference in -- I mean, when he answered what are your  
21 damages in this case, he said the difference in the value  
22 in the company based on the Patton & Associates. I mean,  
23 was there some other -- and I guess that's why  
24 Interrogatory 25 was, you know, so crucial.

25 MR. PURIEFOY: I certainly understand that, Your

1 Honor. The problem with the deposition that's being  
2 referenced is that it was against the backdrop of  
3 Mr. English speaking to Mr. Bergeron about the Patton &  
4 Associates valuation itself. And so I don't think it's a  
5 fair characterization that as Mr. Bergeron is looking at  
6 this Patton & Associates document and being asked specific  
7 questions about it in terms of how he would value the  
8 company, I don't think that there's a -- Mr. Bergeron  
9 certainly is not well equipped enough to value the  
10 business. The response that I sent him by email is we're  
11 okay using that number as a damage figure. And it just so  
12 happened that in using the multiple of 3.5, I believe, as  
13 it related to the payment of the nonowner bonuses, it  
14 almost matched the Patton & Associates number. Although  
15 the method to get to that was completely different, they  
16 were nowhere near the same method to arrive at a number  
17 that was very close to one another, we indicated that we  
18 were okay using that as our damage figure.

19 THE COURT: And I hadn't really considered the  
20 multiple. I'm just looking at -- I mean, a very clear  
21 question: What damages is Decide4Action claiming in this  
22 case? Very clear question. And that's when he goes, well,  
23 I'm not an expert, difference in value. I mean, at what  
24 point does he get to say -- what you're saying is then he  
25 finally gets his opportunity really to tell what his

1 damages are from the stand.

2 MR. PURIEFOY: Well, no, Your Honor. Because I  
3 believe -- Mr. Bergeron is not an attorney. I don't think  
4 that he could ever tell with any degree of specificity what  
5 his actual damages are from a legal standpoint.

6 THE COURT: Then who is?

7 MR. PURIEFOY: Well, Your Honor, I indicated that,  
8 based on documents that were already in Mr. English's  
9 possession, that the \$1.3 million number, which is almost  
10 identical to the number that was used in support of the  
11 United Community Bank notice, would be the damage  
12 calculation. And that spreadsheet, Your Honor, goes  
13 through line by line exactly how that number was arrived  
14 at. It speaks to the payment of the nonowner bonuses, it  
15 speaks to the taxes, it speaks to the multiple, it speaks  
16 to every facet of how that damage figure was arrived at.

17 THE COURT: And who created that?

18 MR. PURIEFOY: Mr. Bergeron.

19 THE COURT: Based on what?

20 MR. PURIEFOY: Based on the very number that he used  
21 in offering to purchase CC+I.

22 When Mr. Bergeron set the \$4.4 million purchase price,  
23 there's an offering memorandum that we were intending at  
24 offering into court that set that EBITDA of 1.173 million.  
25 Mr. Bergeron decided on a multiple of 3.75 that Mr. Sibley

1 ultimately agreed to. That is the multiple that they used  
2 to determine the purchase price of 4.4 million. It was  
3 only through utilization of that multiple as it related to  
4 the payment of nonowner bonuses that he landed at 1.3  
5 million, and that's exactly what's spelled out in that  
6 spreadsheet that's attached to the letter to United  
7 Community Bank. That was his methodology. That answers  
8 every single question that was presented in Interrogatory  
9 25, which was tell me what your damage calculation is, the  
10 methodology used to arrive at that calculation. And every  
11 other aspect of that interrogatory was answered in that  
12 very document which has been presented to the Court and to  
13 the jury on at least three separate occasions.

14 THE COURT: Why did you consent to something that said  
15 that then, that required that specific?

16 I've ruled on the damages, so let's go forward. Are  
17 y'all ready to proceed?

18 MR. PURIEFOY: We are.

19 THE COURT: You need to talk to your client in light  
20 of my ruling, though?

21 MS. THOMASON: Your Honor, that would be helpful.

22 THE COURT: Yeah. And I'm going to take your -- under  
23 advisement. I'm going to deny it for now.

24 MR. ENGLISH: Okay.

25 MR. PURIEFOY: Deny?



1           THE COURT: Deny his -- he made a motion for --  
2 actually, what we were arguing at the time is he made a  
3 motion for a directed verdict on the breach of contract,  
4 and I denied that.

5                               (Pause in proceedings.)

6           THE COURT: All right. Ready?

7           MR. ENGLISH: One other thing, Your Honor. We had two  
8 motions in limine pending. One was on damages, which you  
9 ruled on. The second, we also moved in limine to exclude  
10 any opinion testimony from Mr. Bergeron, and particularly,  
11 any opinions about the value of CC+I.

12          THE COURT: I kind of cut you off with the damages.

13          MR. PURIEFOY: Well, Mr. Bergeron never intended on  
14 talking about the value of the company. But I would just  
15 like clarification, Your Honor, and I apologize.

16          THE COURT: No. That's fine.

17          MR. PURIEFOY: I've not been practicing long, but this  
18 is certainly a new one to me.

19          THE COURT: Well, it's new to me too.

20          MR. PURIEFOY: The ruling, as I understand it to make  
21 sure that I'm presenting my case in chief appropriately, is  
22 that we are not allowed to present any evidence of damages.

23          THE COURT: Correct.

24          MR. PURIEFOY: Okay. And Mr. English followed up with  
25 a directed verdict motion, and I'm unsure if it was a

1 directed verdict as to his breach of contract claim or our  
2 claims. And I was unsure what the denial of that directed  
3 verdict motion ---

4 THE COURT: I mean, I denied. Whichever it was, it  
5 was denied.

6 MR. ENGLISH: I felt I was fully denied, so I didn't  
7 think of making any ---

8 THE COURT: And, I guess, based on the discussion,  
9 then he will not be discussing the value of the business.

10 MR. PURIEFOY: Correct.

11 THE COURT: Okay. All right. Bring the jury in.

12 (WHEREUPON, the jury entered the courtroom at 1:15 p.m.)

13 THE COURT: You feel like you have an obstacle course  
14 there?

15 Thank you for your patience, ladies and gentlemen.  
16 Sometimes it takes us longer to figure out stuff. And we  
17 took a break for lunch, and so we are now -- again, my  
18 apologies we didn't get back right at 1:00.

19 But at this time, as you will recall, the plaintiff  
20 has rested, so now at this time, the defendant will present  
21 their case.

22 Mr. Puriefoy?

23 MR. PURIEFOY: Your Honor, at this time we would like  
24 to present certain deposition designations of Mr. William  
25 Sibley.

1 THE COURT: All right.

2 And, again, ladies and gentlemen, as I told you, every  
3 time a deposition has been presented, I just want to remind  
4 you that this deposition is to be considered the same as if  
5 Mr. Sibley were present in the courtroom, and give it the  
6 weight that you feel is appropriate.

7 Yes.

8 MR. PURIEFOY: Can you confirm that the microphone is  
9 on?

10 THE COURT: Yes.

11 DEPOSITION TESTIMONY OF MR. WILLIAM SIBLEY, JR.

12 "Q All right. I know you just did this, but Mr. Sibley,  
13 could you give me your full name for the record?

14 "A Yes. William Augustus Longstreet Sibley, Jr.

15 "Q Kind of walk me through the formation of CCI. How did  
16 that come to be?

17 "A One of the departments that reported to me and J.P.  
18 Stevens was known as the electronic engineering department,  
19 and that department consisted of the application of  
20 computers to machinery on the manufacturing floor doing  
21 process monitoring and control. West Point bought J.P.  
22 Stevens. West Point Pepperell bought J.P. Stevens. They  
23 got some of the plants that had the installation that the  
24 electronic engineering department had put in place. They  
25 wanted that group of technicians to stay together to

1 support the systems that had been installed, and so in  
2 essence I suggested to West Point Pepperell, the new owner,  
3 how about selling me the software, hardware, furniture and  
4 let me keep that group together and form a company to  
5 support those systems that had been put in place in the  
6 plants that you just bought. And West Point agreed and  
7 sold me, so to speak, that department. And so with several  
8 of the members of that department I formed CC+I in July of  
9 '88.

10 "Q So my original question was, your understanding is  
11 that EBITDA in 2016 was 1.173 million?"

12 MR. ENGLISH: Objection, Your Honor. Hearsay, parole  
13 evidence, and precluded by the stock purchase agreement.

14 THE COURT: Is this not something we -- is this one of  
15 them that ---

16 MR. PURIEFOY: Your Honor, I believe this is one of  
17 the objections that we made pretrial to the designations.

18 THE COURT: I'm going to allow it.

19 "A In that report, yes.

20 "Q In that report, correct?

21 "A Yes.

22 "Q And then the future purchase was going to be based on  
23 a multiple of 3.75?

24 "A That was my understanding, that what -- that's what  
25 Richard told us was that that was the formula he used.

1 "Q Now, was that the formula he used or Generational  
2 Equity used?"

3 MR. ENGLISH: Objection, Your Honor. Same objection.  
4 This is hearsay, again, parole evidence and precluded by  
5 the stock purchase agreement.

6 THE COURT: All right. How much longer -- I mean, is  
7 this the final set of that?

8 MR. PURIEFOY: Yeah.

9 THE COURT: I'm going to allow this one then.

10 "A No. Generational Equity said they would not provide  
11 that type of evaluation. They left that to the potential  
12 buyer to do their own multiples."

13 MR. PURIEFOY: Page 32, line 1.

14 "A No. I never challenged it.

15 "Q I'm going to show you what we've marked as  
16 Defendant's 1. I'll just give you a second to look over  
17 that. Have you had a chance to review it?

18 "A Yes.

19 "Q Do you recognize this document?

20 "A Yes.

21 "Q And what is it that's been marked as Defendant's 1?  
22 What is this document?

23 "A What is it called?

24 "Q Yes.

25 "A A Letter of Intent."

1 MR. PURIEFOY: Your Honor, I believe you have to flip  
2 the ---

3 THE COURT: Where is it? On your computer?

4 MR. PURIEFOY: And I'll restart at page 32, line 11.

5 "Q And what is it that's been marked as Defendant's 1?  
6 What is this document?

7 "A What is it called?

8 "Q Yes.

9 "A A Letter of Intent.

10 "Q And if you'll just flip to the last page of the Letter  
11 of Intent, it looks like Mr. Bergeron, yourself,  
12 Mr. Dozier, Mr. Clark, Mr. Starrett, and Mr. Leviner all  
13 signed this Letter of Intent?

14 "A That's what it looks like.

15 "Q If you go to the second paragraph under -- excuse me.  
16 If you go to the second page under paragraph two, the  
17 second bullet point, it looks like this says that due  
18 diligence shall demonstrate the average EBITDA of 2015 and  
19 '16, including the recast, to be no less than 98 percent of  
20 the EBITDA from the financials of the offering memoranda.  
21 That's the offering memoranda that was created by  
22 Generational Equity. Is that correct?

23 "A Correct.

24 "Q And so as I understand this, and let me know if this  
25 is your understanding, that the EBITDA number that

1 Mr. Bergeron landed on during or following his review of  
2 financials had to be 98 percent of the EBITDA of the  
3 offering memoranda?"

4 MR. PURIEFOY: Please note for the record that the  
5 transcript notes that the witness nodded their head.

6 "Q What was your understanding if for some reason it  
7 didn't hit that 98 percent threshold? What were the  
8 repercussions behind that, if any?

9 "A I don't recall there being any repercussions.

10 "Q Did you understand that the transaction would still  
11 move forward even if that 98 percent threshold wasn't hit?

12 "A Well, as I understood the Letter of Intent, it says  
13 that was a condition of the offer.

14 "Q And so would it be fair to say that the offer could be  
15 rescinded if you didn't hit that 98 percent?

16 "A That's an assumption.

17 "Q And I'm not asking for an assumption. I'm just asking  
18 for what your understanding of this particular provision  
19 is.

20 "A Well, that's my assumption.

21 "Q Okay. And if that was your assumption? I'm sorry.

22 "A That was a condition of the offer.

23 "Q And if that wasn't met, then Mr. Bergeron could elect  
24 to not purchase CCI?

25 "A Presumably so.

1 "Q And you've said that a couple of times. What his  
2 vision of the company -- was his vision of the company  
3 important to you?

4 "A It was, but it was particularly important to a couple  
5 of employees who wanted to work for him.

6 "Q What employees?

7 "A Scott Dozier and Tim Clark."

8 MR. ENGLISH: Objection. Your Honor excluded this  
9 next section.

10 THE COURT: Okay.

11 MR. PURIEFOY: Your Honor, I believe that pretrial  
12 what has been removed were the additional Sections 8 and 9  
13 of this transcript.

14 THE COURT: And I've got it as 1 through 4, lines 1  
15 through 4.

16 MR. PURIEFOY: Oh, I apologize if it was 1 through 4.  
17 I thought it was 1 through 7, Your Honor.

18 THE COURT: Isn't it 5 through 9? Or stipulated 5  
19 through 9 is what I've got.

20 MR. ENGLISH: Yes. That was out.

21 THE COURT: Okay. Oh, okay. I see that now. All  
22 right. So 1 through 4. Sorry.

23 MR. PURIEFOY: Thank you, Your Honor.

24 Page 42.

25 "Q I'm going to show you what I've marked as



1 Defendant's 2. Have you had a chance to review that?

2 "A Yes.

3 "Q So this appears to be an e-mail thread between  
4 Mr. Bergeron and Tim Clark, and I believe you're cc'd on  
5 these communications as well?

6 "A Yes.

7 "Q I'm specifically looking at a May 2, 2017 e-mail from  
8 Mr. Bergeron to Mr. Clark with you being cc'd where he is  
9 requesting owner salaries for 2013 through 2017?

10 "A Yes.

11 "Q Do you recall that request being made by Mr. Bergeron?

12 "A I do, and he was corresponding with Tim Clark because  
13 I was in rehab.

14 "Q Well, let me ask you, you said you had back surgery?

15 "A Yes.

16 "Q And this would have been in early to mid 2017?

17 "A Yes, in the spring, March, and extensive rehab on into  
18 the summer. So I was not in the office all the time.

19 "Q And this may seem like a strange question. Were there  
20 any prescription medications following that surgery?

21 "A No, I can't recall any. I did -- well, once I did  
22 have some antibiotics.

23 "Q But nothing that would have impaired your ability to  
24 understand --

25 "A No.

1 "Q -- anything associated with the transaction?

2 "A No.

3 "Q All right. I'm sorry. I know that's a weird  
4 question. I just wanted to clarify. Okay. Do you know  
5 why Mr. Bergeron was requesting the owner salaries from '13  
6 to '17?

7 "A Not particularly.

8 "Q You never had any discussions with him about that?

9 "A I don't recall.

10 "Q I'm going to show you what we've marked as  
11 Defendant's 3 and 4. This is going to be 3 and 4. Have  
12 you had a chance to review?

13 "A Yes.

14 "Q So if we start with Defendant's 3, which looks like it  
15 is a May 7 e-mail from yourself to Mr. Bergeron, do you see  
16 that?

17 "A Yes.

18 "Q And do you understand that in writing 'I hope this  
19 gives you the detailed data you need,' was this in response  
20 to his request for owner salaries?

21 "A That's my understanding.

22 "Q And I believe that it was an Excel spreadsheet that  
23 was attached to this e-mail?"

24 MR. PURIEFOY: Your Honor, note on the record that  
25 there was an objection to the form of the question.

1 "Q Is that your understanding?

2 "A Yes.

3 "Q So if you look at Defendant's 4, this appears to be an  
4 Excel spreadsheet for fiscal year 2013 through 2017,  
5 specifically April 28, 2017. Do you see that?

6 "A Yes.

7 "Q And it looks like in 2016 Mr. Clark had an annual  
8 salary of 150,000, Mr. Dozier 103,888, Mr. Leviner 60,141,  
9 and yourself 150, 150,000, Mr. Starrett 92,321, and  
10 Ms. Featherstone 24,000?

11 "A Yes.

12 "Q Do you see that? It also looks like in 2015 and '16  
13 there were also owner bonuses that were paid. Do you see  
14 that?

15 "A I do.

16 "Q So in the Excel spreadsheet that's Defendant's 4, it  
17 also looks like in 2016 there were non-owner bonuses paid  
18 that totaled \$35,000, I believe. Do you see that? They  
19 were bonuses that were paid to Joseph Taylor, Nathan  
20 Hermann, and Carlos Viveros?

21 "A And what about it?

22 "Q Do you see a \$15,000 bonus paid to Joseph Taylor?

23 "A Yes.

24 "Q And that was in 2016?

25 "A Yes.

1 "Q Do you see a \$15,000 bonus paid to Nathan Hermann?

2 "A Yes.

3 "Q And do you see a \$5000 bonus paid to Carlos Viveros?

4 "A Yes.

5 "Q Would it be fair to say that between 2013 and '17  
6 there were only one instance, I guess, technically three  
7 instances of non-owner bonuses that were paid?

8 "A Repeat your question.

9 "Q I'm sorry. Between 2013 and 2017, it appears to me  
10 based on a review of Plaintiff's 4 that there were only  
11 three instances of non-owner bonuses being paid?

12 "A Three instances being what?

13 "Q The 15,000 to Mr. Taylor, 15,000 to Mr. Hermann, and  
14 5000 to Mr. Viveros.

15 "A Okay. So an instance for you is a person, not a  
16 year?

17 "Q We can look at it any way. We can say one in the  
18 sense that only one year were bonuses paid to non-owner  
19 employees. Is that fair? Is that fair?

20 "A Yes."

21 MR. PURIEFOY: And, Your Honor, please note before  
22 that previous question there was an objection to form on  
23 the record.

24 "Q But at least on Defendant's 4, no non-owner bonuses  
25 were paid in '15, '14, or '13. Correct?

1 "A Because we weren't profitable. I think we hired  
2 Kimberly in maybe -- I say we hired her. We got her  
3 through a temp back in February or March. I can't remember  
4 exactly when. But ---

5 "Q Of '17?

6 "So, again, this leads into my next question. It  
7 looks like Defendant's 6 indicates that she received a  
8 \$10,000 bonus?

9 "A Yeah.

10 "Q And that she was going to receive that on June 30 of  
11 2017?

12 "A That's right.

13 "Q And she had been paid as a permanent employee since  
14 May 15, 2017?

15 "A But we gave her the equivalent credit all the way back  
16 because she had done such a good job as a temp. It was  
17 almost as if she was on the payroll anyway. She did an  
18 excellent job.

19 "Q Sure. In the 29 years or so that CCI operated, do you  
20 recall any other instances where bonuses were paid at  
21 100 percent?

22 "A 1999 in the textile business. Same reason.

23 "Q CCI paid 100 percent of --

24 "A Yes.

25 "Q -- non-employee?

1 "A Yes.

2 "Q So the last time that that happened was in 1999?

3 "A Yes. After that time textiles went offshore. Yes.

4 We had made sure that our employees knew that -- once we  
5 had seen that Letter of Intent, that they were aware of the  
6 fact that we were considering the sale.

7 "Q How did you inform them that the sale was going to  
8 happen or considering it?

9 "A Verbally.

10 "Q You told each one of them individually?

11 "A We did for some of the new ones that were coming on  
12 board, because they had not been with us before. Some of  
13 the old ones knew. We again did it verbally, but not  
14 individually -- but individually.

15 "Q In reading schedule 4 -- in reading schedule 4, which  
16 is the disclosure to the Stock Purchase Agreement,  
17 paragraph three, can you determine based on this language  
18 how those bonuses were paid and who they were paid to?

19 "A No.

20 "Q So again, in reading schedule 4, which is a disclosure  
21 attached to the Stock Purchase Agreement, paragraph three,  
22 can you determine based on this language how those bonuses  
23 were paid and who they were paid to?

24 "A No.

25 "Q Do you recall if bonus letters that were sent to each

1 of the employees was ever forwarded to Mr. Bergeron? Did  
2 he receive a copy of that?

3 "A Before closing?

4 "Q Before closing.

5 "A No, not to my knowledge.

6 "Q When was the first -- when was he first made aware  
7 that those bonuses were paid out? Do you know."

8 MR. PURIEFOY: Your Honor, note that there was an  
9 objection to the form.

10 "A He was first made aware in August when he had  
11 requested in July, late July a P&L statement that was from  
12 July 1, '16 through June 30 of '17, our most recent fiscal  
13 year. He had requested a P&L statement.

14 "Q And in that P&L statement --

15 "A Salaries and --

16 "Q -- it specifically stated salaries and bonuses?

17 "A Yes.

18 "Q Did it break out who those bonuses were paid to?

19 "A No.

20 "Q Simply that bonuses were issued?

21 "A Correct.

22 "Q All right, Mr. Sibley, we're back on the record. I  
23 think before we went off the record I was asking you  
24 about how Mr. Bergeron would have been made aware that  
25 these bonuses had been paid out. I know you originally

1       stated that the P&L statement contained salaries and  
2       bonuses?

3       "A     Yes.

4       "Q     And, again, did that P&L break out those salaries and  
5       bonuses?

6       "A     No.

7       "Q     And then I know you suggested that in 2017 September  
8       there was a tax return provided to Mr. Bergeron that could  
9       have also detailed payment of this bonus.

10      "A     And divided it between officers and non-officers.

11      "Q     Okay. I'm going to show you what's been marked as  
12      Defendant's 14. So if you flip to the fourth page, this  
13      looks like a cover letter dated September 21, 2017, to  
14      Computer Control Plus Integration, Inc. from Cherry  
15      Bekaert?

16      "A     Correct.

17      "Q     And this appears to be a 2016 income tax return?"

18             MR. PURIEFOY: Your Honor, note for the record there  
19      was an objection to the form.

20      "A     It is that dated on the tax return, but if you'll  
21      look, it's as of the ending of the fiscal year, June 30,  
22      2017.

23      "Q     So this tax return is for year ending June 30, 2017?

24      "A     Correct.

25      "Q     And I believe you previously indicated that looking at



1 I believe it's lines 12 --

2 "A 12 and 13.

3 "Q -- to 13 --

4 "A Yes.

5 "Q -- of this tax return?

6 "A Correct.

7 "Q Can you tell me where this breaks out bonuses that  
8 would have been paid to the employees of CCI?

9 "A It's in line 13.

10 "Q And what does line 13 ---

11 "A The employees' salaries and wages.

12 "Q \$687,405?

13 "A Correct.

14 "Q When you add up -- when you add up all of the  
15 employees' wages, does it come to this number, or is this  
16 number inclusive of bonuses as well?

17 "A Inclusive.

18 "Q So how would Mr. Bergeron -- so would have  
19 Mr. Bergeron have had to add up salaries for each employee  
20 and deduct it from the number to be determined -- deduct it  
21 from this number to determine the bonuses were paid?

22 "A In total, yes.

23 "Q But this tax return does not specifically state how  
24 much each employee received as a bonus?

25 "A Correct.

1 "Q So of the three documents that we've referred to, the  
2 disclosure schedule, the P&L statement, and the year-end  
3 June 30, 2017 tax return, none of them specifically  
4 detailed who bonuses were paid to?

5 "A Not individually, but in total.

6 "Q Do you recall a conversation with Mr. Bergeron taking  
7 place in November of 2017 in your office or your former  
8 office regarding the payment of these bonuses?

9 "A Yes. I gave him a document that outlined each one  
10 specifically.

11 "Q And what document was that?

12 "A It was just a typed piece of paper that showed each  
13 employee and the bonus they got and the letter. It was  
14 basically a copy of the letter that each employee got.  
15 You've shown me those letters.

16 "Q So it was in November -- it was in that November  
17 meeting that he would have gotten this outline as well as  
18 the letters that went out?

19 "A What's the outline?

20 "Q Or, excuse me, the document that outlined?

21 "A Well, it was a copy of each one. That's what it was,  
22 a stack of papers, each letter. I gave him a copy of each  
23 letter that they --

24 "Q So when you said --

25 "A -- that they were handed.

