

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2021-000986

**RECEIVED**  
MAY 25 2022  
SC Court of Appeals

Tony's Garage, LLC,

Appellant,

v.

UniFirst Corporation

Respondent.

RECORD OF APPEAL

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by counsel for UniFirst, and finding just cause, this Court finds that UniFirst is entitled to Judgment against Tony's Garage in the amount of:

- a. Amount of Arbitration Award, \$12,034.42;
- b. Attorney's fees and costs of \$4,531.74 of UniFirst in pursuing the confirmation of the Arbitration Award pursuant to the Terms and Conditions of the Agreement between the parties, as well as S.C. Code § 15-48-150.

THEREFORE, IT IS HEREBY ORDERED that UniFirst Corporation has judgment against the Tony's Garage, LLC in the amount of \$16,566.16.

**AND IT IS SO ORDERED.**

\_\_\_\_\_, SOUTH CAROLINA  
\_\_\_\_\_, 2021

\_\_\_\_\_  
THE HONORABLE DANIEL DEWITT HALL  
PRESIDING CIRCUIT COURT JUDGE



York Common Pleas

**Case Caption:** Tonys Garage Llc VS Unifirst Corporation  
**Case Number:** 2021CP4601651  
**Type:** Order/Other

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-08-23 16:27:21 page 3 of 3

**Court Reporter:**

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

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4601651

Tonys Garage Llc  
PLAINTIFF(S)

Unifirst Corporation  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), 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:

After careful consideration, Plaintiff's Motion to Vacate Arbitration is DENIED.

**ORDER INFORMATION**

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

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/06/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



York Common Pleas

**Case Caption:** Tonys Garage Llc VS Unifirst Corporation

**Case Number:** 2021CP4601651

**Type:** Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-08-06 11:52:52 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

SIXTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS

Tony's Garage, LLC, )  
 )  
Petitioner, )

CASE NO: 2021-CP-46-\_\_\_\_\_

vs. )

PETITION TO VACATE  
ARBITRATION AWARD

Unifirst Corporation )  
 )  
Defendants. )

Tony's Garage, LLC, the Petitioner, by and through its attorney, Stephen D. Schusterman, move before this Court to Vacate Arbitration Award, based upon the following grounds:

1. The Petitioner is a limited liability company formed under the laws of the state of South Carolina with its principal place of business in Rock Hill, York County, South Carolina.
2. Upon information and belief, UniFirst Corporation is a corporation that is incorporated in Massachusetts and has its principal place of business in Massachusetts.
3. On or about September 27, 2018, the parties entered into a Customer Service Agreement ("Agreement") which was accepted by the Defendants on September 3, 2018, for the furnishing of uniforms.

**FOR A FIRST CAUSE OF ACTION**

4. Subsequent to this Agreement, a dispute arose between the parties regarding the services that were being provided to the Plaintiff and payment of funds.

5. Pursuant to the paragraph entitled OBLIGATIONS AND REMEDIES of the Agreement, any dispute or breach by a party will first attempt to be resolved by negotiation at agreed time and location.
6. Pursuant to the paragraph entitled OBLIGATIONS AND REMEDIES of the Agreement, in the even the parties are unbale to resolve the dispute or breach through negotiation the dispute shall be resolved through final binding arbitration.
7. The Plaintiff never received any communication, whether written or verbal regarding establishing a time and location for negotiations pursuant to the Agreement.
8. On or about October 20, 2020, the Plaintiff was notified of the Defendant's Demand for Arbitration and Statement of Claim.
9. On or about February 2, 2021, the Plaintiff sent correspondence indicating that he was not agreeable to arbitration as per the Agreement no attempts had been made to negotiate at an agreed upon time and place.
10. The February 2, 2021 correspondence also asked Defendant to suspend the arbitration proceedings until the perquisites of the Agreement could be met.
11. The Defendant did not respond to Plaintiff's correspondence.
12. Pursuant to the paragraph entitled OBLIGATIONS AND REMEDIES, the arbitration shall be conducted in the capital city of the state where the customer has its principal place of business (or some other location mutually agreed upon).
13. Based upon information and belief, the Defendant and/or his representative proceeded with the arbitration proceeding.
14. The proceeding was not conducted in the State of South Carolina.

15. The Plaintiff did not agree that the arbitration would be conducted at any other location nor any type of video or telephone conferencing.
16. The Defendant did not notify Plaintiff that he was intending to proceed despite the request by Plaintiff to suspend proceedings to comply with the Agreement.
17. On or about March 1, 2021, the Plaintiff received notification that an Arbitration Award had been rendered against him.
18. The Plaintiff nor any representative on behalf of Plaintiff participated or provided any information to the Arbitrator.
19. The Arbitrator was aware of Plaintiff's February 2, 2001 correspondence indicating the proper procedure prior to arbitration were not met. The Arbitrator proceeded with the arbitration despite the objection.
20. Based upon information and belief, the award obtained by the Defendant was procured by fraud or undue means.
21. As a result, the Arbitration Award should be vacated.

**FOR A SECOND CAUSE OF ACTION**

22. The allegations of Paragraph 1-21 are incorporated herein by reference to the extent not inconsistent herewith.
23. The Agreement is a pre-printed form that prohibits the Plaintiff or any other consumer from negotiating the terms of the Agreement.
24. The Agreement is an adhesion contract.
25. The terms of the Agreement are in small print and single spaced.
26. The arbitration clause is inconspicuous.

27. The arbitration clause contained in the Agreement unduly limits the Plaintiff's right to a meaningful legal proceeding.
28. The Agreement is unconscionable and unenforceable.
29. The arbitration cause is invalid.

Based upon the foregoing, the Plaintiff seeks the following:

1. An order vacating the arbitration award dated March 1, 2021.
2. An order declaring the arbitration clause of the Agreement invalid.
3. For such other relief as this Court deems just and proper.

Respectfully submitted,

s/ Stephen D. Schusterman  
Stephen D. Schusterman  
Schusterman Law Firm, PA  
PO Box 4211  
Rock Hill, SC 29732  
Telephone: 803-325-7788

May 24, 2021



2) Tony's Garage, LLC is a business organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

3) Venue is appropriate in the York County Court of Common Pleas pursuant to S.C. Code Ann. § 15-48-120, 9 U.S.C.A. § 9 ("Federal Arbitration Act" or "FAA") and the Customer Service Agreement ("Agreement") between the parties as identified and detailed below, specifically the Agreement's Arbitration provision (Customer Service Agreement Terms, Obligations and Remedies, p. 2 of 2). The Agreement between UniFirst and Plaintiff is Exhibit 1 to Attachment A to this Motion, which comprises UniFirst's Statement of Claim in the arbitration proceeding.

4) The Agreement's arbitration provision reads in its entirety:

This Agreement shall be governed by Massachusetts law (exclusive of choice of law). If a dispute arises from or relates in any way to this Agreement or any alleged breach thereof at any time, the parties will first attempt to resolve the claim or dispute by negotiation at agreed time(s) and location(s). All negotiations are confidential and will be treated as settlement negotiations. Any matter not resolved through direct negotiations within 30 days shall be resolved exclusively by final and binding arbitration, conducted in the capital city of the state where Customer has its principal place of business (or some other location mutually agreed); pursuant to the Commercial Arbitration Rules of the American Arbitration Association; and, governed by the Federal Arbitration Act, to the exclusion of state law inconsistent therewith. The parties will agree upon one (1) Arbitrator to settle the controversy or claim. The successful or substantially prevailing party in any proceeding, including any appeals thereof (as determined by the Arbitrator/court) shall recover all of its costs and expenses including, without limitation, reasonable attorney fees, witness fees and discovery costs, all of which shall be included in and as a part of the judgment or award rendered hereunder. This provision for Arbitration is specifically enforceable by the parties; the Arbitrator shall have no power to vary or ignore the provisions hereof; and the decision of the Arbitrator in accordance herewith, may be entered in any court having jurisdiction thereof. Customer acknowledges that, with respect to all such disputes, it has voluntarily and knowingly waived any right it may have to a jury trial or to participate in a class action or class litigation as a representative of any other persons or as a member of any class of persons, or to consolidate its claims with those of any other persons or class of persons. If this prohibition against class litigation is ruled to be unenforceable for any reason in any proceeding, then the prohibition against class litigation shall be void and of no force and effect in that proceeding.

5) UniFirst and Plaintiff entered into the Agreement, dated September 25, 2018, for the provision of services to be used in the operation of Plaintiff's business.

6) The initial term of the Agreement was for a period of sixty (60) months (260 revenue weeks) from the date UniFirst made its first delivery to Plaintiff, which upon information and belief was September 27, 2018. The Agreement replaced an earlier agreement for the same services.

7) On or about April 2, 2020, Plaintiff unilaterally and without justification terminated the Agreement, refused to either return or pay for certain rental merchandise provided by UniFirst as required under the terms of the Agreement, and, therefore, Plaintiff was in breach of the Agreement.

8) The calculation of damages alleged against Plaintiff in the arbitration are detailed in Attachments A and B to this Motion, entitled UniFirst's Statement of Claim and UniFirst's Memorandum in Support of Claim, respectively. Both documents are incorporated herein as if repeated verbatim.

9) Contrary to Plaintiff's contention in its Petition that there were no negotiations as a condition precedent to arbitration, representatives for UniFirst routinely visited Plaintiff's business for months following its April 2, 2020 termination of the Agreement to inquire about resumption of services and/or return of UniFirst's rental merchandise to no avail. (See Attachment B, p. 2.)

10) Following these attempts to resolve the dispute counsel for UniFirst served a demand letter upon Plaintiff, dated October 7, 2020, noting that arbitration would be commenced pursuant to the Agreement if Plaintiff did not resolve the claim within ten (10) days. Plaintiff did not respond. (See Attachment C.)

11) Upon Plaintiff's non-response to the demand letter, UniFirst initiated arbitration proceedings on October 20, 2020, pursuant to the Agreement. (See Attachment A.)

12) Plaintiff responded to the arbitration demand via email, with attached letter, on November 18, 2020, disagreeing with UniFirst's claims, but also specifically acknowledging discussions between the parties for resolution of the claims: "On our final contact with Unfirst we again attempted to resolve the ongoing issues we were experiencing and were given an offer of reduced fees." This letter from Plaintiff and acknowledgment from the American Arbitration Association ("AAA") ADR Manager, is attached as Attachment D.

13) The AAA appointed an arbitrator, retired South Carolina Circuit Court Judge Kristi L. Harrington (hereinafter "arbitrator" or "Judge Harrington"), who then provided the parties with a schedule for arbitration including submission of documents and a final conference call prior to completion of the arbitration. (See Attachment E.)

14) UniFirst submitted its Memorandum in Support of Claim on January 18, 2021. (See Attachment B.)

15) On February 10, 2021, two days after Plaintiff's deadline to file documents documenting its case as established by the arbitrator, counsel for Plaintiff submitted a letter to UniFirst's counsel<sup>1</sup> stating that his client does not agree to arbitration because he believes the arbitration clause is not valid or enforceable and he does not believe that the contractual requirement of negotiation was completed prior to filing of the demand for arbitration. (See Attachment F.)

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<sup>1</sup> The letter was uploaded into the AAA file for the matter, was discussed with the arbitrator on February 16, 2021, and was noted in the Award.

16) Pursuant to the previously established schedule, Judge Harrington conducted a final conference call on February 16, 2021 and despite adequate notice to the parties only counsel for UniFirst attended. As a result, oral hearings on the arbitration were waived in accordance with the AAA Rules, and the arbitrator considered all written documents submitted by the Parties. The Arbitration Award (“Award”) is attached to this Motion as Attachment G.

17) Judge Harrington issued an arbitration Award on March 1, 2021 finding that Plaintiff and its counsel: 1) had due notice of the arbitration proceedings, including the final conference call; that 2) Plaintiff submitted no documents or legal authority other than the letter noting that Plaintiff is “not agreeable to engaging in arbitration” despite having due notice of the arbitration; 3) that Plaintiff was in breach of the Agreement between the parties and that the liquidated damages clause applies; and 4) UniFirst was entitled to attorney’s fees from Plaintiff in addition to liquidated damages for Plaintiff’s breach. The total amount of the Award against Plaintiff was \$14,523.82. (See Id.)

18) The AAA served the Award upon the parties, including Plaintiff’s counsel, on March 1, 2021 (see id.) and the following day counsel for UniFirst contacted Plaintiff’s attorney inquiring about the timeframe for Plaintiff’s payment of the Award sum. (See Attachment H.)

19) The instant Petition was filed by Plaintiff’s counsel on May 24, 2021 and the UniFirst filed this Motion in response in a timely manner pursuant to the South Carolina Rules of Civil Procedure.

For the following reasons, Plaintiff’s Petition should be denied and the arbitration Award should be confirmed.

## ARGUMENT

### A. Fraud or Undue Means

Although not specified by Plaintiff in its Petition, presumably Plaintiff's arguments to vacate the Award as a petition are made pursuant to S.C. Code Ann. § 15-48-130, "Vacating an award." That statute notes that upon the application of a party an arbitration award shall only be vacated where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection.

The only grounds for vacating the Award specified by Plaintiff in the Petition is under § 15-48-130 (1), fraud and undue means. (See Petition ¶ 20.) South Carolina's statutory provision regarding vacating arbitration awards is substantially similar to its federal counterpart, 9 U.S.C. § 10(a) and subsection 10(a)(1) is the corruption, fraud, or undue means grounds. "The term 'undue means' has generally been interpreted to mean something like fraud or corruption." MCI Constructors, LLC v. City of Greensboro, 610 F.3d 849, 858 (4th Cir. 2010). Typically, to prove that an award was procured by undue means, the party seeking vacatur:

must show that the fraud [or corruption] was (1) not discoverable upon the exercise of due diligence prior to the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear and convincing evidence.

