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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Hon. Perry H. Gravely, Circuit Court Judge

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

Appellate Case No. 2021-001177

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

Respondent-Appellant,

v.

DECIDE4ACTION, INC.,

Appellant-Respondent.

(Corrected) Record On Appeal – Volume I

Kimberly T. Thomason (#79179)
Howard W. Anderson III (#100329)
Devon M. Puriefoy (#102097)
TRULUCK THOMASON, LLC
3 Boyce Ave.
Greenville, SC 29601
kim@truluckthomason.com
howard@truluckthomason.com
devon@truluckthomason.com
864-331-1751 (p)

Gregory J. English (#65470)
James E. Cox, Jr. (#103886)
WYCHE, P.A.
200 E. Broad St., Suite 400
PO Box 728
Greenville, SC 29602
genglish@wyche.com
jcox@wyche.com
864-242-8200 (p)

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**CONSENT ORDER COMPELLING
DISCOVERY**

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

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

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

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

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

IT IS SO ORDERED.

WE CONSENT:

WYCHE, P.A.

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

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

Attorneys for Plaintiff

TRULUCK THOMASON, LLC

By: s/ Devon Puriefoy
Devon Puriefoy
Kimberly Thomason

1011 East Washington Street
Greenville, SC 29601

Attorneys for Defendant

Judge Gravely's Signature Page to Follow



Greenville Common Pleas

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

Case Number: 2019CP2302032

Type: Order/Consent Order

So Ordered

s/ Honorable Perry H. Gravely, #2755

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

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

vs.

Decide4action, Inc.,
Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,
vs.

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

Counterclaim Defendant/Third Party
Defendant

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2019CP2302032

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

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

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

IT IS SO ORDERED.

(E-Signature of Judge Gravely to Follow)



Greenville Common Pleas

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

Case Number: 2019CP2302032

Type: Order/Amend

So Ordered

s/ Honorable Perry H. Gravely, #2755

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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

September 21, 2021

ENTERED COMPUT.

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

REMITTITUR

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

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

2021 SEP 28 AM 9:15

Dear Clerk of Court:

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

Very truly yours,

Catherine Hamner, deputy
CLERK

Enclosure

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

The South Carolina Court of Appeals

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

v.

Decide4Action, Inc., Appellant.

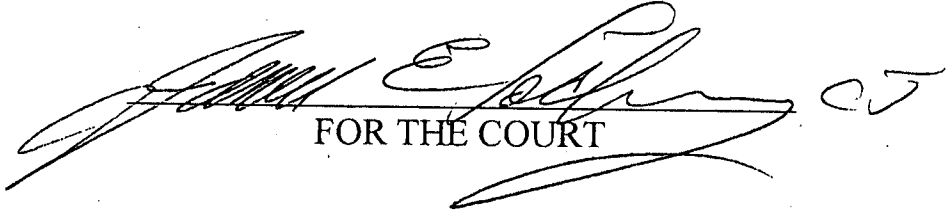
Appellate Case No. 2021-000875

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

2021 SEP 28 AM 9:15

ORDER

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


FOR THE COURT

Columbia, South Carolina

FILED
Sep 02 2021

cc:

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

FORM 4

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

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

William A L Sibley Jr	Decide4Action Inc William A L Sibley Jr Estate	Decide4action Inc	Joyce Featherstone
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

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

2755

7/28/2021

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

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

Kimberly Truluck Thomason 3 Boyce Avenue Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

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

Court Reporter:

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

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

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



Greenville Common Pleas

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

Case Number: 2019CP2302032

Type: Order/Judgment and Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
Defendant.

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

Case No. 2019-CP-23-02032

**FINAL ORDER AND JUDGMENT
REGARDING ESCROW FUND**

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

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

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

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

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

IT IS SO ORDERED.

E-Signature of Judge Gravely to follow



Greenville Common Pleas

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

Case Number: 2019CP2302032

Type: Order/Judgment For Relief

So Ordered

s/ Honorable Perry H. Gravely, #2755

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

William A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

SUMMONS

(Jury Trial Requested)

TO THE DEFENDANT ABOVE NAMED:

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

WYCHE, P.A.

s/ Gregory J. English

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

Date: April 11, 2019

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

William A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

COMPLAINT

(Jury Trial Requested)

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

PARTIES AND JURISDICTION

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act)

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

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

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

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

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

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

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

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

Respectfully submitted,

WYCHE, P.A.

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

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

Attorneys for Plaintiff

April 11, 2019

The Plaintiff respectfully requests a jury trial.