1 "Q Okay. So when you said the document that outlined how  
2 each employee was paid a bonus, you're referring to the  
3 actual letter that they received?

4 "A Correct.

5 "Q And this was the first time, in November of '17 was  
6 the first time that you gave him those letters or the first  
7 time he had seen those letters?

8 "A To my knowledge, and I don't recall the date that I  
9 did it. It might have been late October or early November.  
10 I'm not sure.

11 "Q But it was post closing?

12 "A Yes.

13 "Q So would it be fair to say that this was the first  
14 time that Mr. Bergeron had seen a specific list of  
15 employees and the amounts of bonuses they received?

16 "A Correct, to my knowledge.

17 "Q Do you recall Mr. Bergeron's reaction to receiving  
18 those letters?

19 "A I do.

20 "Q And what was that?

21 "A He was horrified."

22 MR. ENGLISH: Your Honor, I'd ask that the next  
23 question and answer be -- this was just added last night,  
24 so I'd ask the next question and answer be read.

25 THE COURT: What page are you on? Do you have a

1 problem with that?

2 MR. PURIEFOY: I don't, Your Honor.

3 THE COURT: Okay.

4 "Q Why?

5 "A He thought they were too generous.

6 "Q Is it your position today that you were required to  
7 disclose to Mr. Bergeron the payment of those non-owner  
8 bonuses?"

9 MR. PURIEFOY: Note for the record, Your Honor, there  
10 was an objection.

11 "A No.

12 "Q No, you had no obligation to tell him?

13 "A I don't think so really.

14 "Q And why do you think that?

15 "A Because it was a normal form of business.

16 "Q Do you believe that -- do you believe that you did  
17 disclose the bonuses to Mr. Bergeron?

18 "A We gave him that opportunity to decide whether or not  
19 he thought it should be.

20 "Q I'm confused by your answer. You gave him the  
21 opportunity to decide --

22 "A Yeah.

23 "Q -- what should be?

24 "A Well, from the standpoint of things that had changed  
25 since May 17th, we felt it would be the right thing to do

1 to perhaps put the fact that we had given bonuses to let  
2 him know that.

3 "Q And when did you let him know that?

4 "A When did we let him know? We let him know it when we  
5 sent him a P&L report in August.

6 "Q That show that bonuses were paid.

7 "A Yeah.

8 "Q My question is, when did you let him know that bonuses  
9 were paid to non-owners?

10 "A We let him know it then. If he had asked for it  
11 individually, he could have gotten it.

12 "Q How would he have known to ask for it?

13 "A Because of the amount of payroll, and he knew what the  
14 payroll was.

15 "Q The P&L, as I understand it, had wages and bonuses.  
16 Is that correct?

17 "A Yeah, lumped together.

18 "Q Lumped together?

19 "A Yeah.

20 "Q My question is, based on a review only of that, how  
21 would Mr. Bergeron have known that bonuses went to  
22 non-owners?

23 "A Because he could have subtracted the payroll from it.

24 "Q So the onus would have been on him to subtract out the  
25 numbers to determine that bonuses were paid?

1 "A If he wanted to know that.

2 "Q Did the P&L statement distinguish owner compensation  
3 and bonuses from non-owner compensation and bonuses?

4 "A No, but the federal tax did.

5 "Q Is it your position that had he done the math on the  
6 taxes, then he could have ascertained the amount of bonuses  
7 paid to each individual?

8 "A Absolutely."

9 MR. PURIEFOY: No further designations, Your Honor.

10 THE COURT: All right. Step down.

11 Everybody on the jury good?

12 MR. PURIEFOY: Your Honor, at this time we call  
13 Richard Bergeron.

14 THE COURT: Mr. Bergeron, come around and be sworn.

15 THE CLERK: Place your left hand on the Bible and  
16 raise your right hand.

17 WHEREUPON,

18 RICHARD BERGERON,

19 After having been duly sworn, testified as follows:

20 THE CLERK: State your name, please.

21 THE WITNESS: Richard Bergeron.

22 THE CLERK: Thank you. Please be seated.

23 MR. PURIEFOY: Your Honor, is it okay if the witness  
24 has water?

25 THE COURT: Yeah.

DIRECT EXAMINATION

BY MR. PURIEFOY:

Q All right. Mr. Bergeron, please state your full name, again, for the record.

A Richard Bergeron.

Q And where do you currently reside?

A I'm sorry?

Q Where do you currently reside?

A In Greenville, South Carolina.

Q And are you married?

A Yes.

Q What's your wife's name?

A Sambo Bergeron.

Q Any children?

A Three children.

Q What are their names?

A Philippe, Catherine and Patricia.

Q Are they all adults?

A Yes.

Q And where does your son Philippe work?

A He works at Decide4Action with me.

Q And I think you already alluded to it, but what do you do for a living?

A I'm an engineer, and I am the CEO of Decide4Action.

Q And before holding that title of CEO of Decide4Action,

1       what did you do?

2       A       I was CEO of American division of a French company  
3       called Exxelia.

4       Q       And what did Exxelia do?

5       A       Exxelia was making electrical components for  
6       aerospace.

7       Q       Now, Mr. Bergeron, you're aware that you're here today  
8       as a named defendant -- Decide4Action is here today as a  
9       named defendant in a lawsuit that's been brought by  
10      Mr. Sibley. Are you aware of that fact?

11      A       Yes.

12      Q       Who is the late Mr. Sibley?

13      A       Mr. Sibley was the founder of CC+I, Computer Control  
14      Plus Integration. And he found it in '88 and sold his  
15      share to Decide4Action.

16      Q       And we'll get to the sale of those shares here in just  
17      a moment. But walk me through those initial conversations  
18      that you had with Mr. Sibley. How did you first get in  
19      contact with him?

20      A       Okay. In about 2014 I retired from Exxelia, and I was  
21      looking, took a few months off, and with my son we were  
22      looking to start a software company. And so we kind of  
23      went online and registered to all the site like not through  
24      the state but a site that sells company. And at that time  
25      we received an email from Generational Equity, which was a



1 broker that the seller has hired to sell the company.

2 So we look at multiple orders. And so we look at  
3 that, we sign some nondisclosure document. Then we got an  
4 offering memorandum from Generational Equity. And there  
5 was a few discussion. Then I came here to visit the seller  
6 in the company. Then we discussed, we went to lunch. It  
7 was just like one day. Then came back home. A few months  
8 later I had some other discussion with the broker, and I  
9 decided that to make an offer based on what was offered.

10 Q Okay. And so we're going to get into a lot of that,  
11 so let's just back up just a little bit. So was CC+I,  
12 which is Computer Control Plus Integration -- is it okay if  
13 I refer to them as CC+I?

14 A Yes.

15 Q Okay. What services did CC+I provide?

16 A CC+I was making computer software. They had started  
17 in textile. And when textile kind of moved away to Asia,  
18 they moved to beverage. And they were making a little bit  
19 of hardware, but mostly software to people like Coca-Cola,  
20 mostly.

21 Q And when you registered for this site, did you first  
22 contact CC+I or were they already posted on this site as  
23 being the company that was interested in being bought?

24 A Yeah. They were already posted. It's Generational  
25 Equity. It's a broker like a real estate agent. You just

1 type what type of company you're looking for. And then  
2 you'll get an online offer for nondisclosure document, and  
3 then you fill that in, and then you'll receive the offering  
4 memorandum. Nobody -- nobody contacts you before you  
5 receive that.

6 Q Okay.

7 A Then after that, you cannot truly contact them. You  
8 have to go through the agent.

9 Q Can you explain how you thought CC+I could be a  
10 beneficial acquisition for Decide4Action?

11 A Decide4Action was really just starting. There was --  
12 at the time my son was not even employed by the  
13 corporation. It was just me trying to -- to move that idea  
14 of doing software. And so we thought it was maybe a good  
15 fit because Mr. Sibley and a lot of the people were older,  
16 they wanted to retire, and we thought maybe we could bring  
17 some new idea to the mix so to make this -- make this  
18 better for all of us.

19 Q So I know you noted a moment ago that there was a  
20 nondisclosure that was executed as a result of your  
21 application to this website. Did you eventually have  
22 negotiations and discussions with Mr. Sibley after the  
23 execution of that nondisclosure?

24 A Well, it only started when we scheduled a visit here,  
25 and that's the first time I met the sellers. So I believe

1 it was in February of 2016. Don't quote me on the date.

2 Q Okay. And during that visit, did you have discussions  
3 with Mr. Sibley about potentially buying CC+I?

4 A Yes, we did. They were interested to sell. So we --  
5 we start talking about what they wanted to do. There was  
6 four owner employee with -- owner employee beside  
7 Mr. Sibley, and those people wanted to stay. So we had  
8 discussion with Mr. Sibley, with Mr. Clark, Mr. Dozier,  
9 Mr. Starrett and Mr. -- I forgot the name of the last one.  
10 But we had discussion with them, yes.

11 Q And did those discussions ultimately result in the  
12 execution of a letter of intent?

13 A Not the same day. So the same day we just -- we  
14 barely discuss about how much they wanted. So we went to  
15 lunch, came back home. I think we spent a few weeks. Then  
16 I had a call with the broker, and he say just made an  
17 offer, they didn't want to make a price. So I just made an  
18 offer verbally first, then they discuss it among  
19 themselves. Then Mr. Don Sawyer called me back. He say  
20 verbally ---

21 MR. ENGLISH: Objection. Hearsay.

22 THE COURT: Sustained. Re-ask the question.

23 BY MR. PURIEFOY:

24 Q And, Mr. Bergeron, you don't have to get into anything  
25 that anyone may have relayed to you.

1 A Okay.

2 Q Tell me the information that you currently have  
3 personal knowledge of.

4 A It was a conversation with him. So he told me ---  
5 MR. ENGLISH: Objection.

6 BY MR. PURIEFOY:

7 Q You don't have to talk about what he said to you.

8 A Okay.

9 Q So if you could just ---

10 A Okay. Anyway, the conversation is irrelevant.

11 So after the conversation, I knew that they were happy  
12 with the number, so I just wrote a letter and send it to  
13 them unsigned. And then there was a few comments, which we  
14 ended up having a signed copy at the end of that.

15 Q So just to unpack that a little bit, you did make an  
16 offer, a number offer to Mr. Sibley and his partners at  
17 some time?

18 A Yeah. It was not directly to Mr. Sibley. It was to  
19 the broker.

20 Q Okay. So you sent an offer to the broker who then  
21 passed along that information to Mr. Sibley? Is that ---

22 A To the seller.

23 Q Okay. All right. And how many sellers were there?

24 A There was -- well, technically six, but five were  
25 active because one was deceased.

1 Q All right. And I believe you stated that you sent a  
2 letter to the sellers. Is that the letter of intent?

3 A Yes. It is the letter of intent.

4 Q And originally did you state that that was unsigned?

5 A Well, yes. Initially it was unsigned.

6 Q And did the sellers have an opportunity to review the  
7 letter of intent?

8 A They did.

9 Q And was that letter of intent ultimately executed?

10 A Yes, it was.

11 Q I'm going to show you what has been marked as  
12 Plaintiff's Exhibit 1.

13 A Yes. I see it.

14 Q Okay. So under Section 1, the first bullet point  
15 indicates a purchase price of 4.4 million?

16 A Yes.

17 Q And was this a figure that you ultimately chose to  
18 offer to purchase CC+I?

19 A Yes, I did.

20 Q This was not an offer that CC+I made to you?

21 A No.

22 Q Okay. And, Mr. Bergeron, I'm assuming, and would it  
23 be fair to say that this was a figure that you were  
24 comfortable paying for CC+I?

25 A Yes, I was.

1 Q And at the time that you made the offer, did you think  
2 that this was a fair price?

3 A I thought so.

4 Q Okay. Did you have complete control over the offer  
5 that you made for this business?

6 A Yes, I did.

7 Q And we're going to refer back to this letter of intent  
8 on a number of occasions. But I'm going to show you what  
9 we are going to mark as Defendant's Exhibit 2, which is the  
10 offering memoranda.

11 MR. ENGLISH: Your Honor, before we put this up, we  
12 object to this on the grounds of hearsay and parole  
13 evidence.

14 THE COURT: All right. Do I have a copy of this?

15 MR. PURIEFOY: I have an extra copy, Your Honor.

16 THE COURT: Let's just go -- I'm going to look at  
17 this, and let's talk about this outside the presence of the  
18 jury.

19 Ladies and gentlemen, I'm going to ask that you go  
20 back to your jury room. I just want to see how y'all  
21 manage those cylinders one more time. So don't discuss the  
22 case, and we'll bring you right back out as soon as we can.

23 (WHEREUPON, the jury exits the courtroom at 1:50 p.m.)

24 THE COURT: All right. Exactly tell me what this is  
25 and what you're using it -- what's the purpose of this?

1           MR. PURIEFOY: So, Your Honor, it's certainly not  
2 going to be used for -- nor is it going to elicit any  
3 hearsay testimony. In fact, we don't plan on getting into  
4 any of the substance of the document itself. We referred  
5 to the existence of this offering memorandum that was  
6 created by Generational Equity, and really the whole point  
7 of introducing this is, one, to show the effect it had on  
8 Mr. Bergeron in terms of CC+I was, in fact, being marketed  
9 for sale. I believe it's important for the jury to have  
10 clarification that a broker was representing CC+I and had  
11 CC+I on the market, and it's not as though Mr. Bergeron was  
12 actively going after this entity. We simply want to  
13 demonstrate the existence of the document itself. We'll  
14 show the first page of the document which has absolutely no  
15 substantive information contained in it and move on  
16 immediately.

17           THE COURT: But once you introduce it into evidence,  
18 then it's into evidence.

19           MR. PURIEFOY: It is in evidence, Your Honor, but only  
20 for the purpose of demonstrating the effect on the  
21 listener. We have no intention on offering anything  
22 contained in the offering memoranda for proof of the matter  
23 asserted, simply that Mr. Bergeron relied on the offering  
24 memoranda in moving forward to the letter of intent.

25           THE COURT: Can't you do that by just doing the first

1 page?

2 MR. PURIEFOY: Yes. We have no problem doing the  
3 first page.

4 THE COURT: I mean, I have some problem with it. You  
5 say you're not going to use it for that, but then that --  
6 it's just kind of fair game whatever's in here at that  
7 point, whether it's your intent or not. You may change  
8 your mind.

9 MR. PURIEFOY: We have no problem using the first  
10 page.

11 THE COURT: Yeah. I mean, I see where you're going  
12 with it. If you just offer it for that, then you could say  
13 the first page or -- and then this is what you've got. I  
14 mean, as long as you don't reference to what the  
15 information -- I mean ---

16 MR. PURIEFOY: Yes, sir. That's fine.

17 THE COURT: Okay. Are they ready? They probably took  
18 a bathroom break.

19 So that's going to be Exhibit 2, the first page. And  
20 you can reference it was more than one page, too. I don't  
21 have a problem with that.

22 MR. PURIEFOY: The first page is fine, Your Honor.

23 THE COURT: While we're waiting, too, she's got to go  
24 call, try and figure out what the next case is going to be  
25 like.



1 Have y'all got any proposed charges?

2 MR. ENGLISH: Yes, sir.

3 MR. PURIEFOY: We can have something in ten minutes.

4 MS. THOMASON: It will take longer than ten minutes.

5 THE COURT: All right. I mean, I don't need them  
6 right now. And verdict form because I don't have a law  
7 clerk.

8 MR. ENGLISH: Yes. We've got a verdict form too,  
9 although I think maybe ---

10 THE COURT: Maybe you can send it to me after ---

11 MR. ENGLISH: Yeah. I think after the defendant's  
12 case and the motions, that could alter how we do this.

13 THE COURT: How many more witnesses do you have after  
14 this?

15 MR. PURIEFOY: Well, Your Honor, the problem is we  
16 have subpoenaed an additional witness that has not shown up  
17 for two days. We have the proof of delivery and the  
18 subpoena to appear at court today, and he's simply just not  
19 shown up. I don't know necessarily if we're going to call  
20 him, but I would certainly like an opportunity to call him  
21 if I . . .

22 THE COURT: So you have one more then, this potential  
23 witness after this?

24 MR. PURIEFOY: Yes, sir.

25 THE COURT: Okay.

1 MR. ENGLISH: And then I might have a rebuttal  
2 witness.

3 THE COURT: Okay.

4 MR. ENGLISH: And I wonder if I should get him here at  
5 a particular time.

6 THE COURT: I mean, it's -- we've still got plenty of  
7 time for the day.

8 MR. ENGLISH: Right. I think we'll have some motions  
9 after the defendant's case, but I can have him here  
10 whenever.

11 MR. PURIEFOY: I suspect that this is going to take at  
12 least another hour and a half or two hours maybe.

13 THE COURT: That's still 3:30, 30 minutes for motions  
14 or -- is your other witness not going to be long?

15 MR. ENGLISH: He won't be long.

16 THE COURT: I mean, if possible I'd like to get all  
17 testimony in today, that way we can argue and charge in the  
18 morning.

19 MS. THOMASON: So we've got cross.

20 MR. PURIEFOY: I'm not sure how we handle the trial  
21 subpoena that's obviously being ignored. It's a -- it's a  
22 non -- it's no one associated with us.

23 THE COURT: I mean, I guess we send a deputy out  
24 somewhere. Is he local?

25 MS. THOMASON: Three miles from here.

1 MR. PURIEFOY: It's in Greenville.

2 THE COURT: I've never had to send a deputy out.

3 MR. PURIEFOY: We may have a better feel for whether  
4 his testimony will be needed at the conclusion of this.

5 THE COURT: I'd just hold off on that.

6 (WHEREUPON, the jury entered the courtroom at 1:58 p.m.)

7 THE COURT: All right. Are you ready to proceed,  
8 Mr. Puriefoy?

9 BY MR. PURIEFOY:

10 Q All right. Mr. Bergeron, I'm showing you what we've  
11 marked as Defendant's Exhibit 2 which is titled Offering  
12 Memoranda. Do you see that?

13 A Yes.

14 Q Okay. And this says, "Offering Memoranda, Computer  
15 Control + Integration, Inc." This looks like it was a  
16 document created by Generational Equity. Do you see that?

17 A Yes.

18 Q And I believe you testified a moment ago that, after  
19 the execution of the nondisclosure, that an offering  
20 memoranda was presented to you?

21 A Yes, it was.

22 Q Is this the offering memoranda you received?

23 A Yes, it is.

24 Q Okay. And did you have an opportunity to review that  
25 offering memoranda?

1 A Yes, I did.

2 Q And did you rely on that offering memoranda in advance  
3 of making an offer to purchase CC+I?

4 A Yes.

5 Q Okay. All right. And I'd like to go back to  
6 Plaintiff's Exhibit 1, which was the letter of intent. And  
7 specifically, under Paragraph 1 ---

8 A I don't see it here, so I have to turn around to see  
9 it.

10 THE COURT: Yeah. You may have to -- for some reason  
11 it's not picking up on his monitor there. Let me see if I  
12 can try one more time. No, it didn't ---

13 THE WITNESS: I can turn around.

14 MR. PURIEFOY: I can provide him with a hard copy,  
15 Your Honor.

16 THE WITNESS: I can still turn around. It's okay.

17 BY MR. PURIEFOY:

18 Q All right. So under Bullet 4 under Section 1 of the  
19 letter of intent, it states that 90 percent of the purchase  
20 price was going to be held back. Do you see that?

21 A Yes, I do.

22 Q If you can just read that provision.

23 A "90 percent of the purchase price will be paid in cash  
24 at closing with the remaining 10 percent to be put in  
25 escrow for 12 months with interest for the sellers."

1 Q Okay. And can you explain what the purpose of that  
2 holdback provision was?

3 A The purpose of that holdback is that when you buy a  
4 company, you want to make sure that the seller obeyed by  
5 the contract, and you want to make sure that if they made  
6 something that was not allowed by the contract, they can't  
7 just run along with the money. You have something, at  
8 least 10 percent, that they're risking to make sure that  
9 they will obey the contract.

10 Q So did that just serve to ensure that the sellers did  
11 what they were supposed to do?

12 A Yes.

13 Q Okay. Now, Section 2 of the -- actually, if you look  
14 at the final bullet point, my apologies, under Section 1,  
15 can you read that?

16 A "The offer excludes the cash at closing for both the  
17 checking and savings account and includes the balance of  
18 A/R, accounts receivable and accounts payable at closing."

19 Q So we're going to come back to that provision here in  
20 just a second. But if we can go to Section 2 of the letter  
21 of intent which refers to the due diligence process, what  
22 does due diligence mean, Mr. Bergeron?

23 A Due diligence is for companies like an inspection for  
24 a house. So in the offering memorandum or order document  
25 or during discussion, the seller told you -- told me this

1 is it, they give us documents and things like that. And we  
2 have to base the price we're going to pay -- I have to base  
3 the price I'm going to pay based on what they say. At one  
4 point you have to verify that what they say is actually  
5 true. So the due diligence is that you bring a CPA, that  
6 they look through the document and through all the details  
7 to make sure that what they say in the initial document is  
8 reality.

9 Q And I think you already said a moment ago that the  
10 purchase price was 4.4 million. Did you have \$4.4 million  
11 to pay for CC+I?

12 A No, I did not.

13 Q How did you go about getting the money to purchase  
14 that entity?

15 A I apply for a Small Business Administration loan, SBA  
16 loan. So I took what I had saved during my years at  
17 Exxelia and before, and I applied for a loan of 3.5 million  
18 at -- with the SBA. So it took a long time. So I had to  
19 put my house as collateral.

20 And there was specific rule. SBA is a government  
21 entity that actually has a program to buy existing company  
22 to make sure that they remain in the US and that the owner  
23 remain in the US so they can stay alive. So I applied for  
24 that. At that time -- at the time of the LOI, I had just  
25 applied. I wouldn't know if I would have -- be granted

1       that loan or not.

2       Q     Okay. So you applied for a loan of more than  
3       \$3 million. So how important was this due diligence or  
4       inspection for you?

5       A     Well, it was really important because, yes, I put --  
6       you know, I was like 53 at the time. I had put some money  
7       aside. But I had to risk it all to -- all the money I  
8       made, my house, and basically it was a move that could not  
9       fail.

10      Q     And I think you mentioned a moment ago that you used a  
11      CPA to help you through this process?

12      A     Yeah. I used a CPA. I was -- you can see on the  
13      letter of intent my address was in Lake Mary, Florida. I  
14      use the CPA that was a single firm, Dan Carlton, that was  
15      real close to my house. So I just -- yeah, I just use  
16      them.

17      Q     And so walk me through the process that you and your  
18      CPA engaged in during this due diligence process. Were you  
19      able to review financial information of CC+I?

20      A     Yes. The way that it is, because you had to hire a  
21      broker, Generational Equity, G, they made like an  
22      electronic room where they can put all the documents that  
23      they wanted in there. So the CPA gives them a list of  
24      financial document and legal documents. So they put all  
25      the documents in there that we asked for. Some were not

1       there. Some were missing. So that was the first part of  
2       the process. Then the CPA and I get to review those  
3       documents. Then there was one single visit that I came  
4       here with the CPA to look at documents that were too big or  
5       that was not electronic that we would go on site, and the  
6       CPA will go through all of those documents while we were on  
7       site.

8       Q     Okay. So let's just back up. So there was originally  
9       a virtual room that was created where documents can be  
10      uploaded for your review and your CPA's review?

11     A     Yes.

12     Q     And you mentioned that you were able to actually go on  
13     site and inspect CC+I at some point. Do you recall when  
14     that was?

15     A     I would have to look at the document to remember the  
16     dates.

17     Q     Okay. Mr. Bergeron, would it help you if I said that  
18     the inspection may have been sometime around May 2017?  
19     Does that sound about right?

20     A     No. It was before that. May of '17 was when the due  
21     diligence was completed. But the -- I think the meeting  
22     was something in March or April.