Id., citing A.G. Edwards & Sons, Inc. v. McCollough, 967 F.2d 1401, 1404 (9th Cir.1992); see also Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378, 1383 (11th Cir.1988). Evidently, Plaintiff contends that the Award was procured by fraud or undue means because Judge Harrington knew prior to concluding the proceedings that Plaintiff did not believe a valid arbitration provision existed and/or that Plaintiff contended that settlement negotiations had not taken place prior to the arbitration commencement. Notwithstanding, Plaintiff's errant factual contentions which will be discussed below, even in the light most favorable to Plaintiff, those factual allegations certainly do not comprise fraud or undue means. Plaintiff was given full notice of all deadlines, served copies of all of UniFirst's pleadings, allowed to submit its own documents, including letters from the *pro se* Plaintiff and then Plaintiff's counsel, and was given an opportunity to discuss any factual or legal contentions at the final teleconference prior to the conclusion of the proceeding. Plaintiff and his counsel chose not to attend that teleconference or to participate in the arbitration by any means other than the submission of the before-mentioned letters. Based on these uncontroverted facts it is difficult to discern what fraud or undue means the Plaintiff is relying on to justify its contention that the Award should be vacated. Plaintiff knew exactly what UniFirst's contentions were regarding the facts and circumstances of the claim; Plaintiff had notice of the proceeding; Plaintiff had opportunity and means to address UniFirst's contentions; and, ultimately, chose not to. The arbitrator even made reference to Plaintiff's communication in the Award so there is no valid contention that UniFirst or Judge Harrington did anything to prevent Plaintiff from presenting its defense. Even if Plaintiff does not agree with UniFirst's contentions in the arbitration or with the arbitrator continuing the proceeding despite Plaintiff's objections, no court has ever suggested that the term "undue means" should be interpreted to apply to actions that are merely legally objectionable. MCI Constructors, 610 F.3d 849, 858 citing See A.G. Edwards, 967 F.2d at 1403–

04 (defining “undue means” as conduct “that is immoral if not illegal”). Given these facts, UniFirst certainly contends there was no corruption, fraud or undue means, but more importantly, because Plaintiff was made fully aware of UniFirst’s positions on the matter and given full access to the arbitration proceeding, Plaintiff cannot meet its burden under the grounds articulated in MCI Constructors, namely establishing that any fraud or undue means was “not discoverable upon the exercise of due diligence prior to the arbitration....” Stated plainly, it is difficult to understand how Plaintiff would know all positions of the claimant, document their disagreements with those positions, have those documents considered by the arbitrator, and then contend that they were unable to discern those positions in an arbitration in which they refuse to meaningfully participate.

The following sections detail additional arguments in opposition to Plaintiff’s presumed grounds for what comprises the fraud and undue means based on the allegations of the Petition.

**1. Plaintiff’s Contentions That Conditions Precedent to Arbitration Were Not Met Are Not Valid**

Regarding Plaintiff’s contention that settlement negotiations did not take place prior to the commencement of the arbitration, this Court should deny this grounds out of hand based on the evidence available to both it and Judge Harrington. UniFirst attempted to engage the Plaintiff in negotiations by presenting its demand letter on October 7, 2020, almost two (2) weeks before the arbitration began. (See Attachment C.) However, that settlement attempt followed numerous visits to Plaintiff’s place of business by UniFirst representatives to discuss resolution of the matter, including but not limited to Plaintiff’s resumption of the services or payment for the same. (See Attachment B, p. 2.) All of those attempts at resolution were rejected by Plaintiff. Id.

Furthermore, Plaintiff’s contention is belied by his own words. In his November 18, 2020 letter to the AAA ADR Services Manager, Mr. Pannell specifically noted settlement discussions; “On our final contact with Unifirst we again attempted to resolve the ongoing issues we were

experiencing and were given an offer of reduced fees.” Plaintiff might not have accepted UniFirst’s offers of resolution, but that does not mean they did not occur.

It is uncontroverted fact that UniFirst attempted to work with Plaintiff for nearly eight (8) months through its local representatives and through its attorneys to resolve this matter prior to commending the arbitration. This was abundantly clear in the evidence presented to Judge Harrington, including and most importantly in the words of the Plaintiff himself. As a result, there was no fraud or undue means that led to the Award in UniFirst’s favor related to this contention of Plaintiff.

## **2. Plaintiff’s Miscellaneous Contentions About Arbitration Provision Non-Compliance are Incorrect**

In addition to Plaintiff’s inaccurate contention that no settlement negotiation took place prior to commencement of arbitration, Plaintiff also makes other inaccurate factual assertions, presumably, as the basis for the fraud and undue means as grounds for vacating the Award. Specifically, Plaintiff contends, without any evidentiary basis, that the arbitration was not conducted in South Carolina. (Petition, ¶ 14.) First, the arbitrator is a retired South Carolina Circuit Court Judge residing in or around North Charleston, South Carolina.<sup>2</sup> Second, as noted in the Award oral arguments were waived pursuant to the applicable AAA Rules after Plaintiff did not participate in the final teleconference and the matter was considered upon the written documentation submitted. Finally, this arbitration proceeding occurred during nationwide lockdowns related to Covid-19 protocol and, as a result there is no evidence that the arbitrator did not receive information, consider the matter or render an award in the State of South Carolina.

The Plaintiff goes on to list another inaccurate factual assertion in paragraph 18 of his Petition – “The Plaintiff nor any representative on behalf of Plaintiff participated or provided any

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<sup>2</sup> See <https://kristiharrington.com/>.

information to the Arbitrator.” As noted above and in the attachments hereto, both the *pro se* Plaintiff and then through his counsel, submitted letters detailing the positions of Plaintiff related to the claims of UniFirst, as well as its contentions regarding the arbitration clause itself. Mr. Pannell’s November 18, 2020 letter was submitted directly to the AAA Manager of ADR Services and Plaintiff’s counsel’s letter of February 10, 2021 was uploaded to AAA file and considered by Judge Harrington as noted in the Award.

These factual assertions are demonstrably false and should be disregarded by this Court as grounds to vacate the arbitration Award.

#### **B. Arbitration Clause if Valid and Enforceable**

Plaintiff also contends that the arbitration clause is not valid or enforceable. (See Petition, ¶¶ 22-29.) Again, Plaintiff is wrong.

##### **1. South Carolina Law Regarding Characteristics of Arbitration Clauses Does Not Apply**

Specifically, Plaintiff alleges that the Agreement is a contract of adhesion and that the words of the arbitration provision are small and inconspicuous. (See *Id.*, ¶¶ 24-26.) Presumably, Plaintiff is referring to the specific requirements of S.C. Code 15-48-10 of South Carolina’s Uniform Arbitration Act, which requires that “Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.” Stated plainly, the Uniform Arbitration Act does not apply to the arbitration provision at issue in this Agreement by both the words of the Agreement itself and by South Carolina law.

The Agreement specifically notes:

Any matter not resolved through direct negotiations within 30 days shall be resolved exclusively by final and binding arbitration, conducted in the capital city of the state where Customer has its principal place of business (or some other location mutually agreed); pursuant to the Commercial Arbitration Rules of the American Arbitration Association; and, **governed by the Federal Arbitration Act, to the exclusion of state law inconsistent therewith.**

(Emphasis added.) Under the plain language of the Agreement, South Carolina's provision regarding the physical characteristics of an arbitration provision do not apply. Furthermore, this is also true under recognized law in this state. Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538–39, 542 S.E.2d 360, 363 (2001) citing Allied–Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995); Soil Remediation Co. v. Nu–Way Env'tl., Inc., 323 S.C. 454, 476 S.E.2d 149 (1996). In this case, the Agreement plainly involves interstate commerce. It is an agreement between a South Carolina company and a Massachusetts corporation which has subsidiaries and service centers throughout the United States, Canada and Europe.<sup>3</sup> While the Agreement may have been executed by Plaintiff in South Carolina it is a uniform contract prepared out of the state.

The case of Munoz v. Green Tree Financial Corp. is particularly helpful in this discussion. In that case homeowners entered into a finance agreement with a builder, both South Carolina residents and/or companies, to finance a mortgage for home improvements for their home. 343 S.C. 531, 536, 542 S.E.2d 360, 362. The very same day the builder assigned the finance agreement to an out-of-state creditor. Id. After disagreements over the contract arose the homeowners

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<sup>3</sup> The Agreement even defines "UniFirst" as UniFirst Corporation and/or UniFirst Holdings, Inc. d.b.a. UniFirst and/or UniFirst Canada LTD. (See Agreement, p. 1.)

brought a lawsuit and the creditor moved to compel arbitration under a clause which also specified the Federal Arbitration Act governed. Id. The trial judge found that the arbitration clause was unconscionable because it was part of a contract of adhesion, lacked mutuality and that it did not comply with South Carolina law related to consumer transactions and arbitration clauses. 343 S.C. 531, 537, 542 S.E.2d 360, 362-63. On appeal the Court of Appeals reversed finding that “a contract of adhesion is not per se unconscionable, mutuality is not required and the Federal Arbitration Act (FAA) preempts state law because the transaction involved interstate commerce.” Id., 537, 542 S.E.2d 360, 363. Regarding the determination of interstate commerce, the Supreme Court of South Carolina held:

Further, the transaction in this case in fact involves interstate commerce. Both the Munozes and Builder are domiciled in South Carolina. Builder, however, assigned all its rights under the agreement to Creditor, a Delaware corporation with its principal place of business in Minnesota. Creditor actually prepared the agreement in Minnesota and forwarded it to Builder in South Carolina. The proceeds of the loan were disbursed from a bank in Minnesota. Although the Munozes may not have contemplated an interstate transaction, their contractual relationship with Creditor in fact involves interstate commerce and therefore the FAA applies.

Munoz, 343 S.C. 531, 539, 542 S.E.2d 360, 364. Measured with the holding of Munoz, the Agreement between Plaintiff and UniFirst unequivocally contemplates interstate commerce and therefore is subject to the Federal Arbitration Act and not any provision regarding the characteristics of an arbitration provision governed by the law of this state.

**2. Arbitration Clause At Issue Is Not A Contract of Adhesion**

Much like the claimants in Munoz, Plaintiff in this case argues that the arbitration provision is not valid because it is part of a contract of adhesion. (See Petition, ¶ 24.) The arbitration provision at issue in Munoz reads as follows:

All disputes, claims, or controversies arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator selected by us with consent of you. This arbitration contract is made pursuant to a transaction in interstate commerce, and shall be governed by the Federal Arbitration Act at 9 U.S.C. section 1.... THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY U.S. (AS PROVIDED HEREIN). The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this contract.... Notwithstanding anything hereunto the contrary, we retain an option to use judicial or non judicial relief to enforce a mortgage, deed of trust, or other security agreement relating to the real property secured in a transaction underlying this arbitration agreement, or to enforce the monetary obligation secured by the real property, or to foreclose on the real property. Such judicial relief would take the form of a lawsuit. The institution and maintenance of an action for judicial relief in a court to foreclose upon any collateral, to obtain a monetary judgment or to enforce the mortgage or deed of trust shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this contract, including the filing of a counterclaim in a suit brought by us pursuant to this provision.

Munoz, 343 S.C. 531, 536–37, 542 S.E.2d 360, 362. “Generally, an adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable.” Munoz, 343 S.C. 531, 541, 542 S.E.2d 360, 365. Even under state law, an adhesion contract is not *per se* unconscionable. Id., citing Fanning v. Fritz's Pontiac–Cadillac–Buick, Inc., 322 S.C. 399, 472 S.E.2d 242 (1996) (unconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them); Lackey v. Green Tree Fin. Corp., 330 S.C. 388, 498 S.E.2d 898 (Ct.App.1998) (fact that a contract is one of adhesion does not render it unconscionable). In Munoz the South Carolina Supreme Court held that the arbitration provision above, was not a contract of adhesion, noting that “a person who can read is bound to read an agreement before signing it.” Munoz, 343 S.C. 531, 541, 542 S.E.2d 360, 365

citing Hood v. Life & Cas. Ins. Co. of Tennessee, 173 S.C. 139, 175 S.E. 76 (1934). The arbitration provision at issue in this matter is standard for the industry and there is certainly no colorable allegation before the Court that the provision is, therefore, unconscionable.

Moreover, the arbitration provision at issue in the Agreement between UniFirst and Plaintiff is substantially similar to the provision above and is, therefore, not a contract of adhesion.

### **3. Mutuality Does Not Apply**

To the extent that Plaintiff argues there was lack of mutuality between the parties with regard to the arbitration provision, Plaintiff is, again, misguided. Mutuality does not apply as an agreement providing for arbitration as the dispute resolution method does not determine the remedy for a breach of contract but only the forum in which the remedy for the breach shall be determined. See Munoz, 343 S.C. 531, 542, 542 S.E.2d 360, 365. As a result, to the extent maintained by Plaintiff this grounds for vacating the Award should be denied.

### **CONCLUSION** **AND** **MOTION FOR CONFIRMATION OF THE ARBITRATION AWARD**

For the reasons listed above, and pursuant to S.C. Code Ann. §§ 15-48-120 and 15-48-130, 9 U.S.C.A. § 9, and the Agreement between the parties, UniFirst respectfully requests that this Court deny Plaintiff's Petition to Vacate Arbitration Award, and confirm UniFirst's arbitration award, dated March 1, 2021, by entering its award amount, including any post-judgment interest and unpaid administrative fees, as well as the attorney's fees and costs to UniFirst for the confirmation of the award, into a Judgment to be entered into the judgment rolls of the Courts of this York County, South Carolina.

This Motion will be further supported by other such briefs, memorandum, proposed Orders, or evidence which may be received by the Court.

Respectfully submitted this the 23rd day of June, 2021.