EXHIBIT A

CONTRIBUTION AND INDEMNIFICATION AGREEMENT

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

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

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

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

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

1. Contribution

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

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

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

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

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

2. Notice and Defense of Third-Party Claims

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

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

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

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

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

3. Notices

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

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

Joyce Featherstone
109 Sanderling Dr.
Greenville, SC 29607

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

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

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

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

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

4. Waivers and Omissions

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

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

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

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

5. Exclusive Agreement and Modification

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

6. Fraud and Misrepresentation

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

7. No Third Party Beneficiaries

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

8. Governing Law; Binding Effect; Severability; Counterparts

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

9. Further Action

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

10. Role of Law Firm; Conflict of Interest

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

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

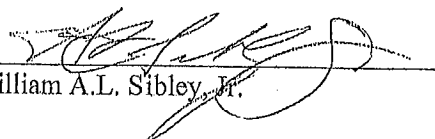
(b) has carefully read and understood the provisions of this Agreement;

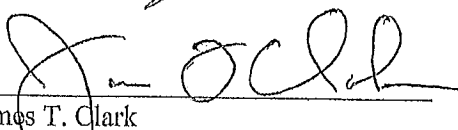
(c) has had the opportunity to seek the advice of independent legal counsel; and

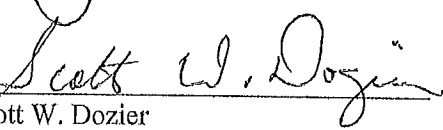
(d) is signing and making this Agreement voluntarily.

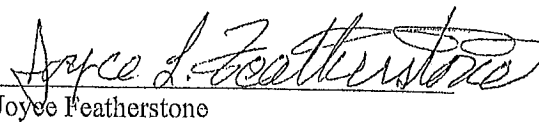
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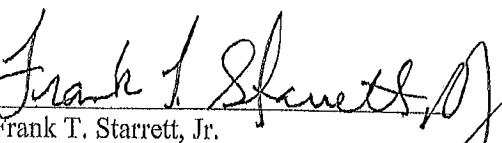
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

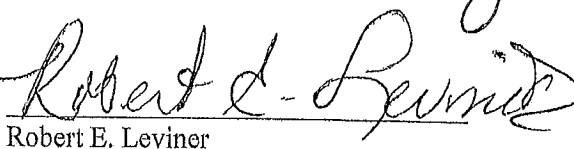

William A.L. Sibley, Jr.


James T. Clark


Scott W. Dozier


Joyce Featherstone


Frank T. Starrett, Jr.


Robert E. Leviner

[Signature Page; Contribution and Indemnification Agreement]

CONTRIBUTION AND INDEMNIFICATION AGREEMENT
SCHEDULE A

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

vs.

Decide4action, Inc.,
Defendant.

**PLAINTIFF'S MOTION TO COMPEL
DISCOVERY**

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

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

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

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

Interrogatories

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

Requests for Production of Documents

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

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

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

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

WYCHE, P.A.

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

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

Attorneys for Plaintiff

Dated: December 10, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

vs.

Decide4action, Inc.,
Defendant.

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

Decide4action, Inc.,
Counterclaimant/Third Party Plaintiff,

vs.

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

RESERVATION OF RIGHTS

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

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

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

November 3, 2020 Response:

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

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

November 3, 2020 Response:

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

Respectfully Submitted,
November 3, 2020

TRULUCK THOMASON, LLC


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

Attorney for Defendant

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

vs.

Decide4action, Inc.,
Defendant.

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

Decide4action, Inc.,
Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party

Defendant

RESERVATION OF RIGHTS

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

ANSWERS TO REQUEST FOR PRODUCTION

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

November 3, 2020 Response:

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

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

November 3, 2020 Response:

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

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

November 3, 2020 Response:

Provided to Plaintiff on or before September 29, 2020.

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

November 3, 2020 Response:

Provided to Plaintiff on or before September 29, 2020.

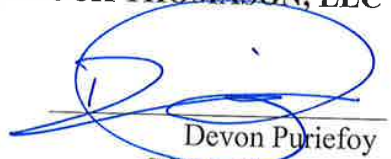
26. All records, documents or reports received pursuant to a subpoena or otherwise from any person or entity, including but not limited to any medical provider, employer, insurance company or governmental agency, relating to the subject matter of this or any other lawsuit involving the Plaintiffs or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

November 3, 2020 Response:

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

Respectfully Submitted,
November 3, 2020

TRULUCK THOMASON, LLC



Devon Puriefoy
SC Bar No. 102097
devon@truluckthomason.com

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

Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

AMENDED COMPLAINT

(Jury Trial Requested)

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

PARTIES AND JURISDICTION

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act)

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

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

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

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

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

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

WHEREFORE, Plaintiff prays that she be granted judgment against DECIDE4ACTION

(a) for actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs and attorneys' fees,

(b) for punitive damages, (c) declaring that the funds in the Escrow Account should be paid to

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

Respectfully submitted,

WYCHE, P.A.