23     Q     And that was the meeting where you and your CPA went  
24     and walked CC+I?

25     A     Yeah. But they didn't finish the due diligence.



1 After that the CPA had questions, and then there was  
2 additional documents sent. So the May '17 date that you  
3 state is when the due diligence was officially accepted.

4 Q Okay. So let's back up to the inspection where you  
5 were onsite at CC+I. Do you recall what you and your CPA  
6 -- what was your CPA's name?

7 A Dan Carlton.

8 Q Do you recall what you and Dan Carlton reviewed during  
9 that inspection?

10 A We reviewed financial statement, we reviewed  
11 contracts, we reviewed invoice, sales order. We were not  
12 at that time provided that much payroll information, but we  
13 review all the rest.

14 Q During that inspection, did you have an opportunity to  
15 meet all of the sellers?

16 A Yes. Well, not Mr. Featherstone because he was  
17 deceased. But all the others, yes.

18 Q The surviving sellers, you were able to meet with  
19 them?

20 A Yeah.

21 Q Did you have discussions with them about particulars  
22 of CC+I?

23 A Yes, I did.

24 Q Did you have an opportunity to meet any of the  
25 employees of CC+I?

1       A     I met some employee. Not all of them, but I met some  
2       employee.

3       Q     Okay. Do you recall about how many employees you met?

4       A     I met Kimberly French, which was the -- like the  
5       accounts receivable, accounts payable lady; I met Justin  
6       Pavatte; I met Scott Dozier; I met Tim Clark; and I met  
7       Terry and Robert. I think that's all the one I met.

8       Q     And did you have an opportunity to speak with them  
9       about the services they provided and what the job duties  
10      were?

11      A     Yes, I did.

12      Q     Okay. And then through those conversations, did you  
13      still feel as though, given their skill sets, that CC+I  
14      would still be a good potential target for Decide4Action?

15      A     I have to say that at that time I felt that way, but I  
16      knew that it was not possible with just a few hours  
17      conversation. I had to rely on the information that was  
18      provided in paper from the past to make that judgment.

19      Q     During the due diligence phase, this inspection  
20      period, were you ever informed at any time that any of the  
21      employees were unhappy with the salaries that they were  
22      receiving?

23      A     No, I was not.

24      Q     Did you have any reason to believe that any employee  
25      was dissatisfied with their salaries?

1 A No, I did not.

2 Q During the original inspection that you had at CC+I,  
3 did you discuss the salaries of any employees?

4 A No, I did not.

5 Q Okay. So at that time, you had not -- you had not  
6 discussed the salaries of any of the employees that worked  
7 at CC+I?

8 A I knew the salary of the owners because it was  
9 disclosed in the offering memorandum, but I did not know  
10 the salary of any other employee at that time.

11 Q All right. I'm going to show you what we've marked as  
12 Defendant's Exhibit 3, I believe. Excuse me. Oh, excuse  
13 me. This is Defendant's Exhibit 1. Defendant's Exhibit 1.

14 All right. If we can look at Defendant's Exhibit 1,  
15 let's go through the first email that we have here which is  
16 a May 2nd email that appears to be sent from you to Tim  
17 Clark. Do you see that?

18 A Yes, I do.

19 Q And do you recall this email?

20 A Yes.

21 Q Okay. And it appears that you're asking for the  
22 owners' salaries from 2017 going back to 2013.

23 A Yes.

24 Q And can you explain why you were asking for that  
25 information?

1 A Well, it's important to know that for five years in  
2 the past to the moment to know how much money the owners  
3 are making because the owners all plan to retire. So I had  
4 to put in my head a plan to replace them eventually except  
5 two. Tim Clark and Scott Dozier plan to stay for the  
6 company long-term. All the other ones had to be replaced.

7 Q Okay. And when you were thinking through this, were  
8 you trying to ascertain or determine what the potential  
9 expenses of running this business could be?

10 A Yes.

11 Q And then Defendant's Exhibit 2 -- excuse me --  
12 Defendant's Exhibit 1 also has a May 3rd correspondence  
13 from Mr. Sibley that I believe is in response to your  
14 May 2nd. Do you see that?

15 A Yes, I do.

16 Q Okay. And what does Mr. Sibley indicate to you in  
17 that?

18 A He said that he will begin to work on it right away.

19 Q And you may have already done this, but can you  
20 explain to the jury how, once you got the information about  
21 these owners' salaries, how it factored into the due  
22 diligence process?

23 A Well, what was important is to make a clear difference  
24 between the owners and the nonowners, because the nonowners  
25 were supposed to stay and be productive. So what's

1 important at that time for anybody that buy your company is  
2 to know what is the salary of the people so you know what  
3 you're buying. So you want to make sure you have full  
4 information. If somebody is making \$75,000 and is happy  
5 with that, you know that you're going to have to provide  
6 raise and things like that for cost of living if they get  
7 better. But it's really important to know that you have a  
8 company that you can continue to operate after the sellers  
9 have all left.

10 Q So did you understand that the salaries that were  
11 existing at the time of the due diligence, that if  
12 Decide4Action purchased CC+I, that you would become  
13 responsible for the payment of salaries?

14 A Yes.

15 Q And if we can go back to what's been marked as  
16 Plaintiff's Exhibit 1, which is the letter of intent,  
17 specifically we can look under Section 3 which is titled  
18 Representations and Warranties Required by Seller. Do you  
19 see that?

20 A Yes, I do.

21 Q Okay. So before we get into the bullet points under  
22 Section 3, can you explain to me what that section caption  
23 means, Representations and Warranties Required by Seller?

24 A Like I said before, the letter of intent, you make it  
25 assuming that all the information that they have provided

1 to you is true. But there is some portion of the  
2 information which you feel is really, really important, so  
3 you make sure that they reconfirm -- even though it was in  
4 their document, you reconfirm, you say, "I read that. Is  
5 it really what it is?" Because you want to make sure that  
6 you really buy what they say they're selling. So it's  
7 really what they guarantee to you to be true.

8 Q And so how important to you are these representations  
9 and warranties that were required by the seller?

10 A When I was involved with Exxelia, they were saying  
11 that it was more important than the purchase price. The  
12 representation and warranty is everything because that's  
13 the definition of what you're buying.

14 Q So we can go down to Bullet Point Number 9 under  
15 Section 3.

16 A The one about cash at closing?

17 Q Yes.

18 And can you read that?

19 A "The cash -- the cash at the time of closing would be  
20 distributed to the current shareholders prior to closing.  
21 Any cash not distributed prior to closing will be forfeited  
22 by the seller."

23 Q And what does that provision under Section 3 mean to  
24 you?

25 A This is -- this is a very important thing to make sure

1       that you're not lied about the salary of the people. And  
2       I've seen in my experience one more case like that is that  
3       I want to know what is the salary of each people with their  
4       bonus so the -- I know that if I was told that they make  
5       \$75,000 a year with a bonus of \$5,000, that's their true  
6       salary. You want to make sure that nobody is -- after that  
7       you did the inspection, that they just turn around and give  
8       some extra money that you don't know about to the employee  
9       that are not owners, because then you don't really know the  
10      true salary of the employee. That's why it's really,  
11      really important that the cash is -- I understand it's for  
12      the seller to keep, but if they want to give bonus to  
13      employee, they have to say before closing that those people  
14      have bonuses. It's good to give employee bonus, but you  
15      cannot just use the cash just before closing, give to  
16      employee, because after that, you end up wanting that, and  
17      they end up leaving, which is actually what end up leaving  
18      a year after they waited for June. And they all left at  
19      the same time because they didn't have the 100 percent  
20      bonus, the double salary that they had the year before.

21      Q     So let's back up just a little bit. I think what you  
22      just testified to a second ago was that one of your  
23      concerns in paying cash to nonowners is that it would show  
24      a lower bonus and salary.

25      A     It is -- it is not one of the concern. It is the only

1 concern. You want to make sure that there is no hidden  
2 bonus to employee, nonowners, because if they're hidden,  
3 you don't know the true salary that they were really  
4 making. That's why that clause is there.

5 Q Mr. Bergeron, how long have you been in this business?

6 A You mean software or you mean ---

7 Q Buying and selling companies in general.

8 A When I was working for Exxelia, I was part of a team  
9 that was -- Exxelia was a French company. I was part of a  
10 team much bigger than just me that was doing that. And I  
11 saw -- the reason I was able to write an LOI is because I  
12 saw many people doing that, so I was able to do the same.

13 Q So Bullet Point Number 9 under Section 3, was that a  
14 term that you specifically requested be contained in this  
15 letter of intent?

16 A Yes, I did.

17 Q And prior to the letter of intent's execution, did you  
18 present that term to Mr. Sibley and the other sellers?

19 A Yes, I did. Both verbally and in the letter of  
20 intent.

21 Q And did they have an opportunity to review this  
22 particular term?

23 A Yes. Multiple time.

24 Q And was the letter of intent ultimately executed by  
25 Mr. Sibley and all the sellers?



1 A Yes, it was.

2 Q And was it your understanding that, in executing the  
3 letter of intent, they were agreeing to Bullet Point  
4 Number 9 under Section 3?

5 A Yes, it was.

6 Q And would you have moved forward with the purchase of  
7 CC+I had they not agreed to that provision?

8 A Well, we would have had to change the price, because  
9 then the employee would -- would cost -- would cost more.  
10 It's possible that an employee that is making \$75,000  
11 deserve a \$25,000 bonus, but that means that this employee  
12 cost 100,000, not 75-. And it's totally acceptable to give  
13 a bonus to an employee. You just have to declare what it  
14 is.

15 Q Okay. And so you weren't necessarily opposed to the  
16 payment of bonuses?

17 A Not at all. And there were payment of bonuses to the  
18 nonowners that was declared to me in the amount of -- I  
19 believe like \$35,000. I pay bonus to employee now. We  
20 always do. However, I wanted them told to me at the time  
21 before we finish the inspection. That is the entire idea  
22 here. We need to know about it.

23 Q And so I think you've already stated that the sellers  
24 of CC+I had an opportunity to review this provision.

25 A Yes, they did.

1 Q And they all executed the letter of intent.

2 A Yes, they did.

3 Q And did you rely on this provision and their  
4 representation that all cash was going to be distributed to  
5 current shareholders?

6 A Yes, I did.

7 Q Would you have considered the cash of CC+I to be an  
8 asset of that company?

9 A Yes.

10 Q Okay. And if we can look at Bullet Point 10 which is  
11 directly below Bullet Point 9, and could you read that for  
12 me?

13 A "From the time of the LOI is submitted, the seller  
14 shall not dispose of any asset either by selling, giving,  
15 scrapping unless submitted and approved in writing by the  
16 buyer."

17 Q Okay. And I think you just previously testified that  
18 you thought that the cash of the business would have been  
19 considered an asset. So what did this provision mean to  
20 you?

21 A Well, you make an LOI, and we've already gone through  
22 some representation and warranty. So they say we're going  
23 to sell you this, you say, okay, that's -- I want to buy  
24 this. Now you want to make sure that after you agree on a  
25 price, they're not starting to selling piece by piece.

1 This would be like selling the fridge out of a house that  
2 you already sold. You need to make sure that whatever they  
3 have when you look at it, it's still there when you take  
4 it.

5 Q And so I think you've already said that you saw cash  
6 as an asset. Under this provision, was CC+I allowed to  
7 just give away cash?

8 A No. They were just allowed -- the cash was to be  
9 distributed to the seller. Nobody else. They had to --  
10 that was the only way to distribute cash.

11 Q And so under this particular provision of the letter  
12 of intent, if CC+I and the sellers wanted to give away  
13 cash, would they have had to get your permission to do  
14 that?

15 A You mean to nonowners?

16 Q Correct.

17 A Yes. They would have to submit a letter signed to say  
18 we want to give bonus to such-and-such, and do you have --  
19 approve that.

20 Q And you raise a great point. So under this provision,  
21 had the owners elected to just pay themselves cash, would  
22 you have had any problem with that?

23 A No.

24 Q And would they have had to seek your permission to pay  
25 themselves cash from the company?

1 A No. Because the letter of intent specifically say  
2 they were supposed to give the cash to themselves. So in the  
3 sense, the permission was already in the LOI that they can  
4 give it to themselves.

5 Q And we're going to get into this in a lot more detail  
6 momentarily. But did you eventually become aware that the  
7 sellers of CC+I did, in fact, give away cash that went to  
8 nonowners?

9 A Yes. I was made aware postclosing.

10 Q Okay. And did you ever receive any notification about  
11 the payment of those bonuses asking for your permission in  
12 writing to give those away?

13 A I never did.

14 Q And if we could go down to the bottom of the letter of  
15 intent under Section 5, and if we look at the -- I believe  
16 it's the first bullet point that sets the timeline for this  
17 due diligence process. Do you see that?

18 A Yes, I do.

19 Q Okay. And this states that the buyer shall have  
20 45 days after the signature of the LOI to complete the due  
21 diligence process. Do you see that?

22 A Yes. I see that.

23 Q Okay. Explain that provision.

24 A Well, when you sign the LOI, you don't know how long  
25 it's going to take. So you -- normally, the seller and

1 buyer agree on a time, so normally, the -- anyway, we ended  
2 up say 45 days after that we signed this LOI, I would have  
3 looked at the document, come with my CPA and say, yes, it's  
4 okay. The ---

5 Q And if we look at Bullet Point 2.

6 A Yeah. But if I just want to say about the first --  
7 sorry.

8 Q Sure.

9 A So initially we say 45 days. I've heard yesterday  
10 that the LOI was expired. It was not because there was --  
11 I was really surprised to hear that because we extended  
12 that clause twice with all the consent of the seller and  
13 myself. The first time we extended by 30 days, and the  
14 second time by 15 days. And it took me a little bit to  
15 hear that, you know, we just let it expire while they know  
16 that it was extended twice. So the letter of intent was  
17 never expired. It never did expire.

18 Q So as you sit here today, you recall the extension of  
19 this 45-day period on at least two occasions?

20 A Yes. There was two occasion. And I know that they  
21 were signed, and they were returned to me by Scott Dozier,  
22 which was one of the seller.

23 Q And now if we look under Bullet Point 2 under  
24 Section 5, this states that the buyer shall have 90 days  
25 from the completion of due diligence to complete the

1 acquisition.

2 A Yes. So when you complete the due diligence, now you  
3 have 90 days to complete the -- to make an agreement on the  
4 SPA. Now, it is my understanding that you have 90 days to  
5 make an agreement on the SPA, but then normally you make an  
6 agreement as to when you're going to sign it, because you  
7 agree on it, then it depend on a lot of what it contain,  
8 then you sign it. But that's what it says.

9 Q And do you recall when you and the sellers first began  
10 having discussions about the actual substance of the stock  
11 purchase agreement itself?

12 A I would say that it would be around July or August of  
13 2017.

14 Q Well, let me ask you this, Mr. Bergeron. I believe  
15 you stated that CC+I was already on the market for sale  
16 through a broker when you were introduced to them; is that  
17 fair?

18 A Yes, it was.

19 Q Okay. Why would CC+I agree to an extension on the  
20 letter of intent if they were looking to be sold?

21 A Well, they were actually pushing to push -- to extend  
22 it, because here, CCE, Coca-Cola Enterprise, was sold to  
23 Coke Consolidated, and there was a very large amount of  
24 contract. And they were making a lot of money from those  
25 contract, and they wanted to make sure they finish those

1 contract before they sold the company.

2 Q So if we could go back to Bullet Point 9 under  
3 Section 3, so this was the bullet point that required that  
4 all cash be distributed to the current shareholders?

5 A Yes.

6 Q And so to make sure I understand what you're saying  
7 correctly, in extending the letter of intent, did that give  
8 an opportunity to sellers to increase the amount of cash  
9 they were going to get?

10 A Yes. Because they were getting all the cash from all  
11 those contract, and that's why there was such a big owners'  
12 bonus at the end because they had all of those sales and  
13 they could take the cash out.

14 Q Well, let me ask this. Had the stock purchase  
15 agreement and the transaction closed in accordance with the  
16 original letter of intent, would the sellers have gotten  
17 all the cash from Coca-Cola Consolidated?

18 A Of course not.

19 Q So did it benefit CC+I to extend this letter of  
20 intent?

21 A I think it did.

22 Q All right. And we've made reference to it a number of  
23 times, but I'm going to show you what's been marked as  
24 Plaintiff's Exhibit 8, which is the stock purchase  
25 agreement. And specifically, we can go to page 6 of that

1 stock purchase agreement. And on page 6, do you see where  
2 it says "Events subsequent to May 17, 2017"?

3 A Yes, I do.

4 Q Can you read the first part of that for me?

5 A "Events subsequent to May 17, 2017. Except as set  
6 forth in 4(i) of the disclosure schedule, since May 17,  
7 2017, there has not been any material adverse change, and  
8 target has conducted its business in the ordinary course of  
9 business without limiting the generality of the foregoing  
10 since May 17, 2017."

11 Q Okay. And what did you understand that particular  
12 provision to mean?

13 A What that means is that May 17th is the date where we  
14 finished the inspection. So after that, we don't get to  
15 see the day-to-day. So we finished the inspection, we want  
16 to make sure that after that date, everything remain the  
17 same as we saw, and then after -- continued to operate the  
18 business like normal without making any change that would  
19 adversely change -- affect the value of what I was buying.

20 Q And how important was that provision in you electing  
21 to move forward with the purchase of CC+I?

22 A Well, it's -- it's critical. Because if they changed  
23 something after we inspected it, then the value changed.  
24 That's why we forbid them. It's in conjunction with also  
25 things that we specifically forbid to do to make sure the



1 value does not change. There was a process to approve any  
2 change they wanted to do in case there was something. But  
3 that's really important.

4 Q So if CC+I was to engage in conduct that would be  
5 considered outside the ordinary course, what would be the  
6 method of getting approval to engage in that type of  
7 conduct?

8 A They would have to send a letter to me to describe  
9 what it is and get some approval in writing from me to do  
10 that change.

11 Q And as you sit here today, did you ever recall  
12 receiving any letters seeking your approval to engage in  
13 conduct that would be considered outside the ordinary  
14 course?

15 A I did once.

16 Q Okay.

17 A They -- they wanted to terminate a copier contract for  
18 like \$3,000, and they sent me an email about that and they  
19 approved it.

20 And I say not once, but twice. There was another case  
21 where they felt that they needed to move. They were on  
22 1200 Woodruff, they was in Suite 59, and they wanted my  
23 approval to start the process to move in  
24 Suite C-6. And I approve both of them.

25 Q So there was a process that CC+I could have engaged in

1 to get your permission to do anything outside the ordinary  
2 course?

3 A Yes, there was.

4 Q Okay. And if we can look at page 7 of the stock  
5 purchase agreement, specifically under Roman Numeral I, and  
6 can you read that provision?

7 A "So target has not sold, leased, transferred, assigned  
8 or otherwise dispose of any of its assets, tangible or  
9 intangible, other than in the ordinary course of business."

10 Q And I believe you've already testified that you  
11 considered the cash is to be an asset?

12 A Yes, I do.

13 Q Okay. And this was a provision that was contained in  
14 the stock purchase agreement?

15 A Yes, it was.

16 Q And was that stock purchase agreement signed by you?

17 A Yes.

18 Q On behalf of Decide4Action?

19 A Yes.

20 Q And was it signed by Mr. Sibley and all the other  
21 sellers on behalf of CC+I?

22 A Yes, it was.

23 Q And so did you understand that in executing the stock  
24 purchase agreement, they were confirming that the target  
25 had not sold, leased, transferred assigned or otherwise

1 disposed of any of its assets?

2 A Yes, it was. But we were more specific with some  
3 other clause to make sure that they did not do some of the  
4 -- of the behavior.

5 Q And so if we can look down on page 8, I believe, under  
6 Section 17, Roman Numeral XVII, if you could read that for  
7 the jury.

8 A "Target has not adopted, amended, modified or  
9 terminated any bonus, profit sharing, incentive, severance,  
10 or other plan, contract, or commitment for the benefit of  
11 any of its director, officer or employee or taken any such  
12 action with respect of any other employee benefit plan."

13 Q And so this is one of the other provisions that you  
14 said you took special steps to ensure that other conduct  
15 did not occur?

16 A Yeah. This is the main one in opposed to correspond  
17 to the one in the -- in the LOI to make sure that all bonus  
18 were disclosed. And so they state in there that they have  
19 not done that additional bonus.

20 Q So when you review Section 17 of the stock purchase  
21 agreement, do you believe that this section is affirming  
22 what the letter of intent indicated, that bonuses were not  
23 going to be paid unless they were disclosed?

24 A Yes. But to add more detail, and it was written by a  
25 lawyer as opposed to just being written by me.

1 Q Would you agree that they both stood for the same  
2 general proposition?

3 A Yes. Exactly the same thing.

4 Q And so the requirement that cash be paid to  
5 shareholders not only existed in the letter of intent, but  
6 also made its way into the stock purchase agreement?

7 A Yes.

8 Q And did you rely on this provision in electing to  
9 execute the stock purchase agreement?

10 A Yes. But like I say, given below there's more clause  
11 to make absolutely sure that I did -- could rely on it.

12 Q And we're going to get to some of those clauses in  
13 just a minute. But if we can go down to page 17,  
14 Subsection C, and this is the stock purchase agreement on  
15 page 17 -- excuse me -- Subsection C titled "cash." Do you  
16 see that?

17 A Yes.

18 Q And could you read the first part of the first  
19 sentence for me?

20 A "Cash. Sellers shall ensure that all target cash is  
21 distributed or otherwise paid out to sellers no later than  
22 closing."

23 Q So, again, is this another provision that is contained  
24 in the stock purchase agreement requiring cash to be paid  
25 to sellers?

1 A Yes.

2 Q And during the course of your testimony today, on how  
3 many different occasions did this provision make it into  
4 either the letter of intent or the stock purchase  
5 agreement?

6 A Could you restate the question?

7 Q Sure. Do you recall that the letter of intent also  
8 required that cash be paid to shareholders?

9 A Yes, I do.

10 Q Okay. And then a provision that we just looked at a  
11 moment ago that adopted a requirement that there be no  
12 change in bonus commitment, do you recall that?

13 A Yes, I do.

14 Q And then, again, under Subsection 3, it requires that  
15 all cash be paid to the sellers?

16 A Yes.

17 Q So that's on three separate occasions. Would you  
18 agree that the documents executed by the sellers disallowed  
19 the payment of cash to the sellers -- or to nonowners?

20 A To nonowners, yes. There's multiple times. There's a  
21 lot more than three, but at least three.

22 Q And, again, can you explain to the jury why that is a  
23 concept that is repeated throughout all of the documents?

24 A Well, for the cash, there is two concept. The first  
25 concept is the one that I've already explained for the --

1 to make sure that we know how much money each employee is  
2 making so there's not just a new bonus that arrived the day  
3 before closing or the month before closing, so to make sure  
4 that we know the salary of the employee.

5 Also, for the cash, we always want the cash to be  
6 distributed before closing to make sure that there is no  
7 conflict as the cash two days after closing. So if we wait  
8 after closing, then there's that long dispute. Was it  
9 there? Was it not there? So the clause is that all the  
10 cash before closing, you take it out. So it is easy to  
11 manage, but you take it out for yourself. You don't pay  
12 undeclared bonus with it.

13 Q So if we look, again, at page 6 under Section 17, did  
14 you take -- excuse me. Page 7. Or 8. Under Section 17,  
15 did you take this provision as a representation by the  
16 sellers that they had not adopted any bonus plan?