**RICHARDSON PLOWDEN & ROBINSON, P.A.**

s/ Caleb M. Riser  
S. Nelson Weston, S.C. Bar No. 12902  
Caleb Martin Riser, S.C. Bar No. 76738  
Post Office Drawer 7788  
Columbia, South Carolina 29202  
(803) 771-4400  
[nweston@richardsonplowden.com](mailto:nweston@richardsonplowden.com)  
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*Attorneys for UniFirst Corporation*

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# **ATTACHMENT**

# **A**



Theodore R. Goldstock  
301-347-1274  
[trgoldstock@lercheearly.com](mailto:trgoldstock@lercheearly.com)

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October 20, 2020

**SENT BY FEDERAL EXPRESS**

American Arbitration Association  
Case Filing Services  
1101 Laurel Oak Road, Suite 100  
Voorhees, NJ 08043

Re: Arbitration of Dispute Between UniFirst Corporation and  
Tony's Garage, L.L.C.

Dear Sirs:

Our client, UniFirst Corporation, desires to arbitrate a dispute under the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"). The arbitration is demanded pursuant to a written agreement that stipulates that all disputes shall be resolved under said Rules. The parties to the dispute are as follows:

UniFirst Corporation  
1901 Equitable Place  
Charlotte, NC 28213

Tony's Garage, L.L.C.  
5963 Mount Gallant Road  
Rock Hill, SC 29730

**Claimant**

**Respondent**

**TOTAL CLAIM: \$12,034.82**

**FILING FEE:** Upon receipt of a bill from the AAA for the initial filing fee, UniFirst will use the AAA's online payment system to pay the applicable fee. If you have any questions, please call.

Respondent is not represented by counsel at this time.

Yours Very Truly,

Theodore R. Goldstock

Theodore R. Goldstock  
Attorney for UniFirst Corporation

AMERICAN ARBITRATION ASSOCIATION

<p>UNIFIRST CORPORATION</p> <p>Claimant,</p> <p>v.</p> <p>TONY’S GARAGE, L.L.C.</p> <p>Respondent.</p>	<p>Case Number:</p>
--	---------------------

STATEMENT OF CLAIM

*Parties*

1. Claimant, UniFirst Corporation (“UniFirst”), is a Massachusetts corporation. UniFirst is engaged in the primary business of renting uniforms, mats and other textile products, providing laundering, pick-up and delivery services for the rented items, and providing restroom products and services (collectively, “Services”). UniFirst provides Services from a commercial laundry and distribution facility located at 1901 Equitable Place, Charlotte, North Carolina 28213.
2. Respondent, Tony’s Garage, L.L.C. (“Respondent”), is a South Carolina limited liability company that operates a business at 5963 Mount Gallant Road, Rock Hill, SC 29730.
3. UniFirst and Respondent entered into a Customer Service Agreement dated September 25, 2018 for the provision of Services to be used in the operation of Respondent’s business (the “Agreement,” Exhibit 1 hereto).
4. The initial term of the Agreement was for a period of 60 months (260 revenue weeks) from the date UniFirst made its first delivery to Respondent, and

according to UniFirst's records, the first delivery under the Agreement was made as of September 27, 2018. The Agreement replaced an earlier agreement for the same Services.

5. On or around April 2, 2020, Respondent unilaterally and without justification terminated the Agreement, refused to either return or pay for certain rental merchandise provided by UniFirst (as required under the terms of the Agreement), and Respondent is, therefore, in breach of the Agreement's terms.

***Liquidated Damages***

6. According to the terms of the Agreement, in the event Respondent breaches or terminates the Agreement prior to its expiration date, Respondent agrees to pay UniFirst as liquidated damages, and in addition to all other amounts then due, an amount equal to fifty percent (50%) of the average weekly rental charges during the 26 weeks preceding the date of termination or breach, multiplied by the number of unexpired weeks remaining on the Agreement's term ("**Liquidated Damages**").
7. At the time Respondent breached the Agreement, there were 182 revenue weeks remaining on the term of the Agreement.
8. At the time Respondent breached the Agreement, the average weekly rental charges for the 26 weeks preceding the date of breach amounted to \$91.92.
9. Liquidated Damages, therefore, amount to **\$8,364.72**.

***Unreturned Rental Merchandise***

10. Further, according to the terms of the Agreement, Respondent has agreed, as a condition to the termination of the Agreement for any reason, (i) to return to

UniFirst all Standard Merchandise in good and usable condition or pay for same at the replacement charges then in effect, and (ii) to purchase all Non-Standard Merchandise either in issue or inventory.

11. "Non-Standard Merchandise" includes rental merchandise that "(1) UniFirst does not stock for whatever reason (including due to style, color, size or brand), (2) consists of non-UniFirst manufactured or customized FR garments, or (3) consists of garments that have been permanently personalized."
12. According to UniFirst's records, Respondent has retained in its possession and failed to return certain Standard Merchandise, and failed to pay UniFirst for certain Non-Standard Merchandise, for a total replacement value of **\$3,670.10**:

Item Description	Replacement Cost	Quantity	Total
Cargo Pants	\$25.00	44	\$1,100.00
Short Sleeve High Visibility Shirts	\$35.00	44	\$1,540.00
Jackets	\$65.00	8	\$520.00
Custom Company Emblems	\$3.00	90	\$270.00
		7.00% Sales Tax	\$240.10
<b>Grand Total</b>			<b>\$3,670.10</b>

13. Respondent has refused to pay UniFirst for any of the unreturned Standard Merchandise and the Non-Standard Merchandise as required under the terms of the Agreement, all of which remains in Respondent's possession or control.

*Attorney Fees*

14. Further, according to the terms of the Agreement, Respondent has agreed to pay UniFirst its reasonable attorney fees in enforcing its rights under the Agreement.

WHEREFORE, Claimant, UniFirst Corporation, demands an award against the Respondent, Tony's Garage, L.L.C., as follows:

- A. For compensatory damages of **\$12,034.82**; and
- B. Arbitration costs and reasonable attorney's fees; and
- C. Such other and further relief as the Arbitrator deems just and proper.

LERCH, EARLY & BREWER, CHTD.

By: Theodore R. Goldstock

Theodore R. Goldstock  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814  
(301) 347-1274  
[trgoldstock@lerchearly.com](mailto:trgoldstock@lerchearly.com)  
*Counsel for UniFirst Corporation*

Venue

UniFirst requests that the arbitration be conducted on documents only pursuant to the Rules.

LERCH, EARLY & BREWER, CHTD.

By: Theodore R. Goldstock

Theodore R. Goldstock  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814  
(301) 347-1274  
[trgoldstock@lerchearly.com](mailto:trgoldstock@lerchearly.com)  
*Counsel for UniFirst Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of October, 2020 I served a copy of the forgoing Demand for Arbitration and Statement of Claim on Respondent's resident agent by Federal Express, as set forth below:

Tony's Garage, L.L.C.  
c/o Tony Pannell, Resident Agent  
1920 Crystal Ridge Drive  
Rock Hill, SC 29732

Theodore R. Goldstock  
Theodore R. Goldstock

EXHIBIT 1  
Customer Service Agreement



CUSTOMER SERVICE AGREEMENT TERMS

REQUIREMENTS SUPPLIED. Customer orders from UniFirst Corp. ("UniFirst") the rental garments and/or other items of the type specified in this Agreement ("Merchandise") and related pickup/delivery and maintenance services (collectively with Merchandise, "Services") for all of Customer's requirements therefor, at the prices and upon the terms and conditions set forth herein. Additional Services requested by Customer, verbally or in writing, will also be covered by this Agreement. All rental Merchandise supplied to Customer remains the property of UniFirst. Customer warrants that it is not subject to, and that this Agreement does not interfere or conflict with, any existing agreement for the supply of the Merchandise or Services covered.

PERFORMANCE GUARANTEE. UNIFIRST GUARANTEES TO DELIVER HIGH-QUALITY SERVICE AT ALL TIMES. All items of Merchandise cleaned, finished, inspected, repaired and delivered by UniFirst will meet or exceed industry standards, or non-conforming items will be replaced by the next scheduled delivery day at no cost to Customer. Items of rental Merchandise requiring replacement due to normal wear and tear will be replaced at no cost to Customer, save for any applicable personalization and setup charges.

Customer expressly waives the right to terminate this Agreement during the initial term or any extension thereof for deficiencies in the quality of Services unless: (1) complaints are first made in writing to UniFirst which set forth the precise nature of any deficiencies; (2) UniFirst is afforded at least 80 days to correct any deficiencies complained of; and (3) UniFirst fails to correct those deficiencies complained of within 80 days. In the event Customer complies with the foregoing and UniFirst fails to correct such deficiencies, Customer may terminate this Agreement by written notice to UniFirst, providing that all previous balances due to UniFirst have been paid in full and that all other conditions to terminate have been satisfied. Any delay or interruption of the Services provided for in this Agreement by reason of acts of God, fire, explosions, strikes or other industrial disturbances, or any other cause not within the control of UniFirst, shall not be deemed a breach or violation of this Agreement.

TERM AND RENEWAL. This Agreement is effective when signed by both the Customer and UniFirst Location Manager and continues in effect for 60 months after installation of Merchandise (for new customers) or any renewal date. This Agreement will be renewed automatically and continuously for multiple successive 60-month periods unless Customer or UniFirst gives written notice of non-renewal to the other at least 80 days prior to the next expiration date.

PRICES AND PAYMENTS. Prices are based on 62 weeks of service per year. Any increase(s) to Service Frequency could result in additional charges. On an annual basis, the prices then in effect will be increased by the greater of the annual percent increase in the Consumer Price Index - All Urban Consumers, Series ID: CUUROO0006AG, other goods and services, or by 5%. Additional price increases and other charges may be imposed by separate written notice or by notation on Customer's invoice. Customer may, however, decline such additional increases or charges by notifying UniFirst in writing within 10 days after receipt of such notice or notation. If Customer declines said additional price increases, UniFirst may terminate this Agreement. Customer also agrees to pay the other charges and minimum weekly charge herein specified. Charges relating to a wearer leaving Customer's employ can be terminated by (1) giving notice thereof to UniFirst and (2) returning or paying for any missing Merchandise issued to that individual. Any Merchandise payments required pursuant to this Agreement will be at the replacement price(s) then in effect hereunder. If an authorized Customer representative is not available to receive and acknowledge delivery of Merchandise, Customer authorizes UniFirst to make delivery and assumes responsibility for related charges/invoices.

If Customer fails to make timely payment, UniFirst may, at any time and in its sole discretion, terminate this Agreement by giving written notice to Customer, whether or not UniFirst has previously strictly enforced Customer's obligation to make timely payments. Customer agrees to pay, and will pay, all applicable sales, use, personal property and other taxes and assessments arising out of this Agreement.

DEFE CHARGE. Customer's invoices may also include a DEFE charge to cover all or portions of certain expenses including:

D = DELIVERY, or expenses associated with the actual delivery of Services and Merchandise to Customer's place of business, primarily Route Sales Representative commissions, management salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.

E = ENVIRONMENTAL, or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls and energy conservation and overall regulatory compliance.

F = FUEL, or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.

E = ENERGY, primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

MERCHANDISE. Customer acknowledges and agrees to notify all employees that Merchandise supplied is for general occupational use and, except as expressly specified below, affords no special user protections. Customer further acknowledges that: (1) Customer has unilaterally and independently determined and selected the nature, style, performance characteristics, number of changes and scope of all Merchandise to be used and the appropriateness of such Merchandise for Customer's specific needs or intended uses; (2) UniFirst does not have any obligation to advise, and has not advised, Customer concerning the fitness or suitability of the Merchandise for Customer's intended use; (3) UniFirst makes no representation, warranty or covenant regarding the performance of the Merchandise (including without limitation Flame Resistant and Visibility Merchandise); and (4) UniFirst shall in no way be responsible or liable for any injury or harm suffered by any Customer employees while wearing or using any Merchandise. Customer agrees to indemnify and hold harmless UniFirst and its employees and agents from and against all claims, injuries or damages to any person or property resulting from Customer's or Customer's employee use of the Merchandise, whether or not such claims, injuries or damages arise from any alleged defects in the Merchandise.

Flame Resistant ("FR") Merchandise supplied hereunder is intended only to prevent the ignition and burning of fabric away from the point of high heat impingement and to be self-extinguishing upon removal of the ignition source. FR items will not provide significant protection from burns in the immediate area of high heat contact due to thermal transfer through the fabric and/or destruction of the fabric in the area of such exposures. FR items are designed for continuous wear as only a secondary level of protection. Primary protection is still required for work activities where direct or significant exposure to heat or open flame is likely to occur.

Visibility Merchandise is intended to provide improved conspicuity of the wearer under daylight conditions and when illuminated by a light source of sufficient candlepower at night. It is Customer's responsibility to determine the level of conspicuity needed by wearers under specific work conditions. Further, Customer agrees that Visibility Merchandise alone does not ensure conspicuity of the wearer and that additional safety precautions may be necessary. The Visibility Merchandise supplied satisfied particular ANSI/ISEA standards only when they were new and unused and only if so labeled. Customer acknowledges that usage and laundering of Visibility Merchandise may adversely affect its conspicuity.

Healthcare/Food-Related Customer acknowledges that: (1) UniFirst does not guarantee or warrant that the Merchandise selected by Customer or that processed garments delivered by UniFirst will be appropriate or sufficient to provide a hygienic level adequate for individual Customer's needs; and (2) optional poly-bagging is recommended to reduce the risk of cross-contamination of Merchandise, and the failure to utilize such service may adversely affect the efficacy of UniFirst's hygienic cleaning process. (\* Poly-bag services incur additional charges.)