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

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

Attorneys for Plaintiff

December 28, 2020

The Plaintiff respectfully requests a jury trial.

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

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

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

Respectfully Submitted this 25th
day of January, 2021

TRULUCK THOMASON, LLC

s/ Kimberly Thomason

Kimberly T. Thomason,
Bar No. 79179

s/ Devon Puriefoy

Devon M. Puriefoy
Bar No. 102097

3 Boyce Avenue
Greenville, SC 29601

Phone: (864) 331-1751

Facsimile: (864) 243-8115

Email: kim@truluckthomason.com

Attorneys for Defendant

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

FOR A FIRST DEFENSE

(General Denials)

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

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

FOR A SECOND CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act)

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

FOR SECOND DEFENSE
(Prior Breach)

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

FOR A THIRD DEFENSE

(Fraud)

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

FOR FOURTH DEFENSE

(Misrepresentation)

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

FOR A FIFTH DEFENSE

(Laches)

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

FOR AN SIXTH DEFENSE

(Estoppel)

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

DEFENDANT'S COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Parties, Jurisdiction, and Venue

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

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

Facts

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

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

- with a breach of Section 8 would limit Sellers' aggregate, cumulative liability to \$2.5 million.
54. The LOI established a ninety (90)¹ day due diligence period. In addition to Defendant's review of the Company's financial during the due diligence process, Defendant also scheduled a tentative site visit by Defendant on May 17, 2017. The purpose of the due diligence period was to ensure the accuracy of the October 10, 2016 Offering and in the name of transparency, GE created what is referred to as a "Virtual Room" which is a document sharing software that allows for the free flow of communication and requested document production between all parties involved in the transaction. Virtual Room was the manner in which Defendant would collect all required information regarding GE's valuation of the Company.
55. Defendant retained the services of Dan Calton, CPA ("Calton") of Lake Mary, Florida to assist in the due diligence process. Over the following weeks, GE representatives worked hand-in-hand with Calton to better assist him in making his determination as to the financial condition of the Company.
56. Naturally, Calton took particular interest in the salary and bonus structure of the Company to better understand at least one facet of the Company's fixed expenses.
57. Calton's review of the available documents, dating back to 2013, revealed that no non-owner bonuses were ever paid by the Company, with the exception of one year.
58. This exception was disclosed by Plaintiff via an email to Defendant on May 7, 2017. In the email Plaintiff discloses that in 2016, the Company paid non-employee special bonuses on 3 occasions for a total of \$35,000. Outside of these 3 special occasions,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Intentional Misrepresentation)

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

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

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

FOR A FINAL DEFENSE

(Preservation of Right to Amend Answer)

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

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

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

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

Respectfully Submitted this 25th
day of January, 2021

TRULUCK THOMASON, LLC

s/ Kimberly Thomason

Kimberly T. Thomason,
Bar No. 79179

s/ Devon Puriefoy

Devon M. Puriefoy
Bar No. 10209

3 Boyce Avenue

Greenville, SC 29601

Phone: (864) 331-1751

Email: kim@truluckthomason.com

devon@truluckthomason.com

Attorneys for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

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

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
Defendant.

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

FOR A FIRST DEFENSE

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

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

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

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

5. Seller admits paragraph 47 of the Counterclaims.

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

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

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

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

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

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

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

13. Seller admits paragraph 67 of the Counterclaims.

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

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

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

17. Seller denies paragraph 71 of the Counterclaims.

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

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

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

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

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

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

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

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

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

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

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

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

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

31. Seller denies paragraph 113 of the Counterclaims.

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

FOR A SECOND DEFENSE

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

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

FOR A THIRD DEFENSE

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

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

FOR A FOURTH DEFENSE

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

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

FOR A FIFTH DEFENSE

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

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

FOR A SIXTH DEFENSE

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

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

FOR A SEVENTH DEFENSE

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

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

FOR AN EIGHTH DEFENSE

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

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

FOR A NINTH DEFENSE

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

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

FOR A TENTH DEFENSE

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

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

FOR AN ELEVENTH DEFENSE

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

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

FOR A TWELFTH DEFENSE

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

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

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

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

Respectfully submitted,

WYCHE, P.A.

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

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

February 1, 2021

The Plaintiff respectfully requests a jury trial of this case.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

William A.L. Sibley, Jr

Plaintiff,

vs.

Decide4Action, Inc.

Defendant.

Defendants' Witness List

(Not in order of entry)

(Identification only)

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

Decide4Action, Inc.