17 A Of course. That's what it says.

18 Q And did you rely on that provision?

19 A Yes, I did.

20 Q And then, again, on page 17 under Subsection C titled  
21 "cash," did you also rely on this provision?

22 A Yes, I did.

23 Q And each of these provisions were confirmed by each of  
24 the sellers?

25 A Yes.

1 Q And it was signed by Mr. Sibley specifically?

2 A Yes.

3 Q Okay. Did you ultimately execute the stock purchase  
4 agreement?

5 A Yes, I did.

6 Q And when did you do that?

7 A Like I said before, I think it was signed on  
8 October 16, 2017, but I think the official date is  
9 October 17.

10 Q Did CC+I operate under that name for some period of  
11 time before it was changed?

12 A After the closing?

13 Q Yes.

14 A Yes.

15 Q When did that name change from CC+I to Decide4Action?

16 A About two years ago.

17 Q And so that would have been in 2019?

18 A Maybe December. Yeah. Maybe 2019.

19 Q And how many employees of CC+I transitioned from CC+I  
20 to Decide4Action?

21 A At the time of closing?

22 Q Yes.

23 A Including the owners?

24 Q Yes. If we could do the owners.

25 A So we had Tim Clark, we had Scott Dozier, Mr. Sibley

1 was technically an employee after that, we had Terry  
2 Roberts, Kimberly, we had Ryan. I would say about eight.

3 Q About eight. So I'm going to ask you about some of  
4 them specifically. Do you know who Joseph Taylor is?

5 A Yes, I do.

6 Q Who is Joseph Taylor?

7 A Joseph Taylor was a computer programmer at CC+I.

8 Q And do you recall how long he had been at CC+I before  
9 you acquired it?

10 A I think 18 months.

11 Q Who was Nathan Herrmann?

12 A He was a computer programmer.

13 Q And do you recall how long he had been there?

14 A Like a year.

15 Q And you've already mentioned Justin Pavatte. Who was  
16 that?

17 A He was a programmer, too.

18 Q And when you say "programmer," what do you mean by  
19 programmer?

20 A Well, coder. They did write computer software.

21 Q And was this the software that you installed in these  
22 facilities to automate these processes?

23 A Yes.

24 Mr. Pavatte was at CC+I for eight months.

25 Q Eight months.



1           And you mentioned Kimberly French. Who was that?

2       A     She was the -- like the receptionist and the account  
3       receivable, account payable. She was doing like the  
4       accounting -- in-house accounting.

5       Q     Are there any other nonowner employees that you can  
6       recall other than those four individuals?

7       A     There was Carlos, there was Ryan Clark, there was --  
8       there was another one, the IT guy, Chris Jones.

9       Q     Let's start with Carlos. And was his name Carlos  
10      Viveros?

11      A     Yeah. Carlos Viveros.

12      Q     And what was his job title?

13      A     He is senior computer programmer.

14      Q     And what about Ryan Clark?

15      A     Ryan Clark, his title, he was -- he had a title in  
16      sales, technically.

17      Q     And do you recall how long Ryan Clark was with CC+I  
18      before you acquired it?

19      A     Like a year.

20      Q     What about Carlos Viveros? Do you recall how long he  
21      was ---

22      A     I think he was there like two years. It was the  
23      oldest nonowner employee.

24      Q     And I believe the last person you mentioned was a  
25      Mr. Jones?

1 A Chris Jones.

2 Q And you said he was in IT?

3 A IT.

4 Q And how long had he been with CC+I?

5 A I think like a year and a half.

6 Q So all of the nonowner employees, the longest employed  
7 was Carlos Viveros, about two years?

8 A Yes.

9 Q Would you have considered Joseph Taylor to be a  
10 crucial employee at the time you acquired CC+I?

11 A Yes, I did.

12 Q Would you have considered Nathan Herrmann to be a  
13 crucial employee at the time you acquired?

14 A Yes, I did.

15 Q What about Justin Pavatte?

16 A I did also.

17 Q And Kimberly French?

18 A Kimberly French, I think she was, yeah.

19 Q To you she was?

20 A She was. She was doing accounting, and that was --  
21 she was the only one there.

22 Q And Carlos Viveros?

23 A Yes, he was.

24 Q And Ryan Clark?

25 A I didn't know.

1 Q Okay. And Mr. Jones?

2 A Mr. Jones, yes.

3 Q So if we can talk through the months after the  
4 execution of the stock purchase agreement, how was -- how  
5 was business once you acquired and took over the operations  
6 of CC+I?

7 A Well, business is really slow because what I just said  
8 about why the LOI was delayed, I didn't know then. I just  
9 learned after that, basically, all the sales work is rushed  
10 out. So business was really slow because Coke was not  
11 buying anything because they bought everything they needed  
12 like a year in advance.

13 Q So let me ask you this. How was the work atmosphere?  
14 Did it appear as though that the employees were happy with  
15 their employment after your acquisition?

16 A The first three month, yes.

17 Q And what changed after the first three months?

18 A What changed is that slowly I started to discover that  
19 at least three of the employee were actually not  
20 programmer. They had the title of computer programmer, but  
21 they were not actually able to do that.

22 Q And so that kind of started the shift in the work  
23 atmosphere when you made that realization?

24 A Yes. It was gradual. It was not like a lot.

25 Q Right. So it took a period of time for you to realize

1       that some of those employees couldn't actually do the  
2       coding that you needed them to do?

3       A     It took maybe six to eight months.

4       Q     Well, let's talk specifically about November of 2017.  
5       Do you recall being provided any information in November of  
6       '17?

7       A     I don't think I can ever forget that day.

8       Q     Okay. Can you explain to the jury what happened in  
9       November of 2017?

10      A     I was still commuting from Florida on Allegiant trying  
11      to get this company under control. And on Friday  
12      afternoon, like an hour or two before I was leaving,  
13      Mr. Sibley called me in his office, and he opened -- he had  
14      an old file cabinet next to his office and he said, "I'm  
15      just going to give you some HR document." Then he pulled  
16      that file and he gives me those piece of paper. And I just  
17      look at them, and I think that he was accurate. I turned  
18      white.

19      Q     And what did Mr. Sibley provide you at that time?

20      A     It was the letter that he had given a full-year salary  
21      to all the employee except one. All the nonowners -- after  
22      due diligence, all the people that were -- if Tony was  
23      making \$75,000 a year, he was given \$75,000 bonus. Like  
24      Justin Pavatte was there for eight months. He had the  
25      salary of \$75,000, and he was given an additional \$75,000

1 eight months after he was there.

2 Q And we're going to get into the specifics of each  
3 person's bonus, but I think you said that all but one  
4 person was paid 100 percent of their salary as a bonus?

5 A All the nonowners were double the salary except one.

6 Q And who was that?

7 A It was Kimberly French.

8 Q And when you learned about the payment of these  
9 bonuses, did you feel as though that was somehow in  
10 violation of either the letter of intent or the stock  
11 purchase agreement?

12 A I knew then that it was a big violation.

13 Q And before November 2017, had you ever been provided  
14 copies of those documents?

15 A I had no idea. That's why I turned white on that day.

16 Q And so you would agree, you were in the courtroom when  
17 I was reading Mr. Sibley's testimony where he indicated  
18 that that was never provided to you?

19 A I fully agree to this portion. I don't agree to what  
20 I say because I was so taken, I was white, that I decided  
21 to say nothing. I just took the document, thank you very  
22 much, and just walked out the door before I say anything,  
23 because I knew it was something big, and I didn't want to  
24 just make a mistake. So I say nothing and did nothing.

25 Q Well, let me ask this. During the process of the due

1 diligence, had any mention ever been made of these bonuses  
2 being paid to nonowners?

3 A Well, I saw it on other testimony there was the owner  
4 salary spreadsheet. The bonus to nonowners was supposed to  
5 be \$35,000 a year. So I was fully expecting three bonuses  
6 totaling \$35,000 a year. I had never had any mention of a  
7 full year salary, a double salary of each employee. Never  
8 heard of that.

9 Q Now, you testified earlier that the CPA that  
10 accompanied you to the site inspection was Dan Carlton?

11 A Yes.

12 Q Okay. And as you sit here today, are you aware of  
13 whether Dan Carlton received copies of those bonus ---

14 A I'm aware that he never received it, because I did  
15 ask.

16 Q And did Dan Carlton create a report following that  
17 site inspection?

18 A Yes, he did.

19 Q Okay. And were the sellers of CC+I, including  
20 Mr. Sibley, were they aware of the fact that this report  
21 was being created?

22 A Yes, they were.

23 Q And then how do you know that they were aware that  
24 this report was going to be created?

25 A Because there's always a report after due diligence.

1 It's like an inspection. There's always a report.

2 Q And as you sit here today, do you have personal  
3 knowledge as to whether or not Mr. Sibley received that  
4 report from Dan Carlton?

5 A I don't think he did, the report.

6 Q But he knew that one was going to be created?

7 A Yes.

8 Q Okay. And do you know what their understanding of  
9 that report was and what its intended purpose was?

10 A I cannot say that. I don't know that.

11 Q Okay. I'm going to show you what we have marked as  
12 Plaintiff's Exhibit 3. All right. Is this the report that  
13 Mr. Carlton created?

14 A Yes.

15 Q And you recognize this document?

16 A Yes.

17 Q First, I'd like to look at the date. This document is  
18 dated it looks like June 22nd of 2017?

19 A Yes, it is.

20 Q Okay.

21 A I didn't wait for the report to say that the due  
22 diligence clause was agreed upon. I had some communication  
23 with Mr. Carlton, and I agreed on May 17th that was okay.

24 Q Okay. And so if we could look at the first two  
25 paragraphs of this report, so the first looks like this

1 document was being created as a result of due diligence  
2 activities performed on May 16th and 17th. Do you see  
3 that?

4 A Yes.

5 Q Okay. Is that the site inspection that you were  
6 referring to?

7 A Yes.

8 Q And then if you go down under the section titled Scope  
9 and Procedures, do you see where it states that during that  
10 meeting, Mr. Carlton was going to review financial  
11 information supplied by CC+I?

12 A Yes.

13 Q Okay. And was this report something that you relied  
14 on in ultimately moving forward with the purchase of CC+I?

15 A Yes, I did. Not only did I do, but it was also a  
16 legal requirement for the Small Business Administration.  
17 You cannot buy a company if you don't have an inspection  
18 report.

19 Q So this was dated June 22nd of 2017, correct?

20 A Yes.

21 Q Okay. And on the inspection, I believe, based on a  
22 reading of this document, occurred on May 16th and 17th of  
23 2017. Were there any additional inspections that were  
24 conducted after May 17, 2017?

25 A Yes.



1 Q Okay. What were those inspections?

2 A There were some other document that were sent by  
3 Cherry Bekaert, CC+I's accountant. So they sent some  
4 additional document that we took into consideration.

5 Q And was the need for those additional documents a  
6 result of this report that Mr. Carlton indicated that there  
7 were still some additional documentation he needed to  
8 review?

9 A Yes.

10 Q So then there were some additional documents that were  
11 produced to you after this report was created?

12 A Yes.

13 Q And, again, this report was created on June 22nd of  
14 2017?

15 A Yes.

16 Q And in the additional documents that were produced to  
17 you after this report's creation, did you receive the bonus  
18 letters then?

19 A No.

20 Q Okay. All right. Mr. Bergeron, I'm going to have you  
21 look at what we have marked as Defendant's Exhibits 3  
22 through 9. All right. Mr. Bergeron, do you see what's  
23 marked as Defendant's 3 on the screen?

24 A Yes.

25 Q It's titled "Terms of Employment Amendment"?

1 A Yes.

2 Q Okay. And could you tell me the date on this  
3 agreement?

4 A June 26, 2017.

5 Q And so would you agree with me that these bonus  
6 letters were dated four days after Mr. Carlton's report?

7 A Yes.

8 Q And if you go to the first -- excuse me -- the second  
9 paragraph, and could you read that for the jury?

10 A "In addition to this possible salary increase in  
11 August, on June 30, 2017, Justin will receive a bonus this  
12 year equal to his present salary, namely \$70,000. CC+I has  
13 been dramatically blessed with profitable business during  
14 our just completed fiscal year ending June 30, 2017. This  
15 bonus is in response to the very profitable year and the  
16 outstanding work put forth by our CC+I team of associates.  
17 The company director, Bill, Tim and Scott, thank you for  
18 the extra effort you have contributed to make our year so  
19 successful. The amount of bonus varies from year to year,  
20 depending on company profitability and the effort put forth  
21 by each associate. We are happy to share the result of a  
22 really good year with you, really good associate, while at  
23 the same time we challenge each of us to actually work to  
24 achieve us a repeat performance this coming fiscal year."

25 Q Okay. And so you learned about the payment of

1 Mr. Pavatte's salary of \$70,000 and then matching that  
2 salary for the first time in November 2017?

3 A Yes.

4 Q Okay. And I believe you've already indicated and it's  
5 clear that that bonus was 100 percent of Mr. Pavatte's  
6 salary?

7 A Yeah. But that's what also the letter says.

8 Q And how long did you say Mr. Pavatte had been an  
9 employee of CC+I before he received this bonus?

10 A I think it was eight months.

11 Q Okay. And if we could look at Defendant's Exhibit 4,  
12 do you see that this is a CC+I bonus results for fiscal  
13 2017?

14 A Yes.

15 Q And you see that this is also dated June 26, 2017?

16 A Yes.

17 Q Okay. And Ryan Clark, you see the annual salary that  
18 he was receiving?

19 A Yes.

20 Q And if we can just look at the first sentence of this.

21 A It's annual salary of \$50,000.

22 Q And if you could read the sentence directly below.

23 A "It is with great pleasure that we announce that on  
24 June 30, 2017, Ryan will receive a bonus this year equal to  
25 his present annual salary, namely \$50,000."

1 Q And at the bottom of the second paragraph, do you also  
2 see the same language where CC+I hopes for a, quote, repeat  
3 performance?

4 A Yes.

5 Q Okay.

6 A And just for -- Ryan Clark was the son of Tim Clark,  
7 one of the sellers.

8 Q All right. And he received a bonus in the amount of  
9 100 percent of his salary?

10 A Yes.

11 Q If we could look at Defendant's Exhibit 5, same thing.  
12 This is a -- CC+I bonus results for fiscal 2017 for  
13 Christopher Jones?

14 A Yes.

15 Q And his annual salary was what?

16 A \$45,000.

17 Q Can you read the first portion?

18 A "It is with great pleasure that we announce that on  
19 June 30, 2017, Chris will receive a bonus this year equal  
20 to his present salary -- annual salary, namely \$45,000."

21 Q And at the bottom of the second paragraph, do you see  
22 the same language where it says that we hope to repeat this  
23 performance next year?

24 A Yes.

25 Q Okay. If we can look at Defendant's 6. Is

1 Defendant's 6 a CC+I bonus results for fiscal 2017 for  
2 Carlos Viveros?

3 A Yes.

4 Q What was his annual salary?

5 A \$75,000.

6 Q And if you could read that first portion.

7 A "It was with great pleasure that we announce that on  
8 June 30, 2017, Carlos will receive a bonus this year equal  
9 to his present annual salary, namely \$75,000."

10 Q Okay. And would you agree that the last portion of  
11 the second paragraph indicates that there's a hope of a  
12 repeat performance for next year?

13 A Yes.

14 Q If we can look at Defendant's 7. This is the CC+I  
15 bonus results for fiscal 2017 for Joseph Taylor. Do you  
16 see that?

17 A Yeah.

18 Q And what was his annual salary?

19 A \$46,000.

20 Q Okay. Could you read that first part for me?

21 A "It is with great pleasure that we announce that on  
22 June 30, 2017, Joseph will receive a bonus this year equal  
23 to his present annual salary, namely \$46,000."

24 Q Okay. And do you see that the last part of this  
25 paragraph also makes reference to CC+I, indicating that

1       they are looking forward to a repeat performance next year?

2       A     Yes.

3       Q     And final -- excuse me -- Defendant's Number 8, this  
4       is a CC+I bonus results for fiscal 2017 for Nathan  
5       Herrmann?

6       A     Yes.

7       Q     And what was his annual salary?

8       A     63,874.

9       Q     And could you read that first part?

10      A     "It is with great pleasure that we announce that on  
11      June 30, 2017, Nathan will receive a bonus this year equal  
12      to his present annual salary, namely 63,874."

13      Q     Okay. And do you notice at the bottom of this  
14      paragraph, it also repeats the sentiment that they are  
15      hopeful for a repeat performance next year?

16      A     Yes.

17      Q     And if you look at final -- Defendant's Number 9, the  
18      final bonus, do you see that this says "Terms of  
19      Employment"?

20      A     Yes.

21      Q     Okay. And this is for Kimberly French?

22      A     Yes.

23      Q     It set her annual salary at what?

24      A     37,500.

25      Q     And if you come down to what I believe is the second

1 sentence that starts "in addition to the salary increase"?

2 A "As of July 1, 2017, Kimberly will receive an increase  
3 so that her annual salary will be \$40,000. In addition to  
4 the salary increase, Kimberly will receive a \$10,000 bonus  
5 on June 30, 2017."

6 Q So Ms. French didn't receive 100 percent of her  
7 salary.

8 A No, she did not.

9 Q And what was her title again?

10 A She was account payable, accounts receivable.

11 Q And did you say she also worked as a receptionist?

12 A Yes, she did. She was not needed like the rest of  
13 them to make those -- to code.

14 Q So she wasn't a programmer like the rest of them?

15 A No. She was just a normal office person, so she was  
16 disposable.

17 Q Okay.

18 A For them.

19 Q And let me ask you, in the bottom part of each one of  
20 these -- if we could go back to Defendant's Exhibit 8, in  
21 the bottom part of the paragraph for each of these bonus  
22 results of fiscal 2017, the second paragraph, the first  
23 paragraph, that makes reference to repeat performance.

24 A Yes.

25 Q When you saw these letters that had been sent out to

1 each one of these employees, did you take issue with the  
2 use of the words "achieving repeat performance"?

3 A Of course. It was part of what brought me white.  
4 Because I knew at that time that that was a big problem,  
5 that they would expect double the salary that that was  
6 declared to, except Kimberly French that was expecting  
7 \$10,000 more. But I knew that I just bought a company that  
8 had double the amount of expense in employee that I was  
9 counting on. So for me it was like I put everything, all  
10 my life into this with my son, and now I just realized  
11 that, oh, my God, they will expect this to be the same.  
12 And the sales, I knew now the sales were down, so I knew I  
13 was in big trouble.

14 Q And the very last part of this says "repeat  
15 performance this coming fiscal year." So this was paid as  
16 a year-end bonus ending July 2017 -- or June 2017; is that  
17 right?

18 A Yes.

19 Q So in the next fiscal year, which would have ended  
20 June 30th of 2018, if you would have acquired CC+I, who  
21 would have been responsible for paying that repeat bonus?

22 A Of course I was.

23 Q So Mr. Sibley, if the transaction went through, would  
24 not be responsible for paying those bonuses?

25 A Not at all.



1 Q And would he have to deal with any of the fallout that  
2 resulted if those bonuses were not paid?

3 A No. Because Mr. Sibley's contract was three months.

4 Q And if we could look back at the stock purchase  
5 agreement, which is Plaintiff's Exhibit 8, this was -- and  
6 we've looked at this already. Did you believe that the  
7 payment of the bonuses that we just looked at were a breach  
8 of this stock purchase agreement?

9 MR. ENGLISH: Objection. Asked and answered.

10 THE COURT: Go ahead. I'll let him ask it again.

11 BY MR. PURIEFOY:

12 Q If we could go to page 8. And this was the provision  
13 is Subsection 17 of the stock purchase agreement. Do you  
14 recall reading this provision?

15 A Yes, I do.

16 Q And one of the things that provision indicates is  
17 target has not adopted, amended, modified, terminated any  
18 bonus, profit sharing, incentive, severance or other plan,  
19 contract or commitment." Do you see that?

20 A Yes.

21 Q Did you view the language of repeat performance as a  
22 commitment to pay a bonus in the future?

23 A What I view was irrelevant. I did, but what was more  
24 important is the employee also did.

25 Q Well, as you sit here today, do you ---

1 A Yes, I do.

2 Q --- believe that the employees thought that that was a  
3 commitment?

4 A They told me so.

5 Q Okay. Let me ask this. Do you believe that  
6 Mr. Sibley had the opportunity to disclose the payment of  
7 those bonuses to you at some time prior to closing?

8 A He had those letter at the end of June. What was the  
9 problem of scanning them and sending them to me? It was  
10 really, really easy.

11 Q Did you take issue with the fact that the bonuses were  
12 paid or that they weren't disclosed?

13 A That they were not disclosed. If the employee aware  
14 of that, that's okay. But they were not disclosed. That's  
15 the problem.

16 Q And you heard the testimony I read into the record at  
17 the beginning of our case in chief. Did you hear the  
18 portion of Mr. Sibley's testimony where he indicated that  
19 you could have known about the existence of these bonuses?

20 A Yes. I heard that.

21 Q Okay. And I'm going to have you look at what's been  
22 marked as Plaintiff's 4, which are the tax returns. And  
23 have you seen these tax returns before?

24 A Yes, I did.

25 Q When were these tax returns provided to you?

1 A Like a week before the closing.

2 Q Was that at your request?

3 A Actually, not. It was at the request of the SBA  
4 administration.

5 Q But you did receive a copy of this?

6 A Yes, I did.

7 Q And do you recall hearing the testimony that was read  
8 into the record of Mr. Sibley that, through this document,  
9 you could have or should have known about the existence of  
10 those nonemployee -- or nonowner bonuses?

11 A Yes, I recall.

12 Q And specifically in that testimony, we looked at  
13 lines 12 and 13?

14 A Yes.

15 Q And so if we can look at lines 12 and 13, did you look  
16 at these two lines -- okay. Did you look at these two  
17 lines when you received this tax return a week before the  
18 closing?

19 A Yes, I did.

20 Q And if we can look at line item 12, what is that  
21 titled?

22 A It says "Salary and Wages."

23 Q Okay. Go up to 12. Excuse me.

24 A 12, Compensation of Officers.

25 Q Okay. And what is that number?

1 A 2,550,375 -- 379.

2 Q And then directly below that is salaries and wages.  
3 Do you see that?

4 A Yes.

5 Q And what is that number?

6 A 687,405.

7 Q And are you aware that it was Mr. Sibley's position  
8 that, through this document, you should have known about  
9 the existence of the payment of nonowner bonuses?

10 A I'm aware.

11 Q Okay. Can you look at lines 12 and 13 and tell me  
12 where it discloses the payment of nonowner bonuses?

13 A It does not. And it doesn't even come even close to  
14 raising a suspicion for me, because if you look at -- now  
15 you've highlighted line 12 and 13, but if you highlight the  
16 line just above that says 4.4 million something, that was  
17 sales of 50 percent more than in the last year because they  
18 all deliver all of those contract. So of course if you  
19 deliver more, you're going to spend more money with  
20 employee. So they had temporary employee at one point,  
21 they had overtime and all of this. So when you have like  
22 40 percent more sales, I fully expected the employee to  
23 cost more. And normally, the payroll should have been like  
24 450- if you will take the eight employee. So you have a  
25 couple of hundred thousand dollars, it doesn't raise any

1 question whatsoever.

2 Q Well, let me ask, in Line Item 13 which shows salaries  
3 and wages in the amount of \$687,000, I believe ---

4 A Yes.

5 Q --- do you see that?

6 A Yes.

7 Q Does salaries and wages break out whether those  
8 salaries and wages were paid to owner employees or nonowner  
9 employees?

10 A I think in the tax return it does.

11 Q So under line 13, can you tell of the \$687,405 how  
12 much of that went to the owners and how much of that went  
13 to the nonowners?

14 A I don't think I can.

15 Q Okay. And you're aware that Mr. Sibley stated it was  
16 this document that you should have known that the nonowner  
17 bonuses were paid?

18 A I'm aware that he's saying that, but he is just make  
19 it up. If he wanted to disclose it, he would have send me  
20 the letter.

21 Q Well, as you sit here today, do you believe that this  
22 tax return discloses that information?

23 A No, it does not.

24 Q All right. We talked about the fact that you had a  
25 discussion with Mr. Sibley about the payment of these

1 bonuses back in November of 2017. Do you recall that?