If any Merchandise supplied hereunder is Merchandise that: (1) UniFirst does not stock for whatever reason (including due to style, color, size or brand); (2) consists of non-UniFirst manufactured or customized FR Merchandise; or (3) consists of Merchandise that has been permanently personalized (in all cases known as "Non-Standard Merchandise"), then, upon the discontinuance of any Service hereunder at any time for any reason, including expiration, termination, or cancellation of this Agreement, with or without cause, deletion of any Non-Standard Merchandise from Customer's Service Program, or due to employee reductions (in each case a "Discontinuance of Service"), Customer will purchase at the time of such Discontinuance of Service all affected Non-Standard Merchandise items then in UniFirst's inventory (in-service, shelf, as well as any manufacturer's supplies ordered for Customer's use), paying for same the replacement charges then in effect.

Customer agrees not to contaminate any Merchandise with asbestos, heavy metals, solvents, inks or other hazardous or toxic substances ("contaminants"). Customer agrees to pay UniFirst for all Merchandise that is lost, stolen, damaged or abused beyond repair. As a condition to the termination of this Agreement, for whatever reason, Customer will return to UniFirst all standard Merchandise in good and usable condition or pay for same at the replacement charges then in effect.

OBLIGATIONS AND REMEDIES. If Customer breaches or terminates this Agreement before the expiration date for any reason (other than for UniFirst's failure under the performance guarantee described above), Customer will pay UniFirst, as liquidated damages and not as a penalty (the parties acknowledging that actual damages would be difficult to calculate with reasonable certainty) an amount equal to 50 percent of the average weekly amounts invoiced in the preceding 28 weeks, multiplied by the number of weeks remaining in the current term. These damages will be in addition to all other obligations or amounts owed by Customer to UniFirst, including the return of Standard Merchandise or payment of replacement charges, and the purchase of any Non-Standard Merchandise items as set forth herein.

This Agreement shall be governed by Massachusetts law (exclusive of choice of law). If a dispute arises from or relates in any way to this Agreement or any alleged breach thereof at any time, the parties will first attempt to resolve the claim or dispute by negotiation at agreed time(s) and location(s). All negotiations are confidential and will be treated as settlement negotiations. Any matter not resolved through direct negotiations within 30 days shall be resolved exclusively by final and binding arbitration, conducted in the capital city of the state where Customer has its principal place of business (or some other location mutually agreed); pursuant to the Commercial Arbitration Rules of the American Arbitration Association; and governed by the Federal Arbitration Act, to the exclusion of state law inconsistent therewith. The parties will agree upon one (1) Arbitrator to settle the controversy or claim. The successful or substantially prevailing party in any proceeding, including any appeals thereof (as determined by the Arbitrator/court) shall recover all of its costs and expenses including, without limitation, reasonable attorney fees, witness fees and discovery costs, all of which shall be included in and as a part of the judgment or award rendered hereunder. This provision for Arbitration is specifically enforceable by the parties; the Arbitrator shall have no power to vary or ignore the provisions hereof; and the decision of the Arbitrator in accordance herewith, may be entered in any court having jurisdiction thereof. Customer acknowledges that, with respect to all such disputes, it has voluntarily and knowingly waived any right it may have to a jury trial or to participate in a class action or class litigation as a representative of any other persons or as a member of any class of persons, or to consolidate its claims with those of any other persons or class of persons. If this prohibition against class litigation is ruled to be unenforceable for any reason in any proceeding, then the prohibition against class litigation shall be void and of no force and effect in that proceeding.

MISCELLANEOUS. The parties agree that this Agreement represents the entire agreement between them. In the event Customer issues a purchase order to UniFirst at any time, none of the standard pre-printed terms and conditions therein shall have any application to this Agreement, or any transactions occurring pursuant hereto or thereto. UniFirst may, in its sole discretion, assign this Agreement. Customer may not assign this Agreement without the prior written consent of UniFirst. Customer agrees that in the event it sells or transfers its business, it will require the purchaser or transferee to assume all obligations and responsibilities under this Agreement; provided that such assumption shall not relieve Customer of its liabilities hereunder; and provided further that any failure by a purchaser or transferee to assume this Agreement shall constitute a breach and early termination of this Agreement resulting in the obligation to pay all amounts on account thereof as set forth in this Agreement. Neither party will be liable for any incidental, consequential, special or punitive damages. In no event shall UniFirst's aggregate liability to Customer for any and all claims exceed the sum of all amounts actually paid by Customer to UniFirst. In the event any portion of this Agreement is held by a court of competent jurisdiction or by a duly appointed arbitrator to be unenforceable, the balance will remain in effect. All written notices provided to UniFirst must be sent by certified mail to the attention of the Location Manager. In Texas and certain other locations, UniFirst's business is conducted by, and the term "UniFirst" as used herein means, UniFirst Holdings, Inc. d.b.a. UniFirst.

ACCEPTED. Customer Signature [Signature] Date 9-27-18 (I have read and agree to all of the above Terms.)

Form #12333 06/16 Rev. 0/0

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# **ATTACHMENT**

# **B**

AMERICAN ARBITRATION ASSOCIATION

UNIFIRST CORPORATION  Claimant,  v.  TONY’S GARAGE, L.L.C.  Respondent.	Case Number: 01-20-0015-3734
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**UNIFIRST MEMORANDUM IN SUPPORT OF CLAIM**

Claimant, UniFirst Corporation (“UniFirst”), is a Massachusetts corporation. UniFirst is engaged in the primary business of renting uniforms, mats and other textile products, providing laundering, pick-up and delivery services for the rented items, and providing restroom products and services (collectively, “Services”). UniFirst provides Services from commercial laundry and distribution facilities throughout the United States including a facility located at 1901 Equitable Place, Charlotte, NC 28213. Respondent, Tony’s Garage, L.L.C. (“Respondent”), is a South Carolina limited liability company that operates an automotive repair business at 5963 Mount Gallant Road, Rock Hill, SC 29730. UniFirst provided Services to Respondent from its Charlotte, North Carolina office.

**Background**

UniFirst and Respondent entered into a Customer Service Agreement dated September 25, 2018 for the provision of Services to be used in the operation of Respondent’s business (the “Agreement,” Exhibit 1 hereto). The initial term of the Agreement was for a period of 60 months (260 revenue weeks) from the date UniFirst made its first delivery to Respondent, and according to UniFirst’s records, the first delivery was made on September 27, 2018. The Agreement replaced an earlier agreement for the same Services.

At all times, UniFirst performed its obligations and provided Services to Respondent according to the terms of the Agreement. At no time, according to UniFirst's records, has Respondent complained about the quality of UniFirst's Services. On or around April 2, 2020, as a result of the COVID-19 pandemic and its impact on Respondent's business, Respondent refused to accept additional deliveries of Services. UniFirst continued thereafter to visit Respondent's place of business periodically to inquire if Respondent would resume Services, as the initial impact of the pandemic decreased. Many of UniFirst's customers during this time temporarily closed and then reopened and recommenced receiving Services. Respondent would not resume Services however. During this time, all of UniFirst's rental merchandise remained in Respondent's possession, and Respondent continued to use UniFirst's rental items without paying UniFirst the weekly charges for Services. In August, 2020, four months after Respondent suspended UniFirst's Services, UniFirst's Route Service Manager, Phillip Richter, visited Respondent and insisted that it start accepting and paying for weekly deliveries of Services again. Mr. Richter asked Respondent's owner, Tony Pannell, to return all of UniFirst's rental merchandise for proper cleaning, and promised to replace any items that were worn through ordinary wear and tear while in Respondent's possession. However, Mr. Pannell informed Mr. Richter that Respondent's business was still suffering from the effects of the pandemic, refused to return any of UniFirst's rental merchandise, and further informed Mr. Richter that Respondent was unable to pay for UniFirst's Services. Respondent's unilateral suspension and subsequent termination of UniFirst's Services commencing on April 2, 2020, and Respondent's failure to return or pay UniFirst for certain rental merchandise as required under the terms of the Agreement constitute a breach of the Agreement's terms. Mr. Pannell later informed Mr. Richter that he had found better pricing from a competitor of UniFirst's.

### **Liquidated Damages**

According to the terms of the Agreement, in the event Respondent breaches or terminates the Agreement prior to its expiration date, Respondent agrees to pay UniFirst as liquidated damages, and in addition to all other amounts then due, an amount equal to fifty percent (50%) of the average weekly rental charges during the 26 weeks preceding the date of termination or breach, multiplied by the number of unexpired weeks remaining on the Agreement's term ("**Liquidated Damages**"). At the time Respondent breached the Agreement, there were 182 revenue weeks remaining on the term of the Agreement. At the time Respondent breached the Agreement, the average weekly rental charges for the 26 weeks preceding the date of breach amounted to \$91.92. Liquidated Damages, therefore, amount to **\$8,364.72** (See Exhibit 2 hereto, UniFirst's Summary of Claim and Liquidated Damages Worksheet, which lists the last 26 weeks of invoiced amounts).

### **Unreturned Standard Merchandise and Non-Standard Merchandise**

Further, according to the terms of the Agreement, Respondent has agreed, as a condition to the termination of the Agreement for any reason, (i) to return to UniFirst all Standard Merchandise in good and usable condition or pay for same at the replacement charges then in effect, and (ii) to purchase all Non-Standard Merchandise either in issue or inventory. "Non-Standard Merchandise" includes rental Merchandise that "(1) UniFirst does not stock for whatever reason (including due to style, color, size or brand), (2) consists of non-UniFirst manufactured or customized FR Merchandise, or (3) consists of Merchandise that has been permanently personalized."

According to UniFirst's records, Respondent has retained in its possession certain Standard Merchandise and refused to pay UniFirst for certain Non-Standard

Merchandise, with a total replacement value of \$3,670.10 (See Exhibit 3 hereto, UniFirst's invoice which lists the inventories of Standard Merchandise that remain in Respondent's possession, and Exhibit 2 hereto, which shows the replacement prices of the Standard Merchandise and the Non-Standard Merchandise (custom emblems) provided to Respondent and the calculation of the total amount due).

Respondent has refused to pay UniFirst for any of the unreturned Standard Merchandise and the Non-Standard Merchandise as required under the terms of the Agreement, all of which remains in Respondent's possession or control.

#### **Attorney Fees**

Further, according to the terms of the Agreement, Respondent has agreed to pay UniFirst its reasonable attorney fees in enforcing its rights under the Agreement. UniFirst requests an award of reasonable attorney fees in the amount of \$2,489.00 (See Exhibit 4 hereto, an Affidavit of Attorney Fees).

#### ***Reasonableness of Liquidated Damages***

The liquidated damages formula set out in the Agreement is a fair and reasonable estimate, at the time the Agreement was made, of UniFirst's expected loss in the event of a breach of the Agreement by the Respondent. The liquidated damages formula is a standard formula used throughout the uniform and textile rental industry. UniFirst's total variable costs amount, on average, to 50% of its revenue. The remaining 50% of each revenue dollar consists of profits and contributions to fixed costs/overhead. Thus, on the margin, including contributions to overhead, 50% of every lost dollar of revenue is a direct cash loss to UniFirst. The liquidated damages formula, therefore, is a reasonable measure of UniFirst's expected loss from the Respondent's breach of the Agreement.

According to the terms of the Agreement, the Agreement is governed by Massachusetts law. The Agreement is an Article 2A lease of personal property under the Uniform Commercial Code. Section 2A-504 of the Massachusetts General Laws Annotated (“MGLA”) specifically authorizes a formula in calculating liquidated damages. The Official Comment to the Code explains that liquidated damages provisions are given special preferential treatment under Article 2A. Requirements for liquidated damages provisions found in Article 2 regarding sales of goods are purposefully omitted from Article 2A: i.e., (i) the difficulty of proof of loss, and (ii) inconvenience or non-feasibility of otherwise obtaining an adequate remedy. Furthermore, Article 2A deletes all reference to the prohibition against unreasonably large liquidated damages found in Article 2: “By deleting the reference to unreasonably large liquidated damages the parties are free to negotiate a formula, restrained by the rule of reasonableness in this section. These changes should invite the parties to liquidate damages.” Section 2A-528(2) of the MGLA recognizes the reasonableness of, and specifically authorizes, the inclusion of contributions to overhead in determining damages under a lease.

Massachusetts case law also supports the enforcement of UniFirst’s liquidated damages formula. Under freedom of contract principles, generally, parties are held to the express terms of their contract, and the burden of proof is on the party seeking to invalidate an express term. The burden of proof regarding the enforceability of a liquidated damages clause, therefore, should rest squarely on the party seeking to set it aside. See *Town Planning & Eng'g Assocs., Inc. v. Amesbury Specialty Co.*, 369 Mass. 737, 744, 342 N.E.2d 706 (1976); *Hastings Assocs., Inc. v. Local 369 Bldg. Fund, Inc.*, 42 Mass.App.Ct. 162, 173, 675 N.E.2d 403 (1997). “Any reasonable doubt as to whether a provision constitutes a penalty or a legitimate liquidated damages clause should be resolved in favor of the aggrieved party. We thus join the majority of courts in other

States that have considered the question.” “It has long been the rule in Massachusetts that a contract provision that clearly and reasonably establishes liquidated damages should be enforced, so long as it is not so disproportionate to anticipated damages as to constitute a penalty. *TAL Financial Corp. v. CSC Consulting, Inc.*, 446 Mass. 422 (2006). In this instance, UniFirst’s liquidated damages provision has been shown to be the best estimate, at the time the Agreement was made, of UniFirst’s expected loss.

**The Affidavit of Phillip Richter, UniFirst’s Route Service Manager at its Charlotte, North Carolina office, is incorporated into this Memorandum by reference as Exhibit 5.**

**WHEREFORE**, Claimant, UniFirst Corporation, demands an award against the Respondent, Tony’s Garage, L.L.C., as follows:

- A. For compensatory damages of **\$12,034.82**; and
- B. Arbitration costs, plus reasonable attorney’s fees in the amount of **\$2,489.00**; and
- C. Such other and further relief as the Arbitrator deems just and proper.

LERCH, EARLY & BREWER, CHTD.

By: /s/ Theodore R. Goldstock  
Theodore R. Goldstock  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814  
(301) 347-1274  
trgoldstock@lercheearly.com  
*Counsel for UniFirst Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of January, 2021 I served a copy of the forgoing Memorandum, and all supporting Exhibits, on Respondent's "owner" via electronic mail, as set forth below:

Tony's Garage, L.L.C.  
c/o Tony Pannell  
[jenae.pannell@gmail.com](mailto:jenae.pannell@gmail.com)

/s/ Theodore R. Goldstock  
Theodore R. Goldstock

EXHIBIT 1

Agreement



## CUSTOMER SERVICE AGREEMENT TERMS

**REQUIREMENTS SUPPLIED.** Customer orders from UniFirst Corp. ("UniFirst") the rental garments and/or other items of the type specified in this Agreement ("Merchandise") and related pickup/delivery and maintenance services (collectively with Merchandise, "Services") for all of Customer's requirements therefor, at the prices and upon the terms and conditions set forth herein. Additional Services requested by Customer, verbally or in writing, will also be covered by this Agreement. All rental Merchandise supplied to Customer remains the property of UniFirst. Customer warrants that it is not subject to, and that this Agreement does not interfere or conflict with, any existing agreement for the supply of the Merchandise or Services covered.

**PERFORMANCE GUARANTEE. UNIFIRST GUARANTEES TO DELIVER HIGH-QUALITY SERVICE AT ALL TIMES.** All items of Merchandise cleaned, finished, inspected, repaired and delivered by UniFirst will meet or exceed industry standards, or non-conforming items will be replaced by the next scheduled delivery day at no cost to Customer. Items of rental Merchandise requiring replacement due to normal wear and tear will be replaced at no cost to Customer, save for any applicable personalization and setup charges.

Customer expressly waives the right to terminate this Agreement during the initial term or any extension thereof for deficiencies in the quality of Services unless: (1) complaints are first made in writing to UniFirst which set forth the precise nature of any deficiencies; (2) UniFirst is afforded at least 80 days to correct any deficiencies complained of; and (3) UniFirst fails to correct those deficiencies complained of within 80 days. In the event Customer complies with the foregoing and UniFirst fails to correct such deficiencies, Customer may terminate this Agreement by written notice to UniFirst, providing that all previous balances due to UniFirst have been paid in full and that all other conditions to terminate have been satisfied. Any delay or interruption of the Services provided for in this Agreement by reason of acts of God, fire, explosions, strikes or other industrial disturbances, or any other cause not within the control of UniFirst, shall not be deemed a breach or violation of this Agreement.

**TERM AND RENEWAL.** This Agreement is effective when signed by both the Customer and UniFirst Location Manager and continues in effect for 60 months after installation of Merchandise (for new customers) or any renewal date. This Agreement will be renewed automatically and continuously for multiple successive 60-month periods unless Customer or UniFirst gives written notice of non-renewal to the other at least 90 days prior to the next expiration date.

**PRICES AND PAYMENTS.** Prices are based on 52 weeks of service per year. Any increase(s) to Service Frequency could result in additional charges. On an annual basis, the prices then in effect will be increased by the greater of the annual percent increase in the Consumer Price Index - All Urban Consumers, Series ID: CUUROOODSAG, other goods and services, or by 5%. Additional price increases and other charges may be imposed by separate written notice or by notation on Customer's invoices. Customer may, however, decline such additional increases or charges by notifying UniFirst in writing within 10 days after receipt of such notice or notation. If Customer declines said additional price increases, UniFirst may terminate this Agreement. Customer also agrees to pay the other charges and minimum weekly charge herein specified. Charges relating to a wearer leaving Customer's employ can be terminated by (1) giving notice thereof to UniFirst and (2) returning or paying for any missing Merchandise issued to that individual. Any Merchandise payments required pursuant to this Agreement will be at the replacement price(s) then in effect hereunder. If an authorized Customer representative is not available to receive and acknowledge delivery of Merchandise, Customer authorizes UniFirst to make delivery and assumes responsibility for related charges/invoices.

If Customer fails to make timely payment, UniFirst may, at any time and in its sole discretion, terminate this Agreement by giving written notice to Customer, whether or not UniFirst has previously strictly enforced Customer's obligation to make timely payments. Customer agrees to pay, and will pay, all applicable sales, use, personal property and other taxes and assessments arising out of this Agreement.

**DEFE CHARGE.** Customer's invoices may also include a DEFE charge to cover all or portions of certain expenses including:

**D = DELIVERY,** or expenses associated with the actual delivery of Services and Merchandise to Customer's place of business, primarily Route Sales Representative commissions, management salaries, vehicle depreciation, equipment maintenance, insurance, road use charges and local access fees.

**E = ENVIRONMENTAL,** or expenses (past, present and future) UniFirst absorbs related to wastewater testing, purification, effluent control, solids disposal, supplies and equipment for pollution controls and energy conservation and overall regulatory compliance.

**F = FUEL,** or the gas, diesel fuel, oil and lubricant expenses associated with keeping UniFirst's fleet vehicles on the road and servicing its customers.

**E = ENERGY,** primarily the natural gas UniFirst uses to run boilers and gas dryers, plus other local utility charges.

**MERCHANDISE.** Customer acknowledges and agrees to notify all employees that Merchandise supplied is for general occupational use and, except as expressly specified below, affords no special user protections. Customer further acknowledges that: (1) Customer has unilaterally and independently determined and selected the nature, style, performance characteristics, number of changes and scope of all Merchandise to be used and the appropriateness of such Merchandise for Customer's specific needs or intended uses; (2) UniFirst does not have any obligation to advise, and has not advised, Customer concerning the fitness or suitability of the Merchandise for Customer's intended use; (3) UniFirst makes no representation, warranty or covenant regarding the performance of the Merchandise (including without limitation Flame Resistant and Visibility Merchandise); and (4) UniFirst shall in no way be responsible or liable for any injury or harm suffered by any Customer employees while wearing or using any Merchandise. Customer agrees to indemnify and hold harmless UniFirst and its employees and agents from and against all claims, injuries or damages to any person or property resulting from Customer's or Customer's employees use of the Merchandise, whether or not such claims, injuries or damages arise from any alleged defects in the Merchandise.

**Flame Resistant ("FR") Merchandise** supplied hereunder is intended only to prevent the ignition and burning of fabric away from the point of high heat impingement and to be self-extinguishing upon removal of the ignition source. FR items will not provide significant protection from burns in the immediate area of high heat contact due to thermal transfer through the fabric and/or destruction of the fabric in the area of such exposure. FR items are designed for continuous wear as only a secondary level of protection. Primary protection is still required for work activities where direct or significant exposure to heat or open flame is likely to occur.

**Visibility Merchandise** is intended to provide improved conspicuity of the wearer under daylight conditions and when illuminated by a light source of sufficient candlepower at night. It is Customer's responsibility to determine the level of conspicuity needed by wearers under specific work conditions. Further, Customer agrees that Visibility Merchandise alone does not ensure conspicuity of the wearer and that additional safety precautions may be necessary. The Visibility Merchandise supplied satisfied particular ANSI/ISEA standards only when they were new and unused and only if so labeled. Customer acknowledges that usage and laundering of Visibility Merchandise may adversely affect its conspicuity.

**Healthcare/Food-Related** Customer acknowledges that: (1) UniFirst does not guarantee or warrant that the Merchandise selected by Customer or that processed garments delivered by UniFirst will be appropriate or sufficient to provide a hygienic level adequate for individual Customer's needs; and (2) optional poly-bagging\* is recommended to reduce the risk of cross-contamination of Merchandise, and the failure to utilize such service may adversely affect the efficacy of UniFirst's hygienic cleaning process. (\*Poly-bag service incurs additional charges.)

If any Merchandise supplied hereunder is Merchandise that: (1) UniFirst does not stock for whatever reason (including due to style, color, size or brand); (2) consists of non-UniFirst manufactured or customized FR Merchandise; or (3) consists of Merchandise that has been permanently personalized (in all cases known as "Non-Standard Merchandise"), then, upon the discontinuance of any Service hereunder at any time for any reason, including expiration, termination, or cancellation of this Agreement, with or without cause, deletion of any Non-Standard Merchandise from Customer's Service Program, or due to employee reductions (in each case a "Discontinuance of Service"), Customer will purchase at the time of such Discontinuance of Service all affected Non-Standard Merchandise items then in UniFirst's inventory (in-service, shelf, as well as any manufacturer's supplies ordered for Customer's use), paying for same the replacement charges then in effect.

Customer agrees not to contaminate any Merchandise with acetone, heavy metals, solvents, inks or other hazardous or toxic substances ("contaminants"). Customer agrees to pay UniFirst for all Merchandise that is lost, stolen, damaged or abused beyond repair. As a condition to the termination of this Agreement, for whatever reason, Customer will return to UniFirst all standard Merchandise in good and usable condition or pay for same at the replacement charges then in effect.

**OBLIGATIONS AND REMEDIES.** If Customer breaches or terminates this Agreement before the expiration date for any reason (other than for UniFirst's failure under the performance guarantee described above), Customer will pay UniFirst, as liquidated damages and not as a penalty (the parties acknowledging that actual damages would be difficult to calculate with reasonable certainty) an amount equal to 50 percent of the average weekly amounts invoiced in the preceding 28 weeks, multiplied by the number of weeks remaining in the current term. These damages will be in addition to all other obligations or amounts owed by Customer to UniFirst, including the return of Standard Merchandise or payment of replacement charges, and the purchase of any Non-Standard Merchandise items as set forth herein.

This Agreement shall be governed by Massachusetts law (exclusive of choice of law). If a dispute arises from or relates in any way to this Agreement or any alleged breach thereof at any time, the parties will first attempt to resolve the claim or dispute by negotiation at agreed time(s) and location(s). All negotiations are confidential and will be treated as settlement negotiations. Any matter not resolved through direct negotiations within 30 days shall be resolved exclusively by final and binding arbitration, conducted in the capital city of the state where Customer has its principal place of business (or some other location mutually agreed); pursuant to the Commercial Arbitration Rules of the American Arbitration Association; and, governed by the Federal Arbitration Act, to the exclusion of state law inconsistent therewith. The parties will agree upon one (1) Arbitrator to settle the controversy or claim. The successful or substantially prevailing party in any proceeding, including any appeals thereof (as determined by the Arbitrator/court) shall recover all of its costs and expenses including, without limitation, reasonable attorney fees, witness fees and discovery costs, all of which shall be included in and as a part of the judgment or award rendered hereunder. This provision for Arbitration is specifically enforceable by the parties; the Arbitrator shall have no power to vary or ignore the provisions hereof; and, the decision of the Arbitrator in accordance herewith, may be entered in any court having jurisdiction thereof. Customer acknowledges that, with respect to all such disputes, it has voluntarily and knowingly waived any right it may have to a jury trial or to participate in a class action or class litigation as a representative of any other persons or as a member of any class of persons, or to consolidate its claims with those of any other persons or class of persons. If this prohibition against class litigation is ruled to be unenforceable for any reason in any proceeding, then the prohibition against class litigation shall be void and of no force and effect in that proceeding.

**MISCELLANEOUS.** The parties agree that this Agreement represents the entire agreement between them. In the event Customer issues a purchase order to UniFirst at any time, none of the standard pre-printed terms and conditions therein shall have any application to this Agreement, or any transactions occurring pursuant hereto or thereto. UniFirst may, in its sole discretion, assign this Agreement. Customer may not assign this Agreement without the prior written consent of UniFirst. Customer agrees that in the event it sells or transfers its business, it will require the purchaser or transferee to assume all obligations and responsibilities under this Agreement; provided that such assumption shall not relieve Customer of its liabilities hereunder; and provided further that any failure by a purchaser or transferee to assume this Agreement shall constitute a breach and early termination of this Agreement resulting in the obligation to pay all amounts on account thereof as set forth in this Agreement. Neither party will be liable for any incidental, consequential, special or punitive damages. In no event shall UniFirst's aggregate liability to Customer for any and all claims exceed the sum of all amounts actually paid by Customer to UniFirst. In the event any portion of this Agreement is held by a court of competent jurisdiction or by a duly appointed arbitrator to be unenforceable, the balance will remain in effect. All written notices provided to UniFirst must be sent by certified mail to the attention of the Location Manager. In Texas and certain other locations, UniFirst's business is conducted by, and the term "UniFirst" as used herein means, UniFirst Holdings, Inc. d.b.a. UniFirst.