2 A Yes, I do.

3 Q Okay. Did you ever have any discussions with any  
4 other sellers regarding these bonuses?

5 A Before or after November?

6 Q At any time.

7 A Well, after November, yes.

8 Q Okay. And specifically let me ask, as you sit here  
9 today, and I believe you already indicated the names of the  
10 seller/owners, your testimony has been that Mr. Sibley knew  
11 about the payment of the bonus?

12 A Yes.

13 Q Okay. And did Scott Dozier know about the payment of  
14 the bonus?

15 A Yes, he did.

16 Q Did Tim Clark know about the payment of the bonus?

17 A Yes, he did.

18 Q Did Mr. Leviner know about the payment of the bonus?

19 A No, he did not.

20 Q Did Mr. Starrett know about the payment of the bonus?

21 A No, he did not.

22 Q Did Ms. Featherstone, based on her own testimony, know  
23 about the payment of the bonus?

24 A I don't know, but she said she did not.

25 Q Okay. So as you sit here today, is it your

1 understanding that only three of the seller/owners actually  
2 knew about those bonuses being paid?

3 A Yes.

4 Q And was the payment of those bonuses ever disclosed to  
5 the other owners before the payments were made?

6 MR. ENGLISH: Objection. No basis.

7 THE COURT: Rephrase the question.

8 BY MR. PURIEFOY:

9 Q Mr. Bergeron, are you aware as you sit here today  
10 whether or not the payment of those bonuses were disclosed  
11 to Mr. Leviner, Mr. Starrett and Ms. Featherstone before  
12 June 26th of 2017?

13 A I know they were not.

14 Q Okay. And in accordance with the letter of intent and  
15 the stock purchase agreement, who was required to get all  
16 of the cash?

17 A The sellers.

18 Q And so if bonuses were paid at 100 percent to  
19 nonowners, would that have taken at least some of the cash  
20 out of the pockets of Mr. Leviner, Mr. Starrett and  
21 Ms. Featherstone?

22 A Of course it did.

23 Q And do you know who ultimately made the decision to  
24 pay those bonuses?

25 A It was Bill Sibley, and I know that it was in a

1 meeting at Scott Dozier's house. And Mr. Dozier asked the  
2 question specifically to Mr. Sibley.

3 MR. ENGLISH: Objection. Hearsay, no basis.

4 THE COURT: Sustained.

5 BY MR. PURIEFOY:

6 Q So we don't have to talk about anything that any one  
7 of them said. So let me rephrase the question. Are you  
8 aware of a meeting that took place at Mr. Sibley's house  
9 regarding the payment of these bonuses?

10 A Yes, I am.

11 Q And do you recall when that meeting took place?

12 A Something like beginning of June, end of May 2017.

13 Q Okay. And the stock purchase agreement mentioned an  
14 event subsequent to May 17, 2017?

15 A Yes.

16 Q And so the decision to pay the bonuses at this meeting  
17 on June 8th would have been after May 17, 2017?

18 A Yes. Of course.

19 Q Okay. And as a result of that meeting at Mr. Sibley's  
20 house, was the decision ultimately made to pay those  
21 bonuses?

22 A Yes, it was.

23 Q And as you sit here today, was it Mr. Sibley,  
24 Mr. Dozier and Mr. Clark that made that decision?

25 A Yes.



1 Q And did Mr. Leviner, Mr. Starrett or Ms. Featherstone  
2 give their input in any way about their beliefs?

3 A No, they did not.

4 Q All right. I'm going to show you what we've marked as  
5 Plaintiff's Exhibit 9. And this is the indemnity escrow  
6 agreement. Do you see that?

7 A Yes.

8 Q And if you could look at page 2, Section 3 of the  
9 indemnity escrow agreement, Section 3(d). All right. This  
10 is a fairly long provision, but this is disbursement on the  
11 indemnification escrow release date. If you can just read  
12 that quickly unless you already know what it says, and then  
13 I'm going to ask you a couple questions about it.

14 A I already know what it says.

15 Q So what did you understand this provision to mean?

16 A Well, it says that if there's no claim within  
17 12 months, then they get the escrow money. If there is a  
18 claim, then it is put aside until the claim is resolved.

19 Q And to clarify for the jury, is this the 10 percent  
20 that was held back on the \$4.4 million?

21 A Yes, it is.

22 Q So \$440,000 was put into an escrow account?

23 A Yes.

24 Q And I believe we've already heard from the agent with  
25 United Community Bank that was responsible for servicing

1       that account. Do you recall that testimony?

2       A     Yes, I do.

3       Q     So the funds were placed with United Community Bank.  
4       And did you make a claim against these funds at some time?

5       A     Yes, I did.

6       Q     And can you explain to the jury the exact reason why  
7       you made the claims on those funds?

8       A     Because of undisclosed bonus.

9       Q     Had those bonuses been disclosed, was there any other  
10      independent reason why you would have sought to hold those  
11      funds in escrow?

12      A     No.

13      Q     So since the closing of the transaction, the only  
14      violation of the stock purchase agreement that you've  
15      discovered is the payment of those bonuses?

16      A     I've discovered some other one, but I decided to let  
17      them go.

18      Q     Was the payment of the nonowner bonuses what prompted  
19      you to seek the holding of these escrow funds?

20      A     Yes.

21      Q     And do you believe that you have a good faith basis  
22      for asking that the escrow funds be held?

23      A     Of course. They were not supposed to be bonus or to  
24      declare them, and he didn't. And as a result, I lost all  
25      the employee. So it put everything in jeopardy.

1 Q So that brings me to my next point, I guess. You  
2 mentioned a couple of times that you lost employees. Talk  
3 to me about what you mean when you say lost employees.

4 A So when I learned about the bonus, it was November,  
5 right? Well, it just so happened that it's almost halfway  
6 through the fiscal year, and almost exactly halfway because  
7 December is a very -- it's Christmas and everything. So  
8 now we are midyear, so the people start thinking, okay, my  
9 bonus, my bonus. So people start -- now they know that I  
10 know. Before, they were not talking about it.

11 Q And when you say that they know that you know, are  
12 they meaning that you know about the existence of the prior  
13 year's bonus?

14 A Yes.

15 Q And that is the 100 percent bonus ---

16 A Yes. Before November they were not talking about it.

17 Q Okay. So in November or December of 2017, did the  
18 employees have any reason to believe that they were not  
19 going to be receiving bonuses in June of 2018?

20 A Yes.

21 Q And how did they know that?

22 A Because they knew that all the sales that they made  
23 the year and half before kind of empty all the sales. So  
24 we were not selling much. And they knew that because they  
25 used to go and install all the time, and now they were not

1 going anywhere, just going in the office and not doing  
2 anything. So they know that we're not having a good year,  
3 and so they start asking question.

4 Q And so did you personally make those employees aware  
5 of the fact that they were not going to be receiving  
6 bonuses?

7 A Well, at first I was very -- I wasn't sure what to do.  
8 So I didn't say, "No, you're not going to get bonus," and I  
9 did pay some bonus. But we didn't have that much to pay  
10 bonus. So it became obvious in May, maybe, that there  
11 wouldn't be a lot of bonuses. We did pay the few bonuses,  
12 but there was just no money to pay bonuses.

13 Q So even after discovery that Mr. Sibley had paid  
14 100 percent of their salaries as bonus in the year  
15 prior ---

16 A Yeah.

17 Q --- the fiscal year prior, you still agreed to pay  
18 those employees bonuses for fiscal year ending June 30,  
19 2018?

20 A We had to pay some. Like Kimberly French, she was a  
21 single mother. She had only -- that was the only one that  
22 I don't need \$10,000, and she was about to get a car  
23 repossessed, so I gave her a bonus. But the other one at  
24 double their salary last year, so it's not like they were  
25 out of money already. But, yeah, we did agree to pay some

1 of it.

2 Q Did any of the employees believe that they were going  
3 to be receiving 100 percent of their salary again as a  
4 bonus by December of 2017?

5 A Not December. June.

6 MR. ENGLISH: Objection.

7 THE COURT: Yeah. Hold on.

8 MR. ENGLISH: No nonhearsay basis.

9 THE COURT: Right. I mean, I don't -- this is  
10 strictly hearsay.

11 MR. PURIEFOY: Well, I can rephrase the question, Your  
12 Honor.

13 BY MR. PURIEFOY:

14 Q Mr. Bergeron, do you have any personal knowledge as to  
15 whether or not you disclosed to the employees that they  
16 were going to be receiving bonuses at 100 percent of their  
17 salaries?

18 A No. I didn't say that.

19 Q Okay. So you never informed them that they would be  
20 receiving that type of bonus?

21 A No.

22 Q And so let me ask you about the employees,  
23 specifically Mr. Taylor, Mr. Herrmann, Mr. Pavatte and  
24 Carlos Viveros, those four. Each one of those were  
25 programmers?

1 A Yes.

2 Q Okay. And did you consider, and I believe you already  
3 testified to this, them to be crucial employees of CC+I and  
4 Decide4Action?

5 A At the time, yes.

6 Q Okay. Can you tell us what happened, tell the jury  
7 what happened in the coming months after it was obvious  
8 they were not going to be receiving 100 percent of their  
9 salary as a bonus?

10 A Three of them, Nathan, Pavatte and Joe, in April or  
11 May, it was obvious they were looking for another job. And  
12 they -- they waited to be sure that it wouldn't be the  
13 bonus, and they left. And when I asked them why they left  
14 at that time, one of them told me they left because there  
15 was no bonus.

16 MR. ENGLISH: Objection. Hearsay.

17 THE COURT: Hold on. Any objection, you've got to  
18 stop. And it can't be based on hearsay.

19 MR. PURIEFOY: No objections to the hearsay.

20 BY MR. PURIEFOY:

21 Q Mr. Bergeron, you don't have to tell me what any of  
22 them said to you, but just explain to the jury whether or  
23 not and who ultimately left.

24 A Ultimately that year or ultimately?

25 Q Ultimately.

1       A     Ultimately, all of the employee except Carlos.

2       Q     And when you say all the employees, you're referring

3       to Mr. Joseph Taylor?

4       A     Joe Taylor, Nathan, Pavatte.

5       Q     Nathan Herrmann?

6       A     Yeah. Nathan Herrmann.

7       Q     Justin Pavatte?

8       A     Yes.

9       Q     And Ryan Clark?

10      A     Ryan Clark.

11      Q     And Chris Jones?

12      A     Chris Jones.

13      Q     And the only one that stayed you said was Mr. Viveros?

14      A     Kimberly French left and Mr. Viveros stayed.

15      Q     Okay. So how many of those employees left prior to

16      the end of fiscal year 2018?

17      A     On or about?

18      Q     On or about.

19      A     Three of them.

20      Q     Okay. And I'm going to show you what we've marked as

21      Plaintiff's Exhibit 10. And this is the letter dated

22      September 19, 2018. Do you see that?

23      A     Yes.

24      Q     And what is this letter?

25      A     This is a letter to United Community to hold the

1       escrow.

2       Q     Okay. And momentarily you were testifying about  
3       Section 3(d) of the indemnity escrow agreement. Do you  
4       recall that?

5       A     Yes.

6       Q     And it was in that provision that set forth the manner  
7       in which you were to notice United Community Bank of some  
8       dispute?

9       A     Yes.

10      Q     And is this letter, does it serve that purpose?

11      A     Yes.

12      Q     Okay. And can you tell the jury the gist of what this  
13      letter is indicating?

14      A     You mean what it mean?

15      Q     Yes.

16      A     It mean that we have a dispute with the seller, and  
17      until we resolve the dispute with the seller, the funds  
18      should stay there with interest to the seller until the  
19      claim is resolved.

20      Q     Okay. And did you understand that through sending  
21      this letter to Ms. Whitney at United Community Bank, that  
22      that was the only way to ensure that those escrow funds  
23      were not paid out?

24      A     Yes.

25      Q     And had this letter not been sent to Ms. Whitney



1 before the 12-month expiration under the escrow agreement,  
2 what would have happened?

3 A The fund would have been disbursed to the seller.

4 Q And then assuming you are correct in your allegations,  
5 how would you have collected those funds?

6 A I guess I would never.

7 Q So did you send this letter or have our office send  
8 this letter as a precaution?

9 A Yes.

10 Q Did you believe that this letter was sent in bad  
11 faith?

12 A No.

13 Q Do you believe this letter was making or filing an  
14 illegitimate claim?

15 A No.

16 Q And, again, the basis of this letter was what?

17 A It was the SPA clause about the undisclosed bonuses.

18 MR. PURIEFOY: Can we take a break, Your Honor, just  
19 momentarily?

20 THE COURT: Are we ready for a break, a short break?  
21 All right. So let's take a short break. Don't discuss the  
22 case. We'll bring you back out in just a few minutes.

23 (WHEREUPON, the jury exits the courtroom at 3:22 p.m.)

24 THE COURT: All right. Mr. Bergeron, you're in what I  
25 call my witness bubble, means you can't talk with your

1 attorneys about your testimony during the break. But  
2 you're free to take a break, go to the bathroom if you need  
3 to.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Ten minutes.

6 (WHEREUPON, a recess is taken at 3:23 p.m.)

7 MR. PURIEFOY: Your Honor, so I was discussing with  
8 Mr. English, I'm at the end of my testimony. There were  
9 three shots of deposition designations that were already  
10 submitted as part of our designation that we were going to  
11 put on the screen -- literally, there's two of them, as a  
12 matter of fact -- and ask them and conclude our testimony.  
13 Before the jury comes back in and we have to send them out  
14 for some argument over that, I just want to bring it to the  
15 Court's attention.

16 MR. ENGLISH: I guess my understanding is these are  
17 excerpts from Mr. Sibley's deposition that have already  
18 been read once or twice, and I don't think it would be  
19 appropriate to have this witness read those deposition  
20 excerpts a second or third time.

21 THE COURT: Yeah. You can use them in closing. I  
22 think we ---

23 MR. PURIEFOY: I can ask him about them, about he's  
24 aware of the fact that he heard this testimony and whether  
25 he agrees or disagrees with it, just not putting it up on

1 the screen.

2 THE COURT: I'm going to let him go ahead and do it.  
3 You can do it.

4 MR. PURIEFOY: Put it up?

5 THE COURT: Yeah.

6 MR. PURIEFOY: Okay.

7 THE COURT: All right. Anything else before we bring  
8 the jury? And then you're going -- doing  
9 cross-examination.

10 MR. ENGLISH: (Nods head affirmatively.)

11 THE COURT: All right.

12 (WHEREUPON, the jury entered the courtroom at 3:37 p.m.)

13 THE COURT: All right. You may proceed.

14 BY MR. PURIEFOY:

15 Q All right. Mr. Bergeron, I'm almost done with you,  
16 but I do want to ask you about two particular deposition  
17 designations which have already been read to the jury,  
18 specifically this statement by Mr. Sibley in his  
19 deposition. Could you read that for the jury?

20 A "It is your position today that you were required to  
21 disclose to Mr. Bergeron the payment of those non-owner  
22 bonuses."

23 Q And then if we can look at lines 14 through 18, and if  
24 you read those responses?

25 A Mr. Sibley said, "No."

1 Q And then the question was presented, "No, you had no  
2 obligation to tell him?" And his answer was?

3 A "I don't think so really."

4 Q And the final question posed was, "Why do you think  
5 that?"

6 A "Because it was a normal form of business."

7 Q Mr. Bergeron, the exchange that was taking place, are  
8 you aware that that was relating to the payment of  
9 100 percent of nonowners' salaries as a bonus?

10 A Yes, I was. I am.

11 Q And Mr. Sibley's testimony indicated that the reason  
12 why he did not need to tell you about that was because it  
13 was in the ordinary course?

14 A Yes.

15 Q Did you believe that the payment of the nonowner  
16 bonuses was within the ordinary course of business?

17 A It was not. To be the ordinary course of business,  
18 you must have done it before, and CC+I, over its existence,  
19 never paid a 100 percent bonus to nonowners.

20 Q And if we could pull up -- this will be the last  
21 designation I'll have you look at. The question that was  
22 asked was, "Sure. In the 29 years or so that CCI operated,  
23 do you recall any other instances where bonuses were paid  
24 at 100 percent?" Do you see that?

25 A Yes, I do.

1 Q And Mr. Sibley's response was, "1999 in the textile  
2 business. Same reason." Do you see that?

3 A Yes.

4 Q And then my question was, "CCI paid 100 percent --"  
5 And he responded, "Yes."

6 And I concluded that question with, "--  
7 non-employees?" His answer?

8 A Yes.

9 Q Okay. And so the question -- final question posed  
10 was, "So the last time that that happened was in 1999?"

11 A That's what he said.

12 Q And you're aware that he indicated in his deposition  
13 that he did, in fact, pay 100 percent bonus to nonowners in  
14 1999?

15 A That's what he said.

16 Q And let's assume for a minute that that's true. Would  
17 you believe that paying 100 percent of a nonowner bonus in  
18 1999 would still be considered within the ordinary course  
19 in 2017?

20 A Well, it would not. But I went and check because I  
21 have access to the company record. And at that time in  
22 1999, there was just one employee that was not an owner, it  
23 was a secretary, and the program at that time was a bonus  
24 -- bonus plan sharing for all employee. And it was like  
25 5 percent of the -- it was shared with all employee. So

1 they did not pay a 100 percent bonus in 1999. That's just  
2 not a true statement.

3 Q And so let me ask one final question -- or two final  
4 questions. Excuse me. The total bonuses that were paid to  
5 nonowners in 2017 was how much?

6 A Was about \$300,000.

7 Q And between 1999 and 2017, had you ever seen a bonus  
8 paid in that amount to nonowners?

9 A No.

10 Q And in the history of CC+I ---

11 A Never.

12 Q --- had a bonus in that amount ever been paid?

13 A To nonowners?

14 Q Yes.

15 A No.

16 MR. PURIEFOY: No further questions, Mr. Bergeron.

17 THE COURT: Cross-examination.

18 CROSS EXAMINATION

19 BY MR. ENGLISH:

20 Q All right. Mr. Bergeron, I believe you were born in  
21 Quebec, Canada, in 1964 and graduated from Laval University  
22 in Quebec in 1988 with a degree in mechanical engineering;  
23 is that right?

24 A Yes.

25 Q And that would be the equivalent of a master's degree

1 here, right?

2 A I think so.

3 Q So you're a smart and well-educated person, correct?

4 A I hope to think so.

5 Q Let's talk about Decide4Action's obligation to or to  
6 not go forward with the purchase of CC+I. Now, you're the  
7 sole shareholder, sole director and CEO of Decide4Action,  
8 correct?

9 A Yes.

10 Q You finished your due diligence of CC+I on May 17,  
11 2017, correct?

12 A It was finished a little bit later than that, but the  
13 date in the contract that we accepted, the material change,  
14 was May 17. But it was actually finished at the end of  
15 May.

16 Q But CC+I didn't stop doing business in May 2017, did  
17 it?

18 A No.

19 Q CC+I had to stay in business and keep incurring  
20 expenses after your due diligence, right?

21 A Yeah.

22 Q And you fully expected that in June 2017, CC+I would  
23 pay a large amount of bonuses, didn't you?

24 A Yes.

25 Q You fully expected that because the owners were

1 supposed to take out all of the cash from the business,  
2 right?

3 A Hold on. Can I -- can I rephrase that? Because I  
4 just thought about the question more. Because in a sense,  
5 if I was to take out the cash, I would have taken it out as  
6 dividend, not as bonuses. So I was expecting dividend, not  
7 bonuses, actually.

8 Q Mr. Bergeron, do you recall giving a deposition to me  
9 in September of 2020?

10 A Yeah.

11 Q And do you recall telling me in that deposition that  
12 you fully expected that in June 2017, CC+I would pay a  
13 large amount of bonuses?

14 A Yeah. I guess it's a technicality. Is it bonuses or  
15 dividend, yes.

16 Q In the deposition you said "bonuses," right?

17 A Yeah. I guess.

18 Q And you fully expected that because the owners were  
19 supposed to take out all of the cash of the business before  
20 selling to Decide4Action, true?

21 A Yes.

22 Q And in June 2017 and thereafter, until you signed the  
23 stock purchase agreement in October, you had no legal  
24 obligation to purchase the stock of CC+I, did you?

25 A I am not sure because I had signed. I guess not.



1 Q You could have backed out at any time, right?

2 A For a valid reason, yes.

3 Q In fact, the stock purchase agreement was not signed  
4 until October 13, 2017, right?

5 A Yeah. Or '16.

6 Q So before then you could have backed out at any time.

7 A For a valid reason, yes.

8 Q There wasn't a limitation, a valid reason. You could  
9 have pulled the plug on your -- of your own discretion  
10 anytime before October 2017, right?

11 A I'm not sure that I know the answer to that.

12 Q Well, in your deposition, didn't you tell me you could  
13 have backed out at any time?

14 A Because I'm not sure if it's a legal question, what  
15 would have happened if I would have backed out because --  
16 without reason. I don't -- I'm not sure -- I'm not sure if  
17 I'm qualified. I think I could have, but I'm not sure.

18 Q Mr. Bergeron, do you recall me asking you in your  
19 deposition that you were not required to close, you had no  
20 legal obligation to purchase the stock, did you, and you  
21 said "no," correct?

22 A Yeah.

23 Q And do you recall me saying you could have backed out  
24 anytime, and you said, "I could have"?

25 A I think I could have. I just said I'm not sure.

1 Q All right. Let's talk about the claim that you made  
2 to UCB. You say that when Mr. Sibley gave you these  
3 documents that specified the employee bonuses that were  
4 paid in November of 2017, you knew it was a big deal,  
5 right?

6 A Yeah.

7 Q Now, look at what we marked as Plaintiff's Exhibit  
8 Number 10. That's the claim that you had your lawyers send  
9 to Sharon Whitney at UCB against the escrow, right?

10 A You use the word "claim." I say -- I think I said all  
11 along that's a letter that we sent to UCB. Is that the  
12 claim or not? I -- I don't think I'm qualified to say if  
13 it is or not.

14 Q Well, the purpose of having your lawyers send this  
15 letter was to assert a claim against the \$440,000 escrow at  
16 UCB, right?

17 A The purpose was to held the escrow money.

18 Q Was to what?

19 A To hold the escrow money until the dispute was  
20 resolved.

21 Q Now, this letter was sent September of 2018. That  
22 would have been ten months after Mr. Sibley gave you these  
23 documents that you testified you knew was a big deal.

24 A Yeah. We had many discussion in those ten months.

25 Q Now, you claim in this document on page 2 that it was

1 a breach of the stock purchase agreement for Mr. Sibley not  
2 to disclose nonowner bonuses, correct?

3 A Yes.

4 Q But those statements weren't true because the sellers  
5 did disclose those bonuses to you, didn't they?

6 A No, they did not.

7 Q Well, look at Plaintiff's Exhibit 8, the last page.  
8 Item 3, it says, "Target." That's CC+I, correct?

9 A Yes.

10 Q "Target paid a fiscal year-end bonus," correct?

11 A Yes.

12 Q And that was an exception to the representations and  
13 warranties that the company had been operated in the  
14 ordinary course of business, correct?

15 A Perhaps.

16 Q Not perhaps. It was. It said that -- that section  
17 says, "Except for on Schedule 4(i), the company has  
18 operated in the ordinary course of business," right?

19 A Can you come again?

20 Q We can just look at it if you can't acknowledge it.  
21 Look on page 6 of the stock purchase agreement. And I'll  
22 hand you up a paper copy. Here you go. Look at the  
23 bottom, Subsection I. It says -- it begins, "Except as set  
24 forth in Section 4(i) of the disclosure schedule, since  
25 May 17, 2017, there has not been any material adverse

1 change." The next page, "Target has conducted its business  
2 in the ordinary course of business."

3 A Yes.

4 Q That disclosure schedule was an exception to operating  
5 in the ordinary course of business, right?

6 A It seems you're correct.

7 Q Yes. Look at the last page again, and -- the last  
8 page of the stock purchase agreement.

9 A The last ---

10 Q Number 3.

11 A Yes.

12 Q So except as set forth here, it's operating in the  
13 ordinary course of business, and the exception is that  
14 target paid a fiscal year-end bonus, right?