ACCEPTED. Customer Signature [Signature] Date 9-27-18 (I have read and agree to all of the above Terms.)  
Form #12321 06/18 Rev. 0/0

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## EXHIBIT 2

### Summary of Claim and Liquidated Damages Worksheet



EXHIBIT 3

Invoice

212 2163728  
 10/08/20  
 1226624  
 RTE# 35850  
 TONY'S GARAGE

UniFirst Corporation  
 P.O. BOX 584  
 NEWELL NC 28126

212 3 5 100 35850 212 1  
 755495 2163728 CHARGE

1143735 803/517-1420  
 TONY'S GARAGE  
 5963 MOUNT GALLANT ROAD  
 ROCK HILL SC 29730

UniFirst Corporation  
 P.O. BOX 584 NEWELL NC 28126

Geo Code: 410910560

212 2163728 10/08/20 CHARGE

755495 Deposit Charge: .00 CEMB 2.50  
 Emblem Charge: .00 FEMB 2.00  
 Service Charge: .35

1143735  
 TONY'S GARAGE  
 5963 MOUNT GALLANT ROAD  
 ROCK HILL SC 29730

1226624  
 TONY'S GARAGE  
 1920 CRYSTAL RIDGE DR.  
 ROCK HILL SC 29732

Cust PIA Bal: .00

800/794-2706 RTE# 35850

-09-

Item	Description	QTY	Rate	Amount	Date
0001	1 TONY PANNELL				
	SSSHT-65/35 TYPE O C	0 11			
	PANT-65/35 W/CARGO P	0 8			
	PANT-65/35 W/CARGO P	0 3			
	JKT-65/35 P/C YSY RE	0 2			
0003	25 JONATHAN BERRY				
	SSSHT-65/35 TYPE O C	0 11			
	PANT-65/35 W/CARGO P	0 11			
	JKT-65/35 P/C YSY RE	0 2			
0005	20 BILLY PANNELL				
	SSSHT-65/35 TYPE O C	0 11			
	PANT-65/35 W/CARGO P	0 11			
	JKT-65/35 P/C YSY RE	0 2			
0006	18 KENNY ECKHART				
	SSSHT-65/35 TYPE O C	0 11			
	PANT-65/35 W/CARGO P	0 11			
	JKT-65/35 P/C YSY RE	0 2			
	DEFE CHARGE		7.55	.530	
	GARMENT MAINTENANCE		9.56	.670	
	SALES TAX (7.0000%)		4.03		
	INVOICE SUB-TOTAL			61.66	

QTY	Rate	Amount	Description
1	1	.460	UNI RE 04TOIF 185 01
1	1	.310	UNI RE 10AI05 360 30
1	1	.310	UNI RE 10AI05 360 30
1	1	.830	UNI RE 15EL05 540 02
3	25	.460	UNI RE 04TOIF 195 01
3	25	.310	UNI RE 10AI05 400 32
3	25	.830	UNI RE 15EL05 540 02
5	20	.460	UNI RE 04TOIF 155 01
5	20	.310	UNI RE 10AI05 320 30
5	20	.830	UNI RE 15EL05 420 02
6	18	.460	UNI RE 04TOIF 165 01
6	18	.310	UNI RE 10AI05 380 34
6	18	.830	UNI RE 15EL05 460 02

EEFX 7.550  
 GMPW 9.56

212 2163728  
10/08/20  
1226624  
RTE# 35850  
TONY'S GARAGE

UniFirst Corporation  
P.O. BOX 584  
NEWELL

NC 28126

212 3 5 100 35850 212 2

755495 2163728 CHARGE

1143735 803/517-1420  
TONY'S GARAGE  
5963 MOUNT GALLANT ROAD  
ROCK HILL SC 29730

Geo Code: 410910560

UniFirst Corporation  
P.O. BOX 584

NEWELL

002  
NC 28126

212 2163728 10/08/20 CHARGE

1143735  
TONY'S GARAGE  
5963 MOUNT GALLANT ROAD  
ROCK HILL SC 29730

1226624  
TONY'S GARAGE  
1920 CRYSTAL RIDGE DR.  
ROCK HILL SC 29732

755495

Deposit Charge: .00 CEMB 2.50  
Emblem Charge.: .00 FEMB 2.00  
Service Charge: .35

Cust PIA Bal: .00

800/794-2706

RTE# 35850

TOTAL SERVICE CHANGES \_\_\_\_\_

AMOUNT DUE \_\_\_\_\_

THIS IS YOUR ONLY INVCE- NET 30 DAYS. PLEASE SIGN \_\_\_\_\_

SOIL PICK UP COUNT SH \_\_\_\_\_ PT \_\_\_\_\_ OT \_\_\_\_\_ NO \_\_\_\_\_

OPEN INVOICE SUMMARY

\* - Denotes Invoice Past Due At Least 30 days.

Invoice Date	Invoice Number	Amount
10/08/20	2163728	61.66
Account Balance:		61.66
Past Due Balance:		

EXHIBIT 4  
Affidavit of Attorney Fees

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AMERICAN ARBITRATION ASSOCIATION

UNIFIRST CORPORATION  Claimant,  v.  TONY'S GARAGE, L.L.C.  Respondent.	Case Number: 01-20-0015-3734
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AFFIDAVIT OF ATTORNEY FEES

I, Theodore R. Goldstock, upon my oath, depose and state as follows:

1. I am over 18 years of age, and I am competent to testify as to the matters set forth in this Affidavit.

2. I am an attorney with Lerch, Early & Brewer, Chartered, 7600 Wisconsin Avenue, Suite 700, Bethesda, MD 20814 (the "Firm").

3. The Firm represents UniFirst Corporation ("UniFirst") in this Arbitration proceeding, and I submit this Affidavit in support of the claim of UniFirst for attorney fees.

4. In connection with the Arbitration, UniFirst engaged the Firm to file a demand for arbitration and statement of claim with the American Arbitration Association, and to represent UniFirst throughout the Arbitration proceeding. Accordingly, this Firm prepared the documents that were necessary to obtain an arbitration award against the Respondent, and participated in the Arbitration proceeding as required.

5. My standard hourly rate is currently \$545.00. This rate is well within the range of hourly rates charged by attorneys in this jurisdiction for litigation services of this type. The total accrued cost for my time on this matter thru January 18, 2020 is

\$2,489.00. A true and correct copy of the Firm's billing summary for this matter is attached hereto.

6. The attorneys' fees accrued and set forth in the attached billing summary were reasonable and necessary to obtain an Arbitration award against the Respondent in this matter.

7. I solemnly affirm under the penalties of perjury that the foregoing is true and correct.

January 18, 2021

/s/ Theodore R. Goldstock  
Theodore R. Goldstock, Esq.

# Statement of Account

92355 UniFirst - Charlotte, NC  
 223 Tony's Garage, L.L.C.

Time & Rate: Original Value

(FOR INTERNAL BILLING ONLY)

## Fees

Date	ID	Description	Time	Hourly Rate	Orig. Amount	Bill Amount
10/7/2020	TRG	review new matter, Tony's Garage, for UniFirst Charlotte; research corp. entity and draft demand letter.	0.40	\$535	\$214.00	\$214.00
10/20/2020	TRG	draft demand for arbitration.	0.80	\$535	\$428.00	\$428.00
10/26/2020	TRG	forward AAA bill to client.	0.10	\$535	\$53.50	\$53.50
<b>Total Fees: 10/2020</b>			<b>1.30</b>		<b>\$695.50</b>	<b>\$695.50</b>
11/11/2020	TRG	submit conflicts checklist to AAA.	0.20	\$535	\$107.00	\$107.00
11/20/2020	TRG	review correspondence from Tony's Garage and AAA; forward to client.	0.20	\$535	\$107.00	\$107.00
11/23/2020	TRG	correspondence with client.	0.10	\$535	\$53.50	\$53.50
<b>Total Fees: 11/2020</b>			<b>0.50</b>		<b>\$267.50</b>	<b>\$267.50</b>
12/1/2020	TRG	correspondence with AAA re proceeding with arbitration.	0.10	\$545	\$54.50	\$54.50
12/9/2020	TRG	forward AAA invoice to client; submit ranking of arbitrators to AAA.	0.20	\$545	\$109.00	\$109.00
12/23/2020	TRG	review notice of appointment of arbitrator.	0.10	\$545	\$54.50	\$54.50
<b>Total Fees: 12/2020</b>			<b>0.40</b>		<b>\$218.00</b>	<b>\$218.00</b>
1/12/2021	TRG	work on drafting Memorandum.	2.20	\$545	\$1,199.00	\$1,199.00
1/14/2021	TRG	final review of Memorandum and assemble all exhibits for filing.	0.20	\$545	\$109.00	\$109.00
<b>Total Fees: 01/2021</b>			<b>2.40</b>		<b>\$1,308.00</b>	<b>\$1,308.00</b>
<b>Total Fees:</b>			<b>4.60</b>		<b>\$2,489.00</b>	<b>\$2,489.00</b>

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EXHIBIT 5

Affidavit of Phillip Richter

AMERICAN ARBITRATION ASSOCIATION

UNIFIRST CORPORATION  Claimant,  v.  TONY'S GARAGE, L.L.C.  Respondent.	Case Number: 01-20-0015-3734
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AFFIDAVIT OF PHILLIP RICHTER

I hereby swear and affirm that:

1. I am over eighteen years of age and am competent to testify.
2. I am the Route Service Manager for UniFirst Corporation ("UniFirst"), at its Charlotte, North Carolina office and the custodian of UniFirst's business records at the Charlotte office.
3. I have personal knowledge of the facts as set forth in UniFirst's Memorandum in Support of UniFirst Corporation's Claims, to which this Affidavit is attached.
4. I hereby affirm that all of the facts and Exhibits set forth or incorporated into the Memorandum are true and correct.

**I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT.**

 11/30/21  
Phillip Richter Date

# **ATTACHMENT**

# **C**



Theodore R. Goldstock  
301-347-1274  
[trgoldstock@lerchearly.com](mailto:trgoldstock@lerchearly.com)

October 7, 2020

Tony's Garage, L.L.C.  
5963 Mount Gallant Road  
Rock Hill, SC 29730

Re: UniFirst Corporation v. Tony's Garage, L.L.C.

Dear Sirs:

We represent UniFirst Corporation ("UniFirst"), and our client has directed us to collect a total of **\$12,034.89** from you, representing damages arising from your breach and early termination of your service agreement with UniFirst dated , 2017 (the "Agreement"). This amount includes: (i) **\$3,670.10** in charges for unreturned, damaged and non-standard merchandise; and (ii) **\$8,364.79** in additional liquidated damages as specified in the Agreement (equivalent to 50% of the average rental charges for the remainder of the contract term).

UniFirst takes this matter very seriously. Further, this dispute is subject to mandatory and binding arbitration under the commercial arbitration rules of the American Arbitration Association (the "AAA"), and we intend to immediately file a demand for arbitration with the AAA if UniFirst's claim is not resolved within ten days of the date hereof. Please be advised that judgments on arbitration awards can be entered by any court of competent jurisdiction.

Please contact me immediately, or ask your attorney to contact me instead.

Yours Truly,

Theodore R. Goldstock

Theodore R. Goldstock

cc: Michael Wright

92355.001

# **ATTACHMENT**

# **D**

# Tony's Garage & Towing

5963 Mt Gallant Road, Rock Hill SC 29732

Phone: 803.328.8647 Fax: 803.328.8709

November 18, 2020

VIA E-MAIL

Frances Crusoe  
Manager of ADR Services

We received the UniFirst Corporation's Demand for Arbitration and Statement of Claim. We understand that in this claim UniFirst states that Tony's Garage committed breach of contract. We disagree with this statement and feel that UniFirst was in breach of contract by not upholding their commitments in the contract. Within their contract is the section, "Performance Guarantee," which states that Unifirst will clean, inspect, and repair merchandise; merchandise being uniforms provided by their company.

Since updating our employees' uniforms quite some time ago, Unifirst has failed to uphold this section of the contract. There have been numerous occasions when our employees' uniforms were not delivered as promised and we had to contact them to inquire about when the uniforms could be expected. We have received uniforms that were supposed to have been laundered and returned, only to receive soiled uniforms. In their contract it states that uniforms will be repaired as needed and if repairs are not able to be made, uniforms will be replaced. Many of the uniforms our employees rent from Unifirst have stains, holes, rips, and seams and stitching that are coming apart. Part of their agreement was that when uniforms are picked up each week to be cleaned they will be inspected for such damages and will be repaired. When this did not occur, we brought the needed repairs to the attention of Unifirst, but no repairs or replacements were made. We have also received uniforms intended for other companies instead of our own and have had to call Unifirst to correct this.

On our final contact with Unifirst we again attempted to resolve the ongoing issues we were experiencing and were given an offer of reduced fees. The costs of renting the uniforms was not the issue, the lack of customer service and maintenance of the uniforms was our concern. They would not address these concerns. We asked that if these concerns could not be resolved that they pick up the uniforms and end our service with them. They have yet to pick up the uniforms. At this time we would like to schedule a time for Unifirst to pick up the uniforms and we are willing to offer a payment of \$1000.00 as a goodwill gesture.

We thank you for your service and look forward to your ability to resolve these grievances.

Sincerely,  
Tony Pannell  
Owner, Tony's Garage

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# **ATTACHMENT**

# **E**

American Arbitration Association

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In the Matter of the Arbitration between

Re: Case Number: 01-20-0015-3734

UniFirst Corporation

-vs-

Tony's Garage, L.L.C.

**DOCUMENT SUBMISSION SCHEDULE**

The Parties shall submit any documents they would like to present in support of their arguments to the AAA. Any submissions shall also be provided to the other party. The AAA will transmit any submissions received to the arbitrator for consideration.

Claimant shall have until January 19, 2021, to submit its documentary case.

Respondent shall have until February 8, 2021, to submit its documentary case.

Claimant shall have until February 12, 2021, to submit its reply documentary case, if any.

A final conference call will be conducted on February 16, 2021, at 11:00am.

In addition to any documents the Claimant wishes to submit, it shall submit a sworn statement (affidavit) containing a breakdown of the amounts claimed and how they were calculated, as well as proof of service to the opposing side.

Pursuant to Rule E-6 (d), the arbitrator shall establish the date for any additional written submission or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.

Dated: January 7, 2021

*/s/Kristi Lea Harrington*  
Hon. Kristi L. Harrington, Arbitrator

# **ATTACHMENT**

# **F**

# SCHUSTERMAN LAW FIRM, P.A.

*Attorney at Law*

541 EAST MAIN STREET · POST OFFICE BOX 4211 · ROCK HILL, SOUTH CAROLINA 29732  
TELEPHONE 803 325-7788 · FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

February 10, 2021

Via Email: [trgoldstock@lerchlearly.com](mailto:trgoldstock@lerchlearly.com)  
Theodore R. Goldstock, Esq.  
Lerch, Early & Brewer, Chtd.  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814-5367

**Re: UniFirst Corporation v. Tony's Garage, LLC**

Dear Mr. Goldstock:

Please be advised that this office represents Tony's Garage, LLC and Mr. Panell in regard to a contract involving your client. It is my understanding that your client has demanded arbitration in this matter. My client is not agreeable to engaging in arbitration with UniFirst Corporation as we do not believe that the arbitration clause contained in the "Customer Service Agreement Terms" is a valid and enforceable clause. As a result, we respectfully ask that you suspend the arbitration proceeding until it can be determined whether the arbitration clause is valid.