15 A Yes.

16 Q And subsequently paid special bonuses to employees on  
17 three occasions, right?

18 A Employee are owners and nonowners, employees.

19 Q And you say it's important to make the distinction  
20 between owner employees and nonowner employees, but you  
21 didn't request any further detail on this, did you?

22 A I thought I had the details because they send me the  
23 spreadsheet that told me the details of the bonus. So I  
24 didn't request any additional details over and above what  
25 they already provided. I did request the detail, and I got

1 the spreadsheet that you presented. And to me that was  
2 sufficient.

3 Q Now, you thought, based on the stock purchase  
4 agreement, that the owners would only be paying bonuses to  
5 themselves, right?

6 A I thought that there was three bonuses totaling  
7 \$35,000 to nonowners and that they would take the cash out  
8 either as bonus or dividends. I didn't specify how they  
9 were to do that.

10 Q Right. And the requirement as you see it of the stock  
11 purchase agreement not to pay bonuses to nonowner employees  
12 was an obligation that came into existence in October of  
13 2017, right?

14 A No. It came into existence when we got the LOI.

15 Q All right. Let's look at the LOI then. Mr. Puriefoy  
16 -- and that's Plaintiff's Exhibit Number 1. Look at  
17 page 4, Section 5.

18 MR. ENGLISH: Enlarge the first three bullets, please.

19 BY MR. ENGLISH:

20 Q Mr. Puriefoy asked you about the first two, but look  
21 at the third bullet point. That says that the buyer and  
22 seller have 90 days to agree on the SPA, and if within that  
23 period the SPA is not essentially agreed, then this LOI  
24 shall be null and void, right?

25 A Yeah.

1 Q And that 90-day period expired on June 8, 2017, didn't  
2 it?

3 A Not true. There was two extension.

4 Q According to you.

5 A No. We have -- we have it signed by -- I have those  
6 documents. I don't understand why you are trying to make  
7 it null and void, because you have those document signed by  
8 all the shareholders. You have all of this.

9 Q You're talking about extension of the due  
10 diligence ---

11 A No, no, no. Extending of the LOI.

12 Q Let me finish. You're talking about the extension of  
13 the due diligence period which continued on. You continued  
14 to receive documents up until the time the stock purchase  
15 agreement was signed, right?

16 A I'm not sure that I understand what you're -- you're  
17 trying to make me say.

18 Q My point is, you continued to receive due diligence  
19 documents up until October 2017 when the stock purchase  
20 agreement was signed, correct?

21 A Yes.

22 Q Including you got tax returns for the year ended  
23 June 30, 2017, before you closed on this sale, right?

24 A Yes.

25 Q Now, going back to your letter to UCB, and what you

1 just told the jury here is you claim that three critical  
2 employees, Mr. Herrmann, Mr. Taylor, and Mr. Pavatte, left  
3 because you didn't pay them bonuses in 2018, right?

4 A I think it was a big contributing factor. And I  
5 cannot say what they told me because it would be hearsay.  
6 But, yes, I believe it was a big portion of it.

7 Q And you didn't hire anybody specific to replace  
8 Mr. Herrmann after he left, did you?

9 A I -- I hired the same amount of employee. We hired  
10 three employee to replace those three.

11 Q Mr. Bergeron, do you recall telling me in your  
12 deposition you did not hire anybody specific to replace  
13 Mr. Herrmann after he left?

14 A What I recall saying is that in coding, we don't hire  
15 people to do somebody else's job. We have a job to do, and  
16 we hire the number of people to do that job. So it's not  
17 like you're replacing one person by another. It's not like  
18 a machine operator. That's what I said.

19 Q And you also said that Mr. Herrmann was a very junior  
20 programmer and wasn't capable of writing code whatsoever.

21 A That's correct, yes.

22 Q So he wasn't capable of doing the job you needed him  
23 to do.

24 A That's correct.

25 Q And yet you just told the jury he was crucial?

1       A     I said he was crucial when I bought the company at the  
2       time. And when -- if you look into what I said,  
3       Mr. Puriefoy asked me at the time -- and I specifically  
4       answered it, is it at the time that I bought the company.  
5       Yes, at the time I bought the company, I didn't knew those  
6       people. At that time, they were crucial. I only found  
7       out, I say, six to eight months later what they were about,  
8       that they were not able to do the job.

9             At the time that I bought the company, of course they  
10       were crucial. But now you're trying to say that I knew  
11       that all along. I didn't. I found out after I bought the  
12       company that they were no good. It's not like I knew that  
13       they -- the day that I bought the company that they were no  
14       good. I knew that after.

15       Q     So you're saying that they were crucial in the first  
16       months after you bought the company. And they worked with  
17       you for a year, right?

18             MR. PURIEFOY: Objection. Mischaracterization of the  
19       evidence, Your Honor. That's not what he just testified  
20       to.

21             THE COURT: Rephrase the question.

22       BY MR. ENGLISH:

23       Q     All right. You're saying that you thought these  
24       employees were crucial when you first bought the company?

25       A     I was told they were.



1 Q Okay. And these employees worked with you for a whole  
2 year, right?

3 A No. Well, Nathan worked, what, October of 2017 up to  
4 June, so it was like eight months. That's what I just  
5 said, six to eight months.

6 Q All right. So these employees continued to work with  
7 you after you bought the company, and during the time they  
8 worked for you, you learned they weren't really crucial,  
9 correct?

10 A Yeah.

11 Q And, in fact, you don't know why the employees left,  
12 do you?

13 A They told me many things. They said a lot of things  
14 before and after. It's hearsay. I -- my opinion has never  
15 changed. My opinion is that those people were supposed to  
16 be customer code programmer, and they were not able to do  
17 the job that they were supposed to do. And normally, when  
18 you try to get somebody to do the job that they're not  
19 capable to do, it end up that they will leave or you have  
20 to fire them. In this case, I tried to work with them for  
21 them to learn, but they ended up leaving, in my opinion,  
22 because they were not able to do the job they were supposed  
23 to do. I might be wrong.

24 Q All right. Look at Plaintiff's Exhibit Number 11.  
25 This is my response to your letter -- or your attorney's

1 letter to UCB. Look at the fourth page. You understand  
2 that these employees gave sworn affidavits saying they did  
3 not leave because you failed to give them a bonus?

4 A I'm also aware that Mr. Pavatte was contacted by  
5 Mr. Sibley and tricked into the -- my life and my son.

6 MR. PURIEFOY: Objection, Your Honor. I need to  
7 confirm, was this affidavit part of one of the exhibits  
8 that we agreed to? Because I ---

9 MR. ENGLISH: Yes, yes. This has been in.

10 THE COURT: This is number what?

11 MR. ENGLISH: 11. It's been an exhibit to the  
12 depositions, it was sent to UCB, it was given to defense  
13 counsel, and we've agreed to before trial.

14 MS. THOMASON: This affidavit was not.

15 MR. PURIEFOY: Your Honor, I beg the Court's  
16 indulgence.

17 THE COURT: All right.

18 MR. PURIEFOY: We see it, Your Honor.

19 THE COURT: You may proceed.

20 BY MR. ENGLISH:

21 Q My question for you, Mr. Bergeron, is, isn't it true  
22 that these employees gave sworn statements that were sent  
23 to UCB saying they did not leave you because you failed to  
24 pay them a bonus?

25 A They did -- they did an affidavit of that.

1 Q So Decide4Action's position is that if the selling  
2 shareholders had paid out all the cash to themselves  
3 instead of paying some of that cash, that three hundred  
4 plus thousand dollars as bonuses to the nonowner employees,  
5 Decide4Action would have no claim, correct?

6 A Correct.

7 Q And if the jury finds that the selling shareholders  
8 disclosed those bonuses to you adequately in the stock  
9 purchase agreement or before, Decide4Action would have no  
10 complaint about the escrow going to the selling  
11 shareholders, right?

12 A Are you asking me what the jury or the judge should  
13 do?

14 Q I'm just trying to understand your position.

15 A My position is that the bonus should have been  
16 disclosed, and because they were not, they should not have  
17 been given.

18 Q But if they were disclosed, then you would have no  
19 complaint.

20 A Yeah.

21 Q You also talked about that you considered this cash to  
22 be an asset of the company, but it was an asset that was  
23 supposed to be paid out before Decide4Action acquired the  
24 stock, right?

25 A Yes.

1 Q Now, you also testified about the language in the  
2 bonus letters that referred to the hope for a repeat  
3 performance in the following year, correct?

4 A Yes. I actually read the document.

5 Q And that was not a commitment or an obligation on  
6 Decide4Action's part to pay the same bonuses in 2018 that  
7 were paid in 2017, was it?

8 A I believe it was an expectation.

9 Q Well, it wasn't a contract, was it?

10 MR. PURIEFOY: Objection, Your Honor.

11 THE WITNESS: I don't know.

12 THE COURT: Hold on. Let me hear the objection.

13 MR. PURIEFOY: Your Honor, this is beyond this  
14 layperson's ability to testify to. He can testify what he  
15 has personal knowledge, but to ask him the legal question  
16 of what is a contract goes beyond what he can testify to as  
17 a lay individual.

18 THE COURT: And he can answer if he knows.

19 THE WITNESS: Well, I believe that if you send  
20 something to an employee as part of HR, it become part of  
21 what you told them. So in HR we always pay attention to  
22 not say or write anything that create that. I believe it  
23 could be seen as a contract. Maybe I'm wrong, but I think  
24 it is a contract.

25 BY MR. ENGLISH:

1 Q So let's look at the stock purchase agreement,  
2 Plaintiff's Exhibit 8, page 8. Let's enlarge Number XVII  
3 that you testified earlier, Mr. Bergeron. It says,  
4 "Target, or CCI, has not adopted, amended, et cetera, any  
5 bonus, profit sharing, incentive, severance or other plan,  
6 contract or commitment." You've got no evidence that CC+I  
7 gave these employees a contract, a plan, contract or  
8 commitment to pay the bonus in the future, right?

9 A But that's not what this says. It doesn't say in the  
10 future. It says between May 17, 2017, and October of '17.  
11 Yes, they did just that. It didn't say about the future.  
12 It says in the contract, they did exactly what they were  
13 not supposed to do between those two days.

14 Q You think a one-time bonus is a plan, contract or  
15 commitment?

16 A I never said that. I said that this clause tells CC+I  
17 that they cannot modify the bonus between May 17 and  
18 October 16. I just said that. I didn't say what you just  
19 said. You're just adding to my word.

20 Q Mr. Bergeron, didn't you tell me in your deposition  
21 that you had no way to know or prove that that bonus in  
22 2017 was part of a plan, contract or commitment to pay  
23 bonuses in the future?

24 A At what time?

25 Q We're talking about the bonuses that were paid in ---

1 A I know. But you asked me a question. I had no way to  
2 know. Sometime you know something that you learn later.  
3 You ask a question that I had no way to know if it was plan  
4 of something for the long term. At what time that I didn't  
5 possess that knowledge?

6 Q And you did not pay those same bonuses in 2018, did  
7 you?

8 A No, I did not.

9 Q And none of these employees sued you, did they?

10 A They threatened to sue.

11 Q None of these employees sued you for not paying them  
12 the same bonus they got in 2017.

13 A No.

14 Q And, in fact, in the sworn affidavits, they said they  
15 weren't even expecting them, right?

16 A In the sworn affidavit, yes. In other communication,  
17 they said they were.

18 Am I allowed to add something?

19 MR. ENGLISH: No. Your attorney can ask you any other  
20 questions he wants to ask you.

21 I've got no further questions for you.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. PURIEFOY:

25 Q Mr. Bergeron, if we could go back to what was marked

1 as Plaintiff's Exhibit 8. Mr. Bergeron, if you look at  
2 page 51 of the stock purchase agreement, this is  
3 Disclosure 4(i) that Mr. English was just asking you about?

4 A Yes.

5 Q Can you see that? He specifically asked you about  
6 Paragraph 3?

7 A Yes.

8 Q Mr. Bergeron, how is "employee" defined under  
9 Schedule 4(i) disclosure?

10 A Employee is not defined.

11 Q And as you sit here today, do you understand that CC+I  
12 had both owner and nonowner employees?

13 A Yes.

14 Q And based on the plain reading of this disclosure, can  
15 you tell who bonuses were paid to, either owner or nonowner  
16 employees?

17 A I cannot.

18 Q Okay. And Mr. English asked you during his  
19 cross-examination about the ordinary course of business.  
20 Do you recall the testimony of Mr. Sibley where he  
21 indicated that the reason why he did not feel as though he  
22 had to disclose the bonuses was because this was a payment  
23 made in the ordinary course of business?

24 A Yes. I remember.

25 Q And do you agree that the payment was made within the

1 ordinary course of business?

2 A No, I do not.

3 Q And did Mr. Sibley ever disclose the payment of these  
4 bonuses to you?

5 A He never did.

6 Q Mr. English asked you about the stock purchase  
7 agreement, specifically on page 17, I believe,  
8 Subsection C -- excuse me, page 18 -- which is the cash.  
9 Mr. English expressly asked you whether the cash was an  
10 asset. Do you recall that?

11 A Yes.

12 Q And you indicated that it was an asset?

13 A Yes.

14 Q And do you recall Mr. English asking you whether or  
15 not the cash was to be paid out to the shareholders?

16 A Yes.

17 Q Okay. Was all of the cash, the asset, paid out to  
18 shareholders?

19 A No, it was not.

20 Q Was there a portion of it that was paid out to  
21 nonowners?

22 A Yes.

23 Q Just a few more. If you could go to -- well,  
24 Mr. English asked you whether or not the bonus letters  
25 constituted some plan or commitment. Do you recall that?



1 A Yes.

2 Q Okay. Do you believe that, in indicating that there  
3 would be a repeat payment, that that rises to the level of  
4 some commitment?

5 A I think it does.

6 Q Okay. And as you sit here today, do you believe that  
7 those employees expected a bonus in that amount?

8 A I know they did expect the bonus. The -- the language  
9 of that letter say if we repeat that same kind of good  
10 year. Of course, the year after was a bad year because  
11 they took all the money out. So they still expected the  
12 bonus, probably less, but it created a commitment. Was  
13 that a contract? I have no legal -- I'm not good enough to  
14 say it was a contract, but it was for sure an expectation  
15 and a commitment.

16 Q And one final question, Mr. Bergeron. Had the owners  
17 not paid any cash of CC+I out to themselves, who would that  
18 cash had gone to under the stock purchase agreement?

19 A I'm not sure that I understand.

20 Q So had any cash been left in CC+I at the time of  
21 closing, had the owners failed to pull out cash to pay  
22 themselves, who would that cash have gone to?

23 A It would have stayed in the company.

24 Q That you ultimately acquired?

25 A Yes.

1 MR. PURIEFOY: No further questions.

2 THE COURT: Thank you. You may step down.

3 MR. PURIEFOY: Your Honor, may we be heard outside the  
4 presence of the jury for just a moment?

5 THE COURT: Okay. Ladies and gentlemen, I'm going to  
6 send you back to your room. Don't discuss the case and  
7 we'll bring you out as soon as we can.

8 (WHEREUPON, the jury exits the courtroom at 4:11 p.m.)

9 MR. PURIEFOY: Your Honor, I apologize, but that last  
10 line of questioning cross-examination makes Justin Pavatte  
11 -- we have to have him here.

12 THE COURT: I mean, why don't we ---

13 MR. PURIEFOY: I don't -- I'm not sure. I've never  
14 dealt with someone not showing up.

15 THE COURT: I mean, we can send out the sheriff to get  
16 him.

17 MR. PURIEFOY: We would be fine with that. It would  
18 not be a very long ---

19 THE COURT: Well, I mean, do y'all want to try to call  
20 him and tell him the sheriff's coming?

21 MS. THOMASON: That will probably be good.

22 THE COURT: Judge Patterson did this one time with a  
23 doctor in surgery. Yeah. He called, made him come. Got  
24 him in the middle of surgery.

25 UNIDENTIFIED: From Charleston.

1           THE COURT: I don't remember where it was. But, yeah,  
2 it was quite an ordeal.

3           Yeah. Why don't y'all try to touch base with him.

4           MR. PURIEFOY: I apologize, Your Honor.

5           THE COURT: That's fine. And if y'all -- if y'all  
6 know him, you may want to call him too. I don't know if  
7 y'all knew him or not.

8           (WHEREUPON, a recess is taken at 4:15 p.m.; the jury  
9 entered the courtroom at 4:32 p.m.)

10          THE COURT: You know, I realize if I was more  
11 thoughtful, I could have just said y'all just stand right  
12 there for a minute.

13          I'm sorry. We've got a matter that we've got to take  
14 up before we can continue with additional witnesses, so  
15 we're going to break until 9:30 in the morning. Does 9:30  
16 work for y'all? All right. And we're going to be ready to  
17 go right at 9:30.

18          And I'm just going to kind of warn you. Let me tell  
19 you a little bit about tomorrow, what's going to happen  
20 just so you can plan accordingly. What's going to happen  
21 is we're going to have some additional testimony. And  
22 after one testimony, we're going to have a little break.  
23 And then we're going to have additional testimony possibly,  
24 then we may have a longer break while we get all the jury  
25 charge and all that stuff together. So it may seem really

1 disruptive tomorrow, but I can promise you, during all that  
2 time, we're frantically working at getting the case so that  
3 it can be sent to you. So I'm just kind of letting you  
4 know you may have a little bit longer break.

5 And we can give you -- we may actually can let you,  
6 you know, not just stay in that courtroom. They can let  
7 you go out for a little bit, maybe do some shopping or  
8 something. No. But anyway, I'm just kind of letting you  
9 know so you can plan accordingly.

10 Otherwise, remember my four rules: do not discuss the  
11 case; do not do any type of research; do not pay any  
12 attention to any media coverage; and let the bailiff know  
13 if anybody contacts you other than the clerk's office.  
14 Other than that, y'all have a good evening and we'll see  
15 you in the morning.

16 (WHEREUPON, the jury exits the courtroom at 4:34 p.m.;

17 Defendant's Exhibit Number 2 was marked for  
18 identification.)

19 THE COURT: And I'll look at your jury charges now  
20 that you've put them up. And y'all send me whatever, yeah,  
21 because I'm going to need to look at them probably in the  
22 morning.

23 MR. ENGLISH: I've got a verdict form, assuming  
24 everything's going back to the jury. Do you want to look  
25 at that?

1 THE COURT: How about emailing those to me.

2 MR. ENGLISH: Yeah, sure.

3 THE COURT: Make sure it's pgravelyj.

4 MR. ENGLISH: Yes.

5 THE COURT: Because if you look on the court system,  
6 the email they give you is actually my secretary's.

7 MR. ENGLISH: Okay. Right.

8 THE COURT: Make sure you put the pgravelyj. Just,  
9 yeah, email me that. That'll be good.

10 MR. ENGLISH: And do you want the full version of the  
11 verdict form or do you want to wait on that?

12 THE COURT: Let's wait on that.

13 MR. ENGLISH: Okay. So here's the -- here are our  
14 requests to charge. They're pretty vanilla. I will email  
15 these to you.

16 THE COURT: Yeah. That way it's easy for me to cut  
17 and paste.

18 MR. ENGLISH: Not that there will be anything to  
19 change.

20 THE COURT: The format, if nothing else.

21 (WHEREUPON, proceedings recessed at 4:37 p.m.)  
22  
23  
24  
25

1                                    WEDNESDAY, JULY 28, 2021

2                    (WHEREUPON, proceedings reconvened at 9:23 a.m.)

3            THE COURT: Did you get your witness?

4            MR. PURIEFOY: We didn't, Your Honor. We had three  
5 individuals go out to try and serve him at three different  
6 locations, and we just couldn't get him.

7            THE COURT: How about request to charge?

8            MR. PURIEFOY: We are finalizing them right now.  
9 They'll be sent to us momentarily.

10           THE COURT: Do y'all have any additional witnesses or  
11 evidence?

12           MR. PURIEFOY: We don't.

13           But before we close our case in chief, we would like  
14 to make a motion to reconsider the Court's ruling on the  
15 motion in limine just on a very particular matter. And to  
16 the extent that the Court is inclined to deny that motion  
17 to reconsider, we would ask for permission to make a  
18 proffer of evidence for appeal.

19           THE COURT: All right. Mr. English?

20           MR. ENGLISH: Well, I think Your Honor has ruled and I  
21 don't know that there are grounds for reconsideration at  
22 this point.

23           THE COURT: Right. I mean, I agree.

24           And, again, you know, I guess maybe to protect  
25 yourself, I think a proffer, I don't have a problem with a

1 proffer. How long do you think it will be?

2 MR. PURIEFOY: It's going to be an attorney proffer,  
3 and it's just going to be some brief readings from the  
4 deposition that's going to demonstrate what Mr. Bergeron  
5 would have testified to about damages had he had an  
6 opportunity.

7 THE COURT: All right.

8 MR. PURIEFOY: So if we could just have one moment,  
9 Your Honor.

10 THE COURT: Yeah. That would be good.

11 (Pause in proceedings.)

12 MR. PURIEFOY: Your Honor, before we proceed to the  
13 proffer, may I just get a clarification on the Court's  
14 ruling on the motion in limine as it relates to evidence  
15 that's allowed to be presented to the jury?

16 THE COURT: I mean, my motion in limine was that you  
17 would not be able to present any damages.

18 MR. PURIEFOY: Correct. And, I guess, the motion to  
19 reconsider was to address that issue. But to the extent  
20 that we're going to be moving into closing arguments, my  
21 question for clarification purposes, are we allowed to make  
22 reference to documents that have already been admitted into  
23 evidence? Because what has been admitted already was the  
24 spreadsheet that breaks out what Mr. Bergeron ---

25 THE COURT: Right. And I think that goes to your

1 defenses even though -- I mean, without any damages, of  
2 course, I don't think you can go forward on any of your  
3 counterclaims, you know. And that's something that will be  
4 addressed in a minute. But, you know, any of the figures,  
5 I think that testimony goes towards your defenses, though.  
6 So I don't -- I mean, those are into evidence. I don't see  
7 any reason why you wouldn't be able to refer to them.

8 MR. PURIEFOY: So we're not being ---

9 THE COURT: Well, I guess we haven't gotten to that  
10 point yet.

11 MR. PURIEFOY: Yes, sir.

12 MR. ENGLISH: Your Honor, and on the proffer, maybe  
13 what we ought to do is just introduce it. If it's from the  
14 deposition of Mr. Bergeron, just introduce the deposition  
15 of Mr. Bergeron as a court exhibit. I know Your Honor  
16 referred to portions of it, and if it's a court exhibit,  
17 then it would be part of the record that can be considered.

18 MR. PURIEFOY: Well, Your Honor, my only problem with  
19 that is the purpose of this proffer is not to state that  
20 everything that Mr. Bergeron represented in his deposition  
21 would have been submitted for purposes of trial.

22 THE COURT: I'll let you do whatever you feel is  
23 appropriate.

24 (Pause in proceedings.)

25 THE COURT: Mr. English, I believe you have -- are you



1 going to have a rebuttal witness?

2 MR. ENGLISH: Yes, sir.

3 THE COURT: All right. Tell the jury that it's going  
4 to probably be about 30 minutes. We've got some things we  
5 need to go over. Just so they won't be wondering where the  
6 next . . .

7 Do you care -- I mean, you don't need to rest in front  
8 of the jury, do you?

9 MR. PURIEFOY: I don't, Your Honor.

10 THE COURT: Okay. I've never seen that that's a  
11 requirement. I know a lot of people are -- they don't  
12 think it's -- some people really like to be able to do  
13 that.

14 (Pause in proceedings.)

15 MR. PURIEFOY: All right. Your Honor, it's just a few  
16 that I'd like to read.

17 THE COURT: And you want to, I guess, just publish.  
18 You want to also put those portions in the record as an  
19 exhibit? I guess if you publish them, that will be fine.

20 MR. PURIEFOY: Yeah. If we choose to publish them,  
21 this is just for appellate purposes.

22 THE COURT: Yeah. For proffering. Okay.

23 MR. PURIEFOY: So, Your Honor, for purposes of the  
24 defendant's proffer of evidence, we would like to, of  
25 course, present to the Court what evidence would have been

1 presented had Mr. Bergeron been permitted to testify about  
2 either special or actual damages during the course of this  
3 trial. Specifically, there was a deposition of  
4 Mr. Bergeron that was taken by Mr. Sibley -- or, excuse me  
5 -- by Mr. English on September 29th of 2020. Reading from  
6 page 37 beginning at Line 12, Mr. Bergeron would have  
7 testified during the course of the trial, "It was my  
8 impression that four point four million dollars was my gut  
9 feeling the best valuation. You asked me if you thought  
10 you were buying. I thought I was buying it at a fair  
11 price. The valuation is used as a method that experts  
12 use."

13 He then goes on to state that he thought the company  
14 was making a profit, and based on those things -- the  
15 company that I thought was making a profit and was [sic]  
16 based things on the profit it was making, it was making  
17 less.

18 We then have a line of questioning by Mr. English  
19 that, of course, Mr. Bergeron would have been able to  
20 testify about where the question was, "Then it looks like  
21 you divided the purchase price of four point four million  
22 dollars by that EBITDA and got an EBITDA multiple of three  
23 point seven five; is that right?"

24 "No," was Mr. Bergeron's response.

25 The question, "Where did you get the multiple?"

1           The answer, "That's what we had agreed on before --  
2           the very second meeting we had, the seller represented  
3           EBITDA was one million one hundred seventy-three. For type  
4           and size of company that we had, we agreed it was somewhere  
5           between three point five and four by EBITDA. That's how  
6           the purchase price was calculated. The three point seven  
7           five is not coming from the purchase price. The purchase  
8           price is coming from the multiple."

9           Again, Mr. English asked, "But regardless, if you  
10          divided the purchase price of four point four million  
11          dollars by EBITDA number, you believe one point one seven  
12          three million, that gives you an EBITDA multiple of three  
13          point seven five, right?"

14          "It does, right."

15          Mr. English then asked, "And then you subtracted the  
16          twenty-five hundred dollar salary and these bonuses along  
17          with payroll taxes from the EBITDA to come up from the one  
18          point one seven three to come up with a new EBITDA number;  
19          is that right?"

20          "With a potential number, yeah."

21          "That's what you called actual EBITDA of eight hundred  
22          and twenty-two thousand; is that right?"

23          "Yeah."

24          "Then you multiplied that earnings number times the  
25          three point seven five multiple and came up with a claim

1 for the reduction of the company value of one point three  
2 million dollars; is that right?"

3 Each one of those instances, of course, Mr. Bergeron  
4 would have been able to discuss how he personally viewed  
5 the value of the company and how he believed he was  
6 damaged, either special damages or actual damages.

7 Mr. Bergeron then states on page 105 of his  
8 deposition, "I replaced all the people with -- all those  
9 people with people that could actually code. We have  
10 changed the name of the company to modernize it. The  
11 product was obsolete. We spent a lot of money to go from a  
12 Windows base system to a web-based system."

13 When asked about -- by Mr. English about the employees  
14 that have left, Mr. Bergeron responded on  
15 page 107 of his deposition, "Because all of these things we  
16 had to do. We had to hire more people to compensate. We  
17 had to bring a better location. We had to improve the  
18 health plan and the employees. Altogether it was an  
19 increase in cost."

20 So, Your Honor, for purposes of the proffer of  
21 evidence, that's all we have.

22 THE COURT: All right. Anything in response to that?

23 MR. ENGLISH: Yes, Your Honor. It looks like after  
24 Mr. Puriefoy proffered beginning on page 37, he started  
25 reading from page 71, and I would just like the Court's

1 record to include pages 71 through 88 of Mr. Bergeron's  
2 deposition so that the record includes the full context of  
3 those discussions.

4 THE COURT: All right. Do you want to put those in  
5 since you're not -- I mean, do we have that in -- well, the  
6 deposition, has that part already been published?

7 MR. ENGLISH: No. It has not been published to the  
8 jury, or not all of it. I think I handed up a copy that  
9 Your Honor reviewed when you made your ruling on the motion  
10 in limine, and I would just like to make sure that we can  
11 pull it out as a court's exhibit, but just that those pages  
12 71 to 88 be included in the record.

13 MR. PURIEFOY: And, of course, Your Honor, for the  
14 record, we have not read the entirety of Mr. Bergeron's  
15 deposition as a proffer of evidence. However, the reason  
16 why no evidence or counter-designations were submitted to  
17 Mr. English's designation were because, of course, it was  
18 our intent to have Mr. Bergeron testify at trial about  
19 those damages.

20 THE COURT: All right. And I think as for a proffer,  
21 I guess he has the -- I'm going to give you this deposition  
22 back then. You said 71 through 88?

23 MR. ENGLISH: Yes.

24 THE COURT: I'm going to give you this, the deposition  
25 you provided to me and you can do . . .

1 MR. ENGLISH: And I could pull the pages out ---

2 THE COURT: Yeah.

3 MR. ENGLISH: --- and mark it as a court's exhibit?

4 THE COURT: Right.

5 MR. ENGLISH: Okay.

6 (WHEREUPON, Court's Exhibit Number 2 was marked for  
7 identification.)

8 THE COURT: All right. Anything else from the  
9 defense?

10 MR. PURIEFOY: Nothing, Your Honor.

11 THE COURT: All right. So the defense closes at this  
12 time.

13 You had something else?

14 MS. THOMASON: Your Honor, is it the Court's ruling  
15 you won't even allow us to submit our motion to reconsider?

16 THE COURT: I mean -- no. I mean, my ruling was  
17 denied, but I'll be glad to look at it.

18 Have you given a copy to Mr. English?

19 (Pause in proceedings.)

20 THE COURT: You would cite Balloon Plantation. You  
21 know that was my case. That was a nightmare that was not  
22 of my doings. You can't tell that from the opinion.

23 (Pause in proceedings.)

24 THE COURT: All right. I've reviewed your motion to  
25 reconsider, and as I indicated earlier, I'm going to deny

1       that and go forward on this.

2             All right. With that being said, does the defendant  
3 rest?

4             MS. THOMASON: Yes, Your Honor.

5             THE COURT: All right. Okay. I'll hear from the  
6 plaintiff now.

7             MR. ENGLISH: Yes, Your Honor. At this time,  
8 plaintiffs and third-party defendant would move for a  
9 directed verdict.

10            THE COURT: And I'm going to tell you, I'm going to  
11 review -- I want to hear all motions before I make a  
12 decision on any of them. All right.

13            MR. ENGLISH: Thank you, Judge.

14            Plaintiff and third-party defendant are moving for a  
15 directed verdict, seven different motions. The first is  
16 the sellers are both entitled to a directed verdict on all  
17 of Decide4Action's counterclaims and third-party claims  
18 because Decide4Action has not satisfied its burden to prove  
19 nonspeculative damages.

20            All causes of action that -- or counterclaims or  
21 third-party claims, which I'm just going to refer to as  
22 counterclaims for simplicity, require damages as an  
23 element. They have not provided any evidence of damages.  
24 Instead they just offered inadequate opinions. And  
25 specifically, the three things that -- and this goes to the

1 substance apart from the whole disclosure issue, these  
2 claims were doomed to fail just as a matter of law.

3 First of all, Mr. Bergeron has admitted in his  
4 deposition that he is not qualified to value the company or  
5 give an opinion on damages, so that's an admission that he  
6 couldn't prove them.

7 Second of all, his -- the methodology he used in what  
8 was attached, that spreadsheet, does not follow the South  
9 Carolina methodology under Santee Oil. That requires  
10 experts to do all of adjusted net asset -- or consider  
11 adjusted net asset market and income or earnings approach.  
12 The Bergeron calculations ignore the first two of those and  
13 they don't really follow an adequate earnings approach.

14 Second, on the damages point, Decide4Action's claim  
15 that the sellers are the proximate cause of any damages to  
16 it are speculative and not reasonably certain. There's  
17 just no evidence that anything, and specifically payment of  
18 these bonuses, caused any damages.

19 And third, the claims for damages are based on things  
20 that are prohibited by the stock purchase agreement.  
21 Specifically, they include claims based on a multiple of  
22 earnings and a diminution in value of the company. And  
23 both of those things are expressly prohibited by Section 8  
24 -- I'm sorry -- Plaintiff's Exhibit 8, Section 8(b), the  
25 stock purchase agreement.



1           So that's the first motion for a directed verdict.

2           THE COURT: All right.

3           MS. THOMASON: Your Honor, defense and counterclaim  
4 defendants actually would ask that you turn this to the  
5 jury, Your Honor. First, we did present evidence of  
6 damages, and it was an inadvertence. And what we have  
7 here, because I am going to speak to the disclosure issue,  
8 is -- is not a discovery war like we have in cases. We've  
9 worked through this. There have been three depositions.  
10 Mr. Bergeron testified at length in his deposition about  
11 how he went through the calculation. Mr. English's entire  
12 case has been based on the fact that it was a multiple and  
13 the methodology used. The spreadsheet that he put in front  
14 of the jury was without limitation, so it's in evidence for  
15 the truth of the matter asserted in it. He then put  
16 deposition designations up from my client. We did not  
17 counter-designate because our client was going to be able  
18 to testify to the rest of that deposition testimony that  
19 clarified it. And so now we have a calculation our client  
20 created in evidence with partial testimony about it, but it  
21 is evidence.

22           In addition, all of the bonus letters went in.

23           There's direct evidence of the payment of money out  
24 and testimony that it would have stayed with the buyer  
25 because it was not paid to the shareholders. We

1       supplemented discovery on the 27th of January on the 8th of  
2       February. We've had countless conversations since then  
3       with Mr. English. It was an advertence. We provided the  
4       documents that supported ours. Did not realize. Caught  
5       totally off guard yesterday. Mr. English can't say he was  
6       prejudiced or his client was prejudiced because they spent  
7       all of this time talking about the methodology. And on top  
8       of that, not even a phone call.

9               The sense of fair play, I also want to say, Your  
10       Honor, that this can't be a rule to show cause because  
11       there's no accompanying affidavit or pleadings, so it has  
12       to be a discovery.

13              THE COURT: But don't you have -- the other issue -- I  
14       think I made my ruling, actually, on two, maybe even three  
15       of the grounds. One is the lack of having an expert that  
16       you need to be able to do this evaluation, and the other  
17       one was that he testified clearly I'm not the one to be  
18       able to testify to my damages. We have to have experts. I  
19       mean, that's what he said in reference to what are my  
20       damages.

21              MS. THOMASON: Your Honor, he also said he had special  
22       knowledge throughout the rest of that. You got part of it,  
23       deposition testimony. He's saying he's not even pretending  
24       to be evaluation, but if he -- he doesn't consider himself  
25       that, but if I can demonstrate through questioning that he

1 has special knowledge through his experience at acquiring  
2 companies.

3 The reports that were referenced, he got the second  
4 one after he had already sent the damages calculation to  
5 Mr. Coburn -- well, to Mr. Sibley and Mr. Coburn. That  
6 damages calculation, the number we had from the very  
7 beginning is the same, but it's his calculation. I could  
8 have questioned him.

9 THE COURT: But if you're going to qualify him as an  
10 expert, isn't that something that you would also have to  
11 disclose to the plaintiff? That even if it's your client,  
12 I mean, you'd have to say my client plans on being an  
13 expert on this.

14 MS. THOMASON: I have -- he did know that that was a  
15 possibility because you can do that at any time. I could  
16 have moved for that if we thought it was expert testimony  
17 that the Court needed. I also have a case, Whisenant v.  
18 James Island, that I can provide to the Court where the  
19 Court in that case said there was enough to take it to the  
20 jury, and the judge actually said you need an expert, you  
21 need this, but where there was proof that he had knowledge  
22 to value what it was to him.

23 Furthermore, you don't have to have a valuation expert  
24 to demonstrate how much money was paid to nonshareholders.  
25 That's actual damages that flow from the natural breach of

1 the agreement that you would expect. We were supposed to  
2 keep it for ourselves or it stays with the buyer. We know  
3 the amount. The letters came in. Mr. English opened the  
4 door to the evidence of damages when he put our damages  
5 calculation up. Now we're being prejudiced by not being  
6 able to produce counter-testimony when he put partial  
7 excerpts from a deposition as designations from our client.  
8 We could have done that same thing had we had any idea this  
9 was going to be an issue. We had him here ready to  
10 testify. The real prejudice here is going to be to him.

11 Not one phone call. It's feigned surprise. I don't  
12 have what I need to come into this court. And, frankly,  
13 it's not fair play. It's not how we practice. I've never  
14 done anything like that ever. Now, you can say shame on me  
15 for not anticipating those kinds of tricks, but we  
16 cooperated throughout this entire process. There was one  
17 motion filed, and we resolved it beforehand and were so  
18 busy producing the documents that were a second part of  
19 that consent order, and then right after that, the day  
20 after, the second production of it we're in conversations  
21 about the term of court. I mean, a lot has happened in  
22 this case.

23 We took Mr. Sibley's deposition. He died suddenly,  
24 tragically, but we don't have him here to cross-examine.  
25 We're stuck with those designations.

1           Another shareholder, Mr. Clark, passed away just last  
2 month or the month before. We don't have him.

3           I mean, a lot has happened. It is an extreme  
4 prejudice. And no prejudice to the plaintiff because they  
5 have made their whole case about our damages methodology.  
6 But to say that we can't even argue nominal damages, we  
7 can't argue actual damages that don't require an expert.  
8 Mr. Bergeron can certainly testify to how much money was  
9 taken, and Mr. Sibley testified to it and Mr. English put  
10 it up in his case. There was no limit as to how he was  
11 going to use it. There's no limiting, there's no request  
12 it be admitted for a limited purpose. So it's in.

13           THE COURT: But, I mean, is the -- let me ask you  
14 this. The fact that these bonuses were paid, I mean, how  
15 can that be related to -- I mean, how can that be converted  
16 to actual damages?

17           MS. THOMASON: Because one thing we know for sure from  
18 all the testimony and the documents is -- and Mr. Sibley's  
19 own testimony, if the bonuses weren't paid out to  
20 shareholders, they stayed with the company and would be the  
21 property of the buyer. That's actual damages. They knew  
22 that. There's testimony on the record already as to that.

23           THE COURT: Is the testimony that the -- is there  
24 division between the bonuses of which went to nonowners and  
25 which went to owners?

1 MS. THOMASON: That's in the record also, Your Honor.

2 THE COURT: Okay.

3 MS. THOMASON: We have testimony with the letters of  
4 what went to the nonowners. They're in evidence. We also  
5 have the spreadsheet that was put in evidence that we  
6 created that lists the exact amount of bonuses paid to  
7 nonowners versus owners.

8 THE COURT: All right. Go ahead.

9 MS. THOMASON: Your Honor, I understand the Court's  
10 ruling, but it's not clear to me if it -- I know it had to  
11 be a discovery sanction, but that is so extreme. Directed  
12 verdict should allow ---

13 THE COURT: As I told you before, it was not just a  
14 discovery ruling.

15 MS. THOMASON: Well, I'm addressing the other  
16 things ---

17 THE COURT: Yeah.

18 MS. THOMASON: --- you said based on that is that he  
19 can testify from firsthand knowledge to what he had. But  
20 what I wanted to just address is the sellers, what has to  
21 be demonstrated is that the breaching party knew that, as a  
22 natural result of their actions, the harmed party would  
23 suffer that amount. They knew that he would have gotten  
24 that money. They knew. They hid it in their reps and  
25 warranties. They expressly excluded Ms. Featherstone from

1       those reps and warranties and then indemnified her for any  
2       damage that might come when he learned of it. They knew at  
3       least the amount of those bonuses. And we've got evidence  
4       that that is the amount that came out of the company that  
5       would have been there for him. That is actual damages.

6               There's also evidence of the intent, the willfulness,  
7       the knowing, and all of that should be allowed to go to the  
8       jury on the actual damages.

9               THE COURT: All right. Mr. English?

10              MR. ENGLISH: Judge, again, on the disclosure issue,  
11       that's already been covered by the motion in limine.

12              But I take offense to the claim that I'm engaged in  
13       some sort of tricks. I wrote them about eight different  
14       times both before and after my motion to compel to please  
15       supplement their answers to interrogatories. They agreed  
16       in an order to do that, and they did not. The reason that  
17       they did not, I suspect, is they're trying to have it both  
18       ways.

19              Your Honor might recall that this \$1.3 million, they  
20       want to -- they know they can't rely on what Mr. Bergeron  
21       submitted to UCB because he's not a valuation expert. He  
22       gave an opinion of the value of the company which is  
23       prohibited by the stock purchase agreement, and he used a  
24       multiple which is prohibited by the stock purchase  
25       agreement. So then what they wanted to do, they want to

1 take these Patton reports -- and Patton & Associates is not  
2 here. They've never been identified as an expert. And  
3 they actually moved in limine to exclude what that Patton &  
4 Associates report said because those reports showed that  
5 the company was worth somewhere between 7.3 and \$6 million  
6 when he paid 4.4 million.

7 So the people who are trying to play cute with the  
8 damage claim is the defendant because they know that those  
9 reports, their own expert reports, hurt them. So instead  
10 of telling me what their damage claims are going to be,  
11 they're withholding that information.

12 And then they want to come in here for the first time  
13 and argue that the bonus, the cash bonuses that went to the  
14 nonowner employees somehow damaged them. Both the letter  
15 of intent that had expired and the stock purchase agreement  
16 were both clear that the cash could be paid. The cash went  
17 to the sellers. It was excluded from the 4.4 million  
18 offer. And it's not damages to them, and they haven't  
19 shown that there's any damages by the fact that the sellers  
20 decided to direct their cash that they would have gotten to  
21 their own employees.

22 So it's not actual damages. It's nothing that's been  
23 -- that's the -- the first time they raised this theory is  
24 once it became clear they weren't going to be able to allow  
25 Mr. Bergeron to testify to some opinion that they want to



1 keep the Patton & Associates report that it's based on out.

2 THE COURT: And I don't get too much in this, and I  
3 will remark that based on -- and, again, this is not  
4 actually before me, but the proffered testimony, your  
5 damages, I'm sure the moment y'all started that we'd have  
6 had an objection. And I'm not sure that I wouldn't have  
7 sustained his objection based on the proffer that you had.  
8 And, again, that's not before me. But, you know, I really  
9 think that without an expert, you really are kind of  
10 jam-dammed.

11 So anyway, let's stick to this. We don't get too much  
12 into the motion.

13 MS. THOMASON: That's okay. But I want to address  
14 denied. The last conversation we supplemented on  
15 February 8th. He emailed us two times in the next couple  
16 of days, and then we started with the trial prep. The fact  
17 that we want to have it both ways, we wanted the valuation  
18 report out because Richard was going to testify from his  
19 personal calculation. They've had that.

20 This is not a new theory either. It's in our pleading  
21 and it's in the spreadsheet, the actual damage from the  
22 bonuses. The second part is his multiple that he wasn't  
23 allowed to testify to.

24 But this is not a new theory. We pled it, we have  
25 included it, he put it in one as an actual, we pled actual

1 all the way through. We've gotten testimony on it as to  
2 the actual. We did not hold it back because we want it  
3 both ways.

4 And, in fact, the \$7 million, it's the same reason  
5 Mr. English didn't want the offering memorandum in. He did  
6 pay 4.4 and 2.5 in cash. I mean, 2.5 came out to them too.  
7 It's about -- that's not even apples to apples. The point  
8 is, we weren't allowed to ask the questions that would  
9 have. So that's fine. Now we have the testimony and the  
10 evidence that's in. The evidence is already in for the  
11 truth of the matter. It has partial testimony about it.

12 But this, we should be allowed to argue to the jury  
13 the damages. I mean, there was so much production. We've  
14 not heard anything about this issue since February. We  
15 didn't even -- but that's okay. Now we have enough  
16 evidence in that the jury could decide the actual amount  
17 that would have gone to Mr. Bergeron, because it can't go  
18 to -- if it doesn't go to the shareholders, it's forfeited  
19 to the company. There's testimony. It's in the stock  
20 purchase. There's testimony from both sides.

21 THE COURT: All right. Let's go to the second portion  
22 of your motion.

23 MR. ENGLISH: All right, Judge. And these are -- will  
24 be additional sustaining grounds to dismiss all of the  
25 counterclaims and third-party claims.

1           The second one is there's no evidence that the stock  
2           purchase agreement was breached. And, again, the payment  
3           of bonuses was not a material adverse change. But even if  
4           it was, it was disclosed by Schedule 4(i), Section 3 of the  
5           stock purchase agreement. So there's just no evidence that  
6           either the payment -- I'll say on that point Mr. Bergeron  
7           admitted that if the payment to the nonowner employees  
8           would not be -- he wouldn't have a claim for that if it was  
9           disclosed, and it was disclosed.

10           MS. THOMASON: So, Your Honor, we believe there's  
11           sufficient, and there is testimony and evidence for the  
12           jury to find that they were not disclosed. They were  
13           buried at best, and they were advertly misleading and  
14           misrepresented. And that testimony came in through  
15           Mr. Bergeron who said if they had been disclosed, it would  
16           have been okay. It was not okay to pay anything over  
17           \$2,000. That came in. Couldn't pay anything out of the  
18           ordinary course over \$2,000.

19           It is definitely a jury question as to whether paying  
20           \$359,000 in bonuses is in the ordinary course or not.  
21           There was a reason. There's testimony as to the reason for  
22           that is to know what you're paying for the employee  
23           salaries. All that testimony is in the record. There is  
24           evidence of a breach. They weren't to pay anything over  
25           \$2,000 except the money out to the shareholders.

1           They also weren't supposed to change employees'  
2           compensation or bonus or incentives. They were not  
3           supposed to change that. They weren't supposed to do  
4           anything that was a material adverse effect on the company,  
5           and that's defined in the contract. And there's testimony  
6           and evidence that they violated that by the very number of  
7           what they spent.

8           THE COURT: Mr. English?

9           MR. ENGLISH: Just in reply to that, again,  
10          Mr. Bergeron admitted if it were disclosed, it wouldn't be  
11          a claim, and it was disclosed.

12          I'll move on to my third motion for a directed  
13          verdict, and this would be an additional sustaining ground  
14          to the damages, and that is third-party defendant Joyce  
15          Featherstone is entitled to a directed verdict because  
16          there's no evidence that she's done anything wrong or that  
17          she's liable. The only evidence is that she was a passive  
18          shareholder. There's no evidence that she breached the  
19          stock purchase agreement. In fact, they acknowledged that  
20          she was excluded from the reps and warranties. There's no  
21          evidence Ms. Featherstone committed a fraudulent act,  
22          committed fraud or made any intentional misrepresentation.  
23          So she is entitled to a directed verdict on the third-party  
24          claims.

25          THE COURT: Ms. Thomason?

1 MS. THOMASON: Your Honor, a moment, please.

2 (Pause in proceedings.)

3 MS. THOMASON: Your Honor, we have no objection to  
4 that. We will dismiss her.

5 THE COURT: All right. You're out. It was that green  
6 dress.

7 All right next one.

8 MR. ENGLISH: But we do want to keep her with us.

9 Your Honor, the next motion for a directed verdict, it  
10 would also be an additional sustaining ground to the  
11 damages motion, and that is the counterclaims include  
12 something called "intentional misrepresentation" as a cause  
13 of action, but we can find no such cause of action under  
14 South Carolina law. We think that's just a restatement of  
15 the fraud claim, and so that -- we don't think there should  
16 be separate charges or anything on the verdict form about  
17 that. It's subsumed in fraud.