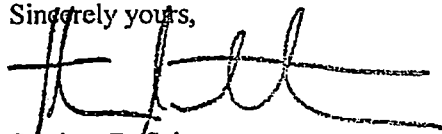
Additionally, it is my understanding in reviewing the Agreement, that in order to even be in a position to invoke the arbitration clause, the parties are required to "first attempt to resolve the claim or dispute by negotiation at an agreed time(s) and location(s). This prerequisite has not been satisfied.

Please contact me at your earliest convenience to discuss this matter.

I look forward to hearing from you.

With kind regards, I am

Sincerely yours,



Stephen D. Schusterman

SDS/

cc: Mr. Tony Panell, Tony's Garage, LLC

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# **ATTACHMENT**

# **G**



AMERICAN  
ARBITRATION  
ASSOCIATION\*

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION\*

Southeast Case Management Center  
John Bishop  
Vice President  
2200 Century Parkway  
Suite 300  
Atlanta, GA 30345  
Telephone: (404)325-0101  
Fax: (877)395-1388

ELECTRONICALLY FILED - 2021 Jun 23 2:41 PM - YORK - COMMON PLEAS - CASE#2021CP4601651

March 1, 2021

Theodore R. Goldstock, Esq.  
Lerch, Early & Brewer, Chtd.  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814-5367  
Via Email to: [trgoldstock@lerchearly.com](mailto:trgoldstock@lerchearly.com)

Tony Pannell  
Tony's Garage, L.L.C.  
5963 Mount Gallant Road  
Rock Hill, SC 29730  
Via Email to: [jenae.pannell@gmail.com](mailto:jenae.pannell@gmail.com)

Case Number: 01-20-0015-3734

UniFirst Corporation  
-vs-  
Tony's Garage, L.L.C.

Dear Parties:

By direction of the arbitrator, attached please find the duly executed Award in the above matter. Please remember there is to be no direct communication with the arbitrator. Any further communication shall be directed to the AAA.

A financial reconciliation has been conducted and each party will receive a separate financial accounting for this matter if there is a balance or refund due.

Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, pursuant to the Rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the American Arbitration Association (the AAA) for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the final award is issued, and regardless of the arbitrator's apportionment of these costs between the parties in the award.

Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter.

We appreciate the opportunity to assist you in resolving your dispute. As always, please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Jenn Ashenfelter on behalf of

Frances Crusoe  
Manager of ADR Services  
Direct Dial: (404)320-5117  
Email: FrancesCrusoe@adr.org  
Fax: (877)395-1388

cc:  
Stephen D. Schusterman, Esq.  
Hon. Kristi L. Harrington

AMERICAN ARBITRATION ASSOCIATION  
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-20-0015-3734

UniFirst Corporation

-vs-

Tony's Garage, L.L.C.

AWARD OF ARBITRATOR

I, Hon. Kristi L. Harrington (Ret.), THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named Parties (Claimant, UniFirst Corporation, represented by Theodore R. Goldstock, Esq. of Lerch, Early & Brewer, Respondent, Tony's Garage, L.L.C., represented by Tony Pannell), and dated September 27, 2018, and having been duly sworn and the oral hearings having been waived in accordance with the Rules, and having fully reviewed and considered the written documents submitted to me by Claimant, and the Respondent having failed to submit documents after due notice in accordance with Rule 31 of the Commercial Arbitration Rules of the American Arbitration Association.

A final conference call was conducted on February 16, 2021, after the document submission deadline of February 12, 2021. Appearing on that call was Claimant's counsel. No one appearing on behalf of Respondent was present. Mr. Goldstock informed the Arbitrator he had been contacted by Stephen Schusterman on February 10, 2021, via email (uploaded into the AAA case file). Mr. Schusterman indicated that he was the attorney for Tony's Garage and indicated his client was "not agreeable to engaging in arbitration." I find that Respondent received proper notice of the Arbitration, had counsel who advised he was aware of the pending arbitration, and failed to present any legal authority to prevent an issuance of an Award.

*I hereby AWARD* to Claimant, UniFirst Corporation, \$12,034.82 as follows: \$8,364.72 as outlined in the terms of the Agreement for the breach of the contract. There was no written notice to Claimant to allow the right to cure as provided in the Agreement. It is undisputed that the Respondent ceased paying under the terms of the Agreement, and without the required notice to Claimant, Respondent is in breach of the terms of the Agreement. The Agreement states the governing law is Massachusetts law, and thus, the Respondent bears the burden of proof regarding the enforceability of a liquidated damages clause should Respondent wish to set the provision aside. As Respondent made no motion or challenge to the provision or to the arbitration, the provision applies. Further, Claimant is awarded \$3,670.10 for standard merchandise total replacement for unreturned Standard Merchandise and the Non-Standard Merchandise as required under the terms of the Agreement.

Claimant further seeks attorney fees in the amount of \$2,489.00. I find the amount of attorneys' fees to be reasonable and necessary. Counsel provided an Affidavit of Attorney Fees indicating his rate is within the range of hourly rates charged by attorneys in the jurisdiction. *I hereby AWARD* attorneys' fees to Claimant in the amount of \$2,489.00.

The administrative fees of the American Arbitration Association, totaling \$925.00, shall be borne by Claimant, and the compensation of the arbitrator, totaling \$1,150.00, shall be borne by Claimant.

The above sums are to be paid on or before 120 days from the date of this Award.

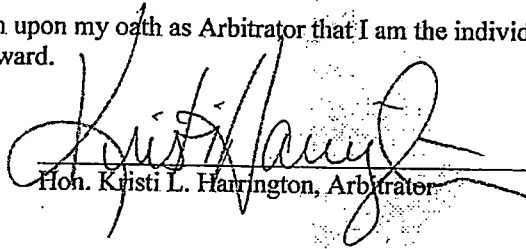
This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein

are hereby denied.

I, Hon. Kristi L. Harrington, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

3-1-21

Date

  
Hon. Kristi L. Harrington, Arbitrator

# **ATTACHMENT**

# **H**

**From:** [Goldstock, Theodore R.](#)  
**To:** [Allison Schusterman](#); [Steve Schusterman](#)  
**Bcc:** [Goldstock, Theodore R.](#)  
**Subject:** RE: Unifirst Corp. v. Tony's Garage, LLC  
**Date:** Tuesday, March 2, 2021 12:15:00 PM  
**Attachments:** [2021-03-01 AAA Closing Case - Awarded.pdf](#)  
[2021-03-01 Final Award.pdf](#)

---

Dear Mr. Schusterman:

Attached is the Award made in favor of UniFirst Corporation and against Tony's Garage, LLC in the total amount of \$14,523.82. When does your client intend to pay the Award?

**From:** Allison Schusterman <[allison@schustermanlawfirm.com](mailto:allison@schustermanlawfirm.com)>  
**Sent:** Wednesday, February 10, 2021 9:28 AM  
**To:** Goldstock, Theodore R. <[trgoldstock@lercheary.com](mailto:trgoldstock@lercheary.com)>  
**Cc:** Steve Schusterman <[sdslaw@comporium.net](mailto:sdslaw@comporium.net)>  
**Subject:** Unifirst Corp. v. Tony's Garage, LLC

Dear Mr. Goldstock:

Attached please find a letter in regards to the above referenced case. Stephen D. Schusterman has been retained to represent Tony's Garage, LLC. Please direct any and all future correspondence directly to our office. Thank you!

--

Allison Schusterman  
Paralegal/Office Manager  
Schusterman Law Firm, P.A.  
541 East Main Street  
Post Office Box 4211  
Rock Hill, South Carolina 29732  
Telephone (803) 325-7788  
Facsimile (803) 325-7889  
[www.schustermanlawfirm.com](http://www.schustermanlawfirm.com)

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1 State of South Carolina ) Court of Common Pleas  
 2 County of York ) Seventh Judicial Circuit

3  
 4 Tony's Garage, LLC, ) Transcript of Record  
 )  
 5 Plaintiff, )  
 vs. ) 2021-CP-46-01651  
 6 )  
 7 UniFirst Corporation, )  
 )  
 Defendants. )

8  
 9  
 10 July 28, 2021  
 York, South Carolina

11 B E F O R E:

12 The Honorable Daniel D. Hall, Judge

13  
 14 A P P E A R A N C E S:

15 Stephen D. Schusterman, Esquire  
 On behalf of the Plaintiff

16  
 17 T. David Rheney, Esquire  
 On behalf of Meridian Security Insurance Company

18  
 19  
 20 Reported by: Stacy S. Johnson,  
 Circuit Court Reporter

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I N D E X

PAGE

Certificate of Reporter

18

E X H I B I T S

\*\*NO EXHIBITS WERE INTRODUCED\*\*

1           (The following proceedings were held July 28,  
2 2021, beginning at 11:50 PM.)

3           THE COURT: All right. The next matter is  
4 2021-CP-46-01651. Tony's Garage versus UniFirst  
5 Corporation. Representing the plaintiff is Mr. Stephen  
6 Schusterman, representing the defendant is Mr. Caleb  
7 Riser.

8           This appears to be a motion brought on behalf of  
9 the defendant. Mr. Schusterman, I'll be glad to hear  
10 from you.

11          MR. SCHUSTERMAN: Yes, Your Honor. I represent  
12 the plaintiff in this action. We have a motion to  
13 vacate an arbitration award and then I believe Mr. Riser,  
14 on behalf of UniFirst, is going to argue to have it  
15 confirmed.

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

18          MR. SCHUSTERMAN: Thank you, Your Honor.  
19 May it please --

20          THE COURT: And -- and for both of you, I have  
21 the file in front of me and will be following along as  
22 you go forth.

23          MR. SCHUSTERMAN: Very good, sir.

24          MR. RISER: And, excuse me, just for a second.

25          Your Honor, I don't want to unnecessarily clutter

1 your desk, but I brought a hard copy that's tabbed of  
2 my pleadings, so before -- I didn't want to interrupt  
3 you, so before you get started, one for you and your  
4 clerk.

5 THE COURT: All right. Thank you.

6 All right, Mr. Schusterman.

7 MR. SCHUSTERMAN: Thank you, Your Honor.

8 May it please the Court? I represent Tony's Garage.  
9 The gentleman seated here to my right, to the Court's  
10 left, is Tony Pannell, who's the owner of Tony's Garage.

11 In September of 2018, Mr. Pannell, Tony's Garage,  
12 on behalf of Tony's Garage, entered into a contract with  
13 the defendant UniFirst Corporation. UniFirst provides  
14 uniforms. This is an automotive repair shop and they  
15 provide uniforms, clean them and the like. That was in  
16 September of 2018.

17 As time went on, Your Honor, of course, COVID came  
18 and there were issues that my client had with UniFirst,  
19 quite possibly issues that UniFirst had with my client.

20 In October of 2020, a man -- an attorney out of  
21 Bethesda, Maryland, a Mr. Goldstock, essentially wrote  
22 to my client or to Tony's Garage basically telling them  
23 that they were in breach of the contract and that they  
24 were going to pursue arbitration.

25 I tell you this, Your Honor, because my client

1 responded with a letter on November, I want to say the  
2 18th of 2020, basically contesting the issue. I think  
3 that the environment -- let me say that this issue really  
4 came to a head when they came to me in March of 2021  
5 and at that time indicated that they did not want to go  
6 through the arbitration process, that they were unaware  
7 of what they had signed.

8 Obviously they're not legally educated. I submit  
9 to the Court when you look at the file, I think that in  
10 law school when you look up what an adhesion contract  
11 is, I believe that when you look at that, Your Honor,  
12 that would be an example of it. It is a form contract  
13 that with an atomic microscope you may be able to get  
14 the wording that's in there.

15 What is of relevance, Your Honor, not to belabor  
16 the point, I just want to give you a quick background,  
17 what's very interesting is I wrote to Mr. Goldstock,  
18 and the letter is in the file, it's -- it's actually --  
19 it's provided, I believe, by Mr. Riser, and essentially  
20 I said to Mr. Goldstock that I was now representing  
21 Tony's Garage, that we were taking exception to the  
22 binding arbitration process, but not merely saying that,  
23 specifically said that -- told Mr. Goldstock that it  
24 was our contention that there was a condition precedent  
25 that was not fulfilled by his client and, thus, the

1 arbitration should not go forward.

2 To that, I received no word. Nothing. I did not  
3 -- I didn't get a phone call, I didn't get a letter, I  
4 didn't get anything until the day after the arbitration  
5 award came through and then he was quick to call my  
6 office to tell me how's my client gonna pay \$12,000.

7 I tell you that, Your Honor, because I want you to  
8 understand the environment that Mr. Goldstock created.  
9 Nothing I say has anything to do with Mr. Riser. I'm  
10 dealing with him. He's an asset to the South Carolina  
11 Bar.

12 THE COURT: I'm curious. So he sends you the --  
13 I mean, you sent the letter, no response. Does your  
14 client participate in it all?

15 MR. SCHUSTERMAN: We did not participate in the  
16 arbitration.

17 THE COURT: So it was -- what you're alleging to  
18 the Court, it was a one-sided arbitration?

19 MR. SCHUSTERMAN: Yes, sir. I'm -- what I'm  
20 actually alleging is that it should not have gone  
21 forward.

22 THE COURT: Right. But what I'm saying is your  
23 client did not participate in the arbitration.

24 MR. SCHUSTERMAN: He did not. That is a correct  
25 statement. He did not.

1 THE COURT: All right.

2 MR. SCHUSTERMAN: And I tell you that because of  
3 the environment that we are in. If Mr. Goldstock wants  
4 to live by this contract, then I believe he has to  
5 potentially die by it as well.