18 MS. THOMASON: We haven't charged any differently,  
19 Your Honor.

20 THE COURT: All right. Okay.

21 MR. ENGLISH: Your Honor, the fifth motion for a  
22 directed verdict is also an additional sustaining ground to  
23 the damages motion, and that is the plaintiff is entitled  
24 to a directed verdict on the counterclaim for breach of  
25 contract accompanied by a fraudulent act because there's no

1 evidence of an independent fraudulent act which accompanied  
2 the breach.

3 THE COURT: Ms. Thomson?

4 MS. THOMASON: We believe there is, Your Honor. We  
5 believe the action in intentionally concealing and  
6 presenting the additional P&L's that did not clearly lay  
7 out and disclose the business at the time the SPA was  
8 executed and in presenting the documentation in  
9 anticipation of the execution of the SPA that was not --  
10 that did not disclose.

11 THE COURT: Okay. Mr. English?

12 MR. ENGLISH: Your Honor, I think that just goes to  
13 their claim that the stock purchase agreement was breached  
14 by failure to disclose these nonowner bonuses. It's all  
15 the same thing regardless of the time any failure to  
16 disclose occurred. But as we saw in the stock purchase  
17 agreement, the last page, Schedule 4(i), it did disclose  
18 that they paid employee bonuses.

19 THE COURT: All right. Your next motion?

20 MR. ENGLISH: Next motion is for a directed verdict on  
21 punitive damages, and that is that there's no evidence or  
22 grounds for punitive damages against the plaintiff. First  
23 of all, the stock purchase agreement, and, again, this is  
24 that Section 8(b) on page 21, expressly says, "In no event  
25 shall seller be liable to buyer for any punitive damages."

1 And I think there's a case. The Maybank case holds that  
2 exculpatory clauses like that are enforceable, and so that  
3 would preclude punitive damages.

4 In addition, Decide4Action has not put forth any  
5 evidence sufficient to satisfy the high standard of proof  
6 that you have to have clear and convincing evidence of a  
7 reckless, willful or wanton infringement of the defendant's  
8 rights.

9 THE COURT: Yes, Ms. Thomason.

10 MS. THOMASON: Your Honor, so as to the punitive  
11 damages, we believe that in proving willful intent  
12 intentionally misrepresented, that's the fraud. Once the  
13 jury can find willful intent, I think we're entitled to  
14 punitive damages if the jury so awards.

15 THE COURT: But how do you overcome the language in  
16 the SPA?

17 MS. THOMASON: There's also language in the SPA  
18 exactly on point with fraud takes out the caps.

19 THE COURT: That's in the SPA as well?

20 MS. THOMASON: Yes, it is, Your Honor. And any  
21 postmotions that ---

22 THE COURT: It takes out the cap or does it take out  
23 the ---

24 MS. THOMASON: So there's a cap of 2.5 million and  
25 there's a threshold of 25,000. And so it takes out those

1 caps anticipating anything with fraud. But further, and  
2 there's case law to this, I believe the case that was just  
3 cited goes as to the breach of contract, but not the fraud  
4 itself. But there's case law that if there's fraud and  
5 inducement and so forth, then there's no waiver, there's no  
6 -- I mean, the contract, the provision relating to that.

7 THE COURT: But is this fraud an inducement? I mean,  
8 that's not -- I don't think y'all pled that, have you?

9 MS. THOMASON: Well, in our pleadings, we pled that  
10 the facts in that claim that ---

11 THE COURT: Right. The fraud but not fraud in -- and  
12 I haven't looked at that case, but, I mean, and I don't  
13 know exactly where the caps are, but if the caps -- you  
14 know, if fraud removes the caps, that doesn't necessarily  
15 remove punitive damages, does it?

16 MS. THOMASON: I think it does, Your Honor. I think  
17 that was the intent.

18 THE COURT: Okay. I mean, I don't -- where's the --  
19 do you have the reference to where in the SPA the cap is?  
20 I know I've seen it through -- is it 8(a) maybe?

21 (Pause in proceedings.)

22 MS. THOMASON: I'm sorry, Your Honor. Bear with me  
23 just a minute.

24 (Pause in proceedings.)

25 MS. THOMASON: Your Honor, it's in here. If you'll



1 allow me ---

2 THE COURT: All right. Anything else you want to say  
3 on the ---

4 MS. THOMASON: Your Honor, also, we pled breach of  
5 contract accompanied by a fraudulent act. And the payment  
6 of the bonuses was the breach and the failure to disclose,  
7 we have indicated, was the fraudulent act and the deception  
8 accompanying that. And we believe that if the jury can  
9 find the breach of contract, the fraud gets them to the  
10 punitive under that claim.

11 THE COURT: All right.

12 MR. ENGLISH: Your Honor, on that point, this isn't a  
13 claim of fraud in that there was a factual  
14 misrepresentation. The defendant is claiming that there  
15 was a failure to disclose or an omission, and that any duty  
16 to disclose, that arose only by virtue of the contract. So  
17 they can't both claim rights under the contract and then  
18 disclaim the language from the contract, the exculpatory  
19 clause in the contract. It's all one package. And the  
20 contract says no matter what, we're not -- sellers are not  
21 liable for punitive damages or diminution in value or any  
22 type of multiple.

23 MS. THOMASON: Your Honor, there absolutely is a claim  
24 about a misrepresentation of fact. It's in our pleadings  
25 that way. We presented it in the testimony that way. It

1 is a misrepresentation of fact. And we've alleged that the  
2 fraud in that -- accompanying that breach of contract  
3 entitles us to punitive damages.

4 THE COURT: All right. Next motion.

5 MR. ENGLISH: Your Honor, and then moving to the  
6 plaintiff's claim, plaintiff would move for a directed  
7 verdict on her breach of contract claim. The indemnity  
8 escrow agreement, which is Plaintiff's Exhibit Number 9, at  
9 page 2 in Section 3(d) requires Decide4Action to prove a  
10 pending claim amount in order to recover any amount. And  
11 as Your Honor knows, UCB has this \$443,000 in an escrow  
12 account. Because Decide4Action has not proven any damages,  
13 its pending claim amount is zero, and it cannot be entitled  
14 to this escrow. So the only place for the escrow to go is  
15 to the plaintiff. And for that reason, we'd ask Your Honor  
16 to grant plaintiff judgment as a matter of law on directed  
17 verdict on the breach of contract claim and direct that the  
18 escrow fund be paid to the plaintiff.

19 THE COURT: Let me just ask you this. Were y'all  
20 seeking additional damages? I mean, I know you put  
21 attorneys fees, but did you have any basis for attorneys  
22 fees?

23 MR. ENGLISH: I don't think we've pled for attorney  
24 fees. I don't think the contract provides for attorney  
25 fees.

1           THE COURT: I actually looked at it this morning, so,  
2           hey.

3           MR. ENGLISH: You're right. You're right. But we  
4           have, we do think -- and this is sort of beyond this  
5           motion, but I do think we have also got a cause of action  
6           for breach of contract accompanied by a fraudulent act that  
7           we think should go to the jury.

8           THE COURT: Okay. All right. Your response to that?

9           MS. THOMASON: Yes, Your Honor. Well, and I just want  
10          to add on the claims that we just talked about, all of  
11          those motions are to be viewed in the light most favorable  
12          to the nonmoving party. We'd ask and we believe in viewing  
13          all the evidence and testimony in light of the nonmoving  
14          party, it's only appropriate to allow the evidence to speak  
15          for itself and us to argue it to the jury. We ask that you  
16          deny the directed verdict.

17          As to the plaintiff's claim for breach of contract  
18          accompanied by a fraudulent act, they haven't pled the  
19          fraudulent act. They said general dishonesty and a pattern  
20          of behavior, but not one bit of testimony came in as to  
21          that. Not one bit of testimony as to dishonesty.

22          THE COURT: I think his motion just was as to his  
23          breach of contract.

24          MS. THOMASON: Accompanied by a -- I'm sorry.

25          THE COURT: Yeah.

1 MS. THOMASON: Okay. So as to the breach of contract,  
2 the contract said that you cannot pay out to anyone but  
3 shareholders. It was very explicit. And you cannot pay  
4 out anything over \$2,000 without getting the written  
5 expressed permission of the buyer. And there's been  
6 testimony as to the very good reasons for that. And so we  
7 believe that we've demonstrated that they did breach the  
8 contract by paying it out, by material adverse change, and  
9 then failing to disclose, and then not including in their  
10 disclosure schedule and maintaining that until postclosing.

11 The other thing is we have demonstrated that, in  
12 paying out the bonuses, they put the evidence themselves up  
13 of how much was paid out in violation of the terms of the  
14 contract to nonowners, and so there's evidence that it was  
15 paid out to nonowners in the record entered by plaintiff.

16 THE COURT: All right.

17 MR. ENGLISH: Your Honor, the defendant's asking the  
18 Court to rewrite the contract. They argue the contract  
19 says you can only pay cash to the sellers. That's not what  
20 the contract says. The contract says the cash belongs to  
21 the sellers. There is no prohibition in the contract for  
22 the sellers paying out bonuses to nonowner employees. It's  
23 just it's not in there. And, again, because they can't  
24 prove damages, this escrow money can't go to them because  
25 they have no pending claim or their amount is zero.

1           THE COURT: All right. Anything else from the  
2 plaintiff?

3           MR. ENGLISH: No, Your Honor.

4           THE COURT: All right. Any motions from the  
5 defendant?

6           MS. THOMASON: Just in response to that last  
7 statement, Your Honor. That's not what the contract says.  
8 And we're referencing it and have -- the LOI is in  
9 evidence. They continue to say it was expired. There are  
10 two executed copies of it. But that doesn't matter because  
11 in the SPA, they reaffirmed the May 17th date and said  
12 nothing has changed.

13           And there's a reason that it said you can't spend more  
14 than \$2,000 out of the ordinary course without telling us  
15 unless you give it to yourselves which is supposed to be  
16 taken out to them because it altered the amount of money  
17 that would have either remained with the buyer if it wasn't  
18 disclosed to the -- or if it wasn't distributed to the  
19 sellers. But there is evidence and the contract does say  
20 that it can only . . .

21           And there's a reason that it says there's no material  
22 adverse change. "Adverse change" is defined. Can't spend  
23 more than \$2,000 over the ordinary course. I believe the  
24 evidence shows that \$359,000 had never been paid before in  
25 20 years in bonuses. So that can't be in the ordinary

1 course. All that's in the record. So we would ask for  
2 that motion be denied.

3 THE COURT: All right. And then motions on behalf of  
4 the defendant?

5 MR. PURIEFOY: And, Your Honor, we're going to renew  
6 our directed verdict motion on Mr. English's claim for  
7 breach of contract accompanied by a fraudulent act.

8 What the testimony has beared out throughout the  
9 course of this trial ---

10 THE COURT: And I think I never actually ruled on  
11 that, so -- but I'll definitely hear further from you.

12 MR. PURIEFOY: Sure, Your Honor.

13 The plaintiffs in this case have alleged that there  
14 was a breach of contract accompanied by a fraudulent act.  
15 As the Court knows, the breach of the contract itself  
16 cannot constitute a fraud. There must be some independent  
17 basis to allege fraud. The only allegation and testimony  
18 that's come in through the course of this trial is that  
19 Mr. Bergeron filed a claim with United Community Bank. And  
20 filing the claim itself cannot constitute fraud. There  
21 must be some additional act beyond the breach that they've  
22 alleged to constitute or give rise to fraud.

23 There's been absolutely no evidence put in the record  
24 today that any conduct beyond the filing of the claim  
25 itself was fraudulent. In fact, we are here before the

1 Court on day three of a jury trial, and that claim has  
2 still survived. There's not been any motions to dismiss,  
3 motions for summary judgment or otherwise to demonstrate  
4 that that was some frivolous claim. This was filed back in  
5 2019 and it is now mid-2021 and we're trying this case.  
6 There was no fraudulent act, Your Honor, beyond the filing  
7 of the claim itself which was permitted expressly under the  
8 terms of the escrow indemnity agreement.

9 The terms of that contract, Your Honor, indicated that  
10 if Mr. Bergeron, as the buyer, had reason to believe that  
11 the sellers had misrepresented or violated the  
12 representations and warranties contained in the stock  
13 purchase agreement, his only recourse was to file a claim  
14 with United Community Bank to instruct them not to release  
15 those funds. Those funds did not then -- were not then  
16 diverted to Mr. Bergeron. They've sat in trust and they've  
17 not been accessible to Mr. Bergeron.

18 There was no fraudulent conduct. Mr. Bergeron, in  
19 November of 2017, determined that \$359,000 of nonowner  
20 bonuses were paid out. He certainly found that to be in  
21 violation of the express provisions of the letter of intent  
22 which said all cash was to go to shareholders, and then  
23 reaffirmed once again in the stock purchase agreement on  
24 page 17, Section C under "cash" which says with great  
25 specificity that seller shall ensure all target cash be

1 distributed or otherwise paid out to sellers. When he made  
2 the determination and the discovery that cash was paid out  
3 to individuals other than the owners of the business, he  
4 certainly had reasonable grounds to believe that the terms  
5 of the stock purchase agreement had been violated, and his  
6 only recourse under the escrow indemnity agreement was to  
7 file a claim with United Community Bank.

8 THE COURT: Mr. English?

9 MR. ENGLISH: Your Honor, I think the jury could find  
10 at least two fraudulent acts by the defendants here. First  
11 of all, Mr. Puriefoy says that their filing of the claim  
12 cannot be the fraudulent act, but he ignores that that  
13 initial claim dated September 19, 2018, contained multiple  
14 claims. One of those claims in that letter was a claim  
15 that the value of the company was diminished. And that  
16 calculation was based on a multiple, and that was expressly  
17 prohibited by the stock purchase agreement. So that claim,  
18 I think the jury could find, constitutes a fraudulent act  
19 by telling the escrow agent to turn over the money based on  
20 something the contract prohibits. That initial letter also  
21 included a claim that employees had left because they  
22 didn't get a similar bonus in 2018.

23 And so I think a party can make a claim -- a  
24 multifaceted claim, and part of it can be a fraudulent act,  
25 and part of it could be -- at least pass muster under the



1 law. But then we provided the escrow agent with affidavits  
2 from those employees that were referenced saying they  
3 didn't leave because they didn't get a bonus. That had  
4 nothing to do with it. And in the face of that, I think  
5 the jury could also find as a second fraudulent act the  
6 defendant's maintenance of their claim beginning December  
7 13, 2018, with Plaintiff's Exhibit Number 12 and continuing  
8 on to this time.

9 So I think there is evidence from which a jury could  
10 find breach of contract accompanied by a fraudulent act.

11 MR. PURIEFOY: Your Honor, just briefly. The  
12 assertion that the inclusion of the value that Mr. Bergeron  
13 included as part of the letter to United Community Bank, I  
14 believe, again, is cutting both ways, because the  
15 plaintiffs in this case have argued that the defendant  
16 should not be able to present any evidence of damages in  
17 this case, yet they have continued to present it not only  
18 to this court but to the jury repeatedly.

19 Your Honor, the breakdown of the damages that was  
20 contained in the letter to United Community Bank was simply  
21 done in accordance with the escrow indemnity agreement.  
22 The escrow indemnity agreement said that you have to give a  
23 basis for the claim and an amount for the claim so as to  
24 allow the escrow agent to determine if a portion of those  
25 funds were going to be released. Mr. Bergeron did exactly

1        what we've been representing to the Court throughout this  
2        trial. He did his own basis of the damages that he  
3        believed that he sustained based on no professional  
4        evaluation but based on what he believed his damages to be  
5        and submitted it to the United Community Bank.

6                To suggest that a letter setting forth the damages  
7        that he anticipated somehow was in violation of the  
8        provisions of the stock purchase agreement is absurd. What  
9        the stock purchase agreement was speaking to was  
10       utilization of some multiple in a lawsuit filed by  
11       Mr. Bergeron against the plaintiff in this case. However,  
12       of course, we've also alleged fraud, and so the utilization  
13       of that multiple may be permitted had we been able to  
14       submit that to the jury. But Mr. English and the  
15       plaintiffs have submitted absolutely nothing to this court  
16       to suggest that anything that Mr. Bergeron did as related  
17       to the sending of that letter to United Community Bank was  
18       fraudulent in any way.

19               Mr. Bergeron was made aware of \$359,000 of nonowner  
20       bonuses that were paid to the employees of -- employees of  
21       CC+I. Ironically, and I do not believe coincidentally,  
22       four of the five key employees left before the end of the  
23       next fiscal year, and we believe it was because they were  
24       not receiving the bonuses that they thought they had been  
25       promised.

1           Your Honor, this is very simple. Fraud requires that  
2           there be specific evidence and specific testimony elicited  
3           throughout the course of the trial that demonstrates that  
4           there was some fraudulent intent in Mr. Bergeron's conduct.  
5           Mr. Bergeron simply informed United Community Bank that he  
6           believed that there was a claim and that he thought the  
7           claim amount was above and beyond what was being held in  
8           escrow, and the only thing he was asking that agent to do  
9           was hold those funds. We are here today, Your Honor, to  
10          determine who is, in fact, entitled to those funds.

11          THE COURT: Briefly.

12          MR. ENGLISH: Just briefly. The defendants continue  
13          to confuse the proof requirements for fraud and breach of  
14          contract accompanied by a fraudulent act. The law is clear  
15          that breach of contract accompanied by the fraudulent act  
16          doesn't require proof of the nine elements of fraud. In  
17          fact, and our jury charges reflect this, a fraudulent act  
18          is just something characterized by dishonesty in fact,  
19          unfair dealing, or the unlawful appropriation of another's  
20          property by design. And we think the submission of the  
21          initial claim in September to UCB and then the maintenance  
22          of that claim in December and thereafter, the jury could  
23          find that that qualifies -- either one of those qualifies  
24          as a fraudulent act.

25          THE COURT: All right. Anything else from the

1 defendant?

2 MR. PURIEFOY: Nothing, Your Honor.

3 THE COURT: Anything else from either side?

4 MR. ENGLISH: Your Honor, I just want to clarify, my  
5 motions for a directed verdict for lack of evidence  
6 included there's no evidence of breach of contract. I know  
7 I said breach of contract accompanied by a fraudulent act  
8 and also fraud. There's no evidence that the plaintiffs  
9 either made a misrepresentation of fact or failed to  
10 disclose when they had a duty to. I think it was covered.  
11 I just want to make it clear.

12 THE COURT: All right. Any further response to that?

13 MS. THOMASON: And, again, Your Honor, all the  
14 evidence considering the light most favorable to the  
15 nonmoving party, I think that there's sufficient evidence  
16 for the jury to find that they paid the bonuses in  
17 violation of the contract as the breach, that they failed  
18 to disclose them as a fraudulent act, that they intended  
19 that Mr. Bergeron rely on the fact that they acted in the  
20 ordinary course from May 17th until the SPA was executed,  
21 and that they had not changed any employee pay or  
22 incentive. And he did rely on it. It was false. It was  
23 reasonable to rely on it because he did his own test up  
24 until May 17th. He didn't get to look at the books again  
25 after that. All that's in evidence. They intended that

1       they keep that from him until a month after closing when  
2       they gave him the letters. So I think there is evidence in  
3       the record sufficient for the jury to find there was fraud.

4           THE COURT: All right. I'm going to take it -- let me  
5       spend a few minutes. So we'll take a ten minute break and  
6       I'll let you know what I come up with.

7           (WHEREUPON, a recess is taken at 10:25 a.m.)

8           MS. THOMASON: Your Honor, that provision I was  
9       referencing, just for the record, is on page 24. It's  
10      8(f).

11          THE COURT: All right. Considered all the motions,  
12      and I can say that none of the motions were not what I  
13      expected.

14          So I do want you to know I spent more than just the  
15      ten minutes there, that I thought long and hard about this  
16      a lot last night on the way home. And since I believe  
17      that, in light of the motion in limine -- and, again, I  
18      made it on three bases and not just the discovery issue.

19          I think, in light of the motion in limine which  
20      strictly said that no damages could be presented and any  
21      information along the damages would go towards your  
22      defenses, that there would not be any damages allowed. And  
23      I think even in the proffer of testimony, again, that  
24      wasn't directly before me, but I'm not sure that that  
25      crossed the threshold needed either for the damages anyway.

1           If no damages can be presented, clearly, every one of  
2           the counterclaims has an element that damages must be  
3           shown, so therefore, that, and in addition to the other  
4           arguments on the counterclaim, I grant the plaintiff's  
5           motion for a directed verdict on each of the counterclaims.

6           Since there is no claim or any offset that -- whether  
7           there was an offset pled, but anything -- any claim I'm not  
8           sure since this is not a damages kind of issue, per se,  
9           it's dealing with an escrow account, I don't know that  
10          there's any basis for any offsets for the escrow, so I  
11          grant plaintiff's motion as to that.

12          I do not find that there was any -- I find as a matter  
13          of law that the plaintiff has not met its burden on  
14          establishing any breach of contract with fraudulent intent,  
15          so I grant the defendant's motion on that and rule that the  
16          escrow account should be paid over to the plaintiff.

17          I believe that, due to the claim that was presented by  
18          the defendant, that there was a dispute, so I'm going to  
19          deny any prejudgment interest.

20          Attorney's fees are out.

21          So therefore, it will be a judgment -- or, I guess, a  
22          finding for the plaintiff then that the escrow account be  
23          transferred to the plaintiff. And I would ask -- since I  
24          know you'll need specific language, I would ask that the  
25          plaintiff draft an order to be submitted to the bank on

1       that regard.

2               And based on this ruling, I believe there's nothing  
3       left to present to the jury.

4               And that's the ruling of the Court.

5               MS. THOMASON: Your Honor, for the record, may I ask  
6       you to reconsider on the directed verdict and allow us to  
7       take it to the jury on the evidence that's in? When the  
8       evidence was presented, I renew that objection. Evidence  
9       was presented and was no limiting instruction on its  
10      admission. And we believe that, in our pleading and our  
11      testimony, Mr. Bergeron did testify to what he would have  
12      been entitled to. In the interest of judicial economy, we  
13      tried it before the jury. At least if there's appeal after  
14      the fact, it's established and we can separate on the jury  
15      verdict forms liability and damages.

16              THE COURT: All right. And I understand. I mean, I  
17      appreciate your motion, but I respectfully deny your  
18      motion.

19              Anything else?

20              MR. ENGLISH: Yes, Your Honor. We'd ask for ten days  
21      for posttrial motions, and I think that would end on the  
22      weekend, so that we'd have until Monday, August 9th for  
23      posttrial motions.

24              THE COURT: All right.

25              MS. THOMASON: Your Honor, one more issue.

1 THE COURT: Yes.

2 MS. THOMASON: There are -- we have settlement  
3 agreements with the other shareholders. Some of them  
4 forfeited portions of their -- their proportionate share.

5 THE COURT: Okay. Well, I'm not sure how that -- then  
6 that means ---

7 MS. THOMASON: It's just the entire amount.

8 MR. ENGLISH: Well, they can work that out with the  
9 other shareholders. They didn't name them as parties in  
10 this action. And if the other shareholders get money that  
11 they say they're entitled to, they can work that out with  
12 them.

13 THE COURT: All right. I mean, I think the only thing  
14 before the Court is what to do with that escrow. I mean, I  
15 don't know that I can award that a portion go anywhere  
16 based on what's in front of me. And it can't stay in the  
17 bank.

18 MS. THOMASON: Right. And so it being released then,  
19 as I understand it, plaintiff is going to then -- just the  
20 shareholders will work it out among themselves on how it's  
21 paid out?

22 THE COURT: I guess. I mean, all I've got if it was a  
23 breach of contract and what to do with escrow.

24 And like I said, you'll have ten days for any  
25 posttrial motions.



1 MS. THOMASON: Thank you, Your Honor.

2 THE COURT: All right. We'll be adjourned.

3 (WHEREUPON, proceedings concluded at 10:37 a.m.)

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