6 The condition precedent, there are -- well, there  
7 are several things. First, it required that before you  
8 could have the arbitration that it very specifically  
9 indicates that you must have -- you must have a sit-down  
10 conference. You must have a -- I want to read to you  
11 specifically. It requires that a time and place agreed  
12 upon by the parties be set up to have a negotiated  
13 session. That never occurred.

14 The position that UniFirst is taking is that  
15 whenever a representative of theirs came by the shop  
16 to find out whether or not Mr. -- Tony's Garage,  
17 Mr. Pannell, was going to continue that that was, in  
18 effect, the negotiation session, and I submit to you  
19 that it clearly is not.

20 It also specifically says within with the rules  
21 that the parties are to -- this is within their contract  
22 -- the parties are to agree on an arbitrator. I have  
23 absolutely nothing, Your Honor, against retired justice  
24 -- I believe it was Harrington, who was appointed to do  
25 this and ultimately heard this case, a South Carolina

1 retired justice. She may be -- I've never appeared  
2 before her. She may be an incredible jurist, but the  
3 contract says that my client was to be a part of that,  
4 to agree. My client never agreed. There was no  
5 agreement that that would be the arbitrator.

6 Further, Your Honor, it -- it requires -- I beg  
7 the Court's indulgence, Your Honor.

8 THE COURT: Well, let me ask you, what -- and help  
9 educate Judge Hall, what -- what authority do -- does  
10 the Court have to -- to vacate an arbitration? I mean,  
11 this is a motion to vacate. That -- that does appear  
12 to be your -- I mean, your complaint, your summons and  
13 complaint was simply to vacate the arbitration award.

14 MR. SCHUSTERMAN: That is correct.

15 THE COURT: All right. How does that come in front  
16 of a circuit -- educate me on how that comes in front of  
17 a circuit judge.

18 MR. SCHUSTERMAN: I believe that the -- that under  
19 the theory of the contract that is entered between  
20 Tony's Garage and UniFirst that between them that a  
21 violation of that contract or a determination of it  
22 being an unconscionable contract for whatever reason  
23 would give the Court the authority to vacate the  
24 arbitration award.

25 THE COURT: Right. Right. And I'm not disputing

1 that. Just help me to understand it and, again, educate  
2 Judge Hall. Would that normally not be either a bench  
3 trial to determine the issues and the questions of fact  
4 in the petition or the complaint or -- or either the  
5 parties -- I guess, there may be a jury trial.

6 I guess what I'm trying to figure out is you're --  
7 you're asking me to -- and you may be right. Again, I'm  
8 asking to help educate me, that do I have the authority,  
9 in essence, to end the case with an order to vacate an  
10 arbitration award?

11 MR. SCHUSTERMAN: It is. And let me say, Your  
12 Honor, I want to -- I do not want to stand up here to  
13 profess -- I mean, that's a very good question, and it  
14 was -- it's my belief, my understanding, that your  
15 authority would not be to -- to end the case, but would  
16 be to merely make a determination that this arbitration  
17 award is invalid.

18 THE COURT: Well, and -- I understand that. Let's  
19 say Judge Hall was wrong. Do you appeal the judge's  
20 order -- well, on either side? Does that then get  
21 appealed to the court of appeals what -- what Judge Hall  
22 does on this petition?

23 MR. SCHUSTERMAN: I'm sorry.

24 THE COURT: Let me -- Mr. Riser, I guess -- and  
25 maybe I'm being too picky. I'm trying to figure out

1 what my jurisdictional authority is on a petition to  
2 vacate an arbitration award.

3 MR. RISER: Thank you, Your Honor.

4 Although not articulated in Tony's Garage's  
5 summons and complaint, UniFirst accepted that summons  
6 and complaint petition to vacate under South Carolina  
7 15-48-130. That statute is entitled vacating an award.

8 THE COURT: Okay. All right. There we have it.

9 Okay. Go ahead. Let's go back to Mr. Schusterman.

10 Go ahead, Mr. Schusterman. We're properly here.

11 I'm listening to you.

12 MR. SCHUSTERMAN: I guess I was not -- I apologize  
13 to the Court and to Mr. Riser. I guess I was going down  
14 a road that -- I'm not sure I understood what the Court  
15 was saying.

16 THE COURT: I just wanted to be sure I had the  
17 authority to hear and rule on what's before me.

18 MR. SCHUSTERMAN: Right. I thought you were asking  
19 more along the lines of let's assume you do vacate the  
20 award. I didn't say you would, but if you did is that  
21 then immediately appealable.

22 THE COURT: That's not an issue now. The question  
23 simply is do I have authority to hear it and 15-48-130  
24 gives me that. And obviously he -- Mr. Riser indicates  
25 that they accepted service and answered and they

1 understand that it's properly here as well, so that's  
2 not an issue.

3 So if you'll continue on, Mr. Schusterman.

4 MR. SCHUSTERMAN: I will -- I will not belabor the  
5 point, Your Honor. It is -- it is our position that  
6 this -- that this contract -- that UniFirst was put on  
7 notice that we objected and continued forward anyway.

8 In South Carolina, you would -- there is -- we  
9 would -- in our Bar we would communicate with an attorney  
10 to attempt to rectify that situation. He chose not to.  
11 I submit to you it's because this arbitration was being  
12 rammed down Tony's Garage's throat, and that's why we  
13 never heard.

14 THE COURT: All right. Thank you.

15 MR. SCHUSTERMAN: Thank you.

16 THE COURT: And let me say again I've got 15-48-130  
17 in front of me, vacating an award. And, again, that  
18 cleared it up. Upon application of a party the Court  
19 shall vacate an award and then we go through all those  
20 elements that you would argue would be the basis for  
21 vacation -- vacating the award.

22 MR. SCHUSTERMAN: Yes, sir.

23 THE COURT: All right. Mr. Riser, I'll be glad to  
24 hear you.

25 MR. RISER: Thank you, Your Honor. May it please

1 the Court? Caleb Riser here for UniFirst Corporation.  
2 Your Honor, I'll -- I'll start with 15-48-130. Again,  
3 that statute's entitled vacating an award. I will just  
4 clarify that Mr. Schusterman was correct in representing  
5 what UniFirst Corporation is here to do and that is my  
6 pleading, which I've handed up a copy, I'm gonna ask  
7 that it be made a part of the record, is a -- is a  
8 response in opposition to Tony's Garage's petition to  
9 vacate the award, as well as a motion to confirm the  
10 award as a judgment, which is under Section (a) --  
11 (d) -- excuse me, (d) of 15-48-130 that says if the  
12 application to vacate is denied and no motion to modify  
13 or correct the award is pending, the Court shall confirm  
14 the award. I'm not aware at this point that there's a  
15 motion to -- to modify or correct the arbitration award.

16 Your Honor, the only grounds articulated by Tony's  
17 Garage as to a reason to vacate the award under 15-48-130  
18 in their petition is under Section (a)(1). The award was  
19 procured by corruption, fraud or other means.

20 THE COURT: Well, or other undue means.

21 MR. RISER: Thank you, Your Honor. Undue means.

22 THE COURT: Right.

23 MR. RISER: As articulated in the brief under  
24 the case MCI Constructors, which is 610 Federal -- or  
25 F.3d 849, a party must show fraud or corruption was not

1 conceivable upon the exercise of due diligence prior to  
2 the arbitration. Tony's Garage was made aware of all  
3 of UniFirst's positions and even responded to UniFirst's  
4 statement of claim.

5 The statement of claim, which is an exhibit to the  
6 -- to my pleading, UniFirst's pleading, that -- that  
7 was filed on October the 20th, 2020. Mr. Schusterman  
8 mentioned Tony's Garage's response, which is dated  
9 November the 18th, 2020. That -- that letter was sent  
10 directly to the AAA administrator and was made a part  
11 of the record at that point. Mr. Schusterman responded  
12 on behalf of Tony's Garage on February the 10th, 2021.

13 All of that information, including Mr. Pannell's  
14 letter to the AAA arbitrator was presented to Judge  
15 Harrington, the arbitrator, and -- and mentioned in her  
16 award. All of those documents are made exhibits to  
17 UniFirst's response in opposition.

18 And Mr. Schusterman said his client did not  
19 participate in the arbitration. I will -- UniFirst  
20 will only concede that -- that Tony's Garage did not  
21 meaningfully participate in the arbitration because  
22 Mr. Pannell's letter was submitted to the AAA arbitrator  
23 and considered by the arbitrator.

24 And on page 8 of the brief I'll quote some language.  
25 It's difficult to understand how a plaintiff in this

1 case would know all the positions of the claimant,  
2 document their disagreements with those positions as was  
3 noted by Mr. Pannell and Mr. Schusterman's letters, have  
4 those documents considered by the arbitrator and then  
5 contend that they were unable to discern those positions  
6 in an arbitration in which they refuse to meaningfully  
7 participate.

8 Tony's Garage also includes that the -- or  
9 states that the arbitration clause is not valid. The  
10 arbitration clause was, first of all, acknowledged by  
11 Judge Harrington in her award in the first sentence as  
12 the basis of her presiding over the arbitration. That  
13 clause, which is -- which is an exhibit to Attachment A  
14 of your -- of the brief that I handed up, it's also on  
15 page 2 of my brief, that clause specifically references  
16 the Federal Arbitration Act and excludes any state's  
17 laws to the contrary.

18 Like 15-48-10, which is the State's Uniform  
19 Arbitration Act, which requires specific labeling,  
20 Mr. Schusterman noted both in his pleading and his  
21 argument that the arbitration language was small and  
22 hard to discern.

23 And with regard to the Federal Arbitration Act  
24 applying and superseding any state act, this contract  
25 contemplates Interstate commerce. It's a contract

1 between a South Carolina corporation and an international  
2 corporation who supplies its clients from across the  
3 globe. Uniform -- or as articulated in the brief, but  
4 I'll specifically mention, UniFirst has production  
5 facilities and headquarters in Massachusetts, in Canada  
6 and in Europe.

7 That -- this -- these facts are similar to a case  
8 articulated in the brief, Munoz versus Green Tree, which  
9 is 343 South Carolina 531, pages 11 and 12 of the brief,  
10 specifically related to a contract with a company out of  
11 state.

12 And I'll -- I'll also note that plaintiff,  
13 Mr. Pannell, signed the contract on the second page,  
14 which includes the arbitration clause, and even -- and  
15 quoted a section of that terms and conditions in his  
16 November 18th, 2020, letter to UniFirst that was sent to  
17 the AAA arbitrator. So, Your Honor, I -- I think it's  
18 hard-pressed for Mr. Pannell to offer -- to argue now  
19 that he didn't see that or read it before signing the  
20 contract.

21 It's also been alleged that it's a contract of  
22 adhesion. I will -- I will not concede that point;  
23 however, as even articulated in a -- in a hearing  
24 earlier before you today, in South Carolina -- adhesion  
25 contracts in South Carolina are -- are not per se

1 unconscionable and unconscionable contracts are those  
2 that are so oppressive that no reasonable person would  
3 make or no fair or honest person would accept them and  
4 in this case, the Munoz case, specifically addresses a --  
5 a very similar arbitration provision where the Federal  
6 Arbitration Act applies.

7       Finally and concluding, there were allegations that  
8 conditions precedent did not take place. I don't think  
9 that's supported by the facts. As articulated in the  
10 first two exhibits of the brief, which are UniFirst's  
11 statements of claim and support in the arbitration,  
12 UniFirst employees tried for nearly eight months to  
13 discuss the issue with Mr. Pannell and work things out  
14 and the contract only requires that they try to work that  
15 out over a period of thirty days.

16       I would -- have one bone of contention related to  
17 the language of negotiation upon agreed upon times and  
18 locations. There's no formality required in that clause.  
19 There was no formality that letters be exchanged and  
20 that hotel conference rooms be booked and the parties  
21 sit down to discuss. They had -- there was eight months  
22 of discussion in trying to work out this issue. And I  
23 don't think there's any allegation in the record that  
24 Mr. Pannell, on behalf of Tony's Garage, objected to  
25 UniFirst speaking to him. In fact, he confirmed a

1 negotiation himself in his letter to the AAA arbitrator  
2 dated November 18th of 2020.

3 And, finally, Your Honor, the arbitration clause  
4 is valid. South Carolina's Uniform Arbitration Act does  
5 not apply. Plaintiff was fully aware of UniFirst's  
6 position in the arbitration. There is no fraud or undue  
7 means associated with it; therefore, UniFirst would  
8 request that Tony's Garage's petition be denied and that  
9 the arbitration award be confirmed pursuant to the  
10 15-48-130.

11 THE COURT: All right. Thank you.

12 I think I have a pretty good grasp of -- now what  
13 I need to review. I'll review what's been submitted  
14 and filed and I'll issue a ruling by the end of next  
15 week, all right?

16 Thank y'all.

17 MR. SCHUSTERMAN: Thank you.

18 MR. RISER: Thank Your Honor, for your time.

19 (Whereupon, the proceedings were concluded at  
20 12:15 PM.)

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23

24

25

## C E R T I F I C A T E

1  
2  
3 I, Stacy S. Johnson, Official Court Reporter  
4 for the Eleventh Judicial Circuit of the State of  
5 South Carolina, do hereby certify that the foregoing  
6 is a true, accurate and complete transcript of record  
7 of all the proceedings had and the evidence introduced  
8 in the hearing of the captioned case in Circuit Court  
9 on the 28th day of July, 2021.

10 This transcript may contain quoted material.  
11 Such material is reproduced as read by the speaker.

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

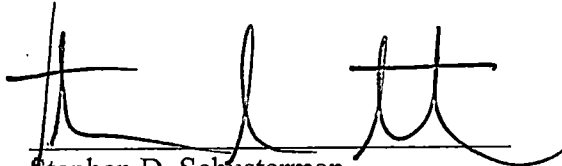
14  
15 November 1, 2021

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17 *Stacy S. Johnson*  
18 STACY S. JOHNSON  
19 CIRCUIT COURT REPORTER  
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Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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May 18, 2022

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