Counterclaimant/Third-Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party Defendant.

DEFENDANTS' PROPOSED WITNESS LIST

(Anticipated order witnesses will be called)

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

Very Respectfully,

TRULUCK THOMASON, LLC

Kimberly Thomason, Esq.

Devon Puriefoy, Esq.

Attorneys for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

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

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
Defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

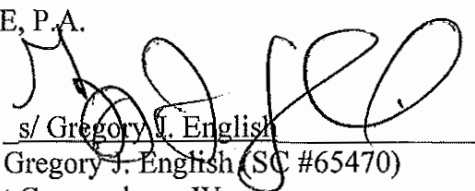
The Stock Purchase Agreement under which Decide4action brings its counterclaims provides in relevant part that:

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

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

Respectfully submitted,

WYCHE, P.A.

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

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

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

July 26, 2021

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

vs.

Decide4action, Inc.,
Defendant.

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

Decide4action, Inc.,
Counterclaimant/Third Party Plaintiff,

vs.

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

Featherstone

Counterclaim Defendant/Third Party

Defendant

RESERVATION OF RIGHTS

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

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

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

November 3, 2020 Response:

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

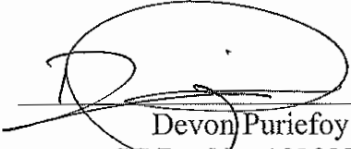
26. Identify and describe in detail all measures taken by the Defendant to mitigate its alleged damages.

November 3, 2020 Response:

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

Respectfully Submitted,
November 3, 2020

TRULUCK THOMASON, LLC


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

Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**CONSENT ORDER COMPELLING
DISCOVERY**

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

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

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

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

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

IT IS SO ORDERED.

WE CONSENT:

WYCHE, P.A.

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

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

Attorneys for Plaintiff

TRULUCK THOMASON, LLC

By: s/ Devon Puriefoy
Devon Puriefoy
Kimberly Thomason

1011 East Washington Street
Greenville, SC 29601

Attorneys for Defendant

Judge Gravely's Signature Page to Follow



Greenville Common Pleas

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

So Ordered

s/ Honorable Perry H. Gravely, #2755

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

Greg English

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

Devon,

Please let me know when to expect this.

Thanks, Greg



Gregory English | Wyche

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

A Lex Mundi Member Firm

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

I will.

Get Outlook for iOS

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

Devon,

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

Thanks, Greg



Gregory English | Wyche

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

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

It is being hand delivered today.

Thanks

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

Devon,

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

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

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

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

Do please send these things tomorrow.

Thanks, Greg



Gregory English | Wyche

200 East Camperdown Way | Greenville, SC 29601-2972

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

genglish@wyche.com | www.wyche.com/genglish | vCard

A Lex Mundi Member Firm

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

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

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

Devon,

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

Thanks, Greg



Gregory English | Wyche

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

From: Devon Puriefoy [mailto:devon@truluckthomason.com]
Sent: Wednesday, January 27, 2021 4:01 PM
To: Greg English <genglish@wyche.com>; Brandi Larobardiere <brandi@truluckthomason.com>
Cc: Kimberly Thomason <kim@truluckthomason.com>; John-Paul Baum <johnpaul@truluckthomason.com>
Subject: Re: Sibley v Decide4action

Greg,

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

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

Devon,

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

Thanks, Greg



Gregory English | Wyche

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

A Lex Mundi Member Firm

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

I consent.

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

Devon,

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

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

Thanks, Greg



Gregory English | Wyche

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

A Lex Mundi Member Firm

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

g,

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

From: Greg English <genglish@wyche.com>

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

To: Devon Puriefoy <devon@truluckthomason.com>, Brandi Larobardiere <brandi@truluckthomason.com>

Cc: Kimberly Thomason <kim@truluckthomason.com>, John-Paul Baum <johnpaul@truluckthomason.com>, Greg English <genglish@wyche.com>

Subject: RE: Sibley v Decide4action

Devon,

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

Thanks, Greg



Gregory English | Wyche

200 East Camperdown Way | Greenville, SC 29601-2972

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

genglish@wyche.com | www.wyche.com/genglish | vCard

A Lex Mundi Member Firm

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

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

To: Greg English <genglish@wyche.com>; Brandi Larobardiere <brandi@truluckthomason.com>

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

Subject: Re: Sibley v Decide4action

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

Respectfully,

From: Greg English <genglish@wyche.com>

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

To: Devon Puriefoy <devon@truluckthomason.com>, Brandi Larobardiere <brandi@truluckthomason.com>

Cc: Kimberly Thomason <kim@truluckthomason.com>, John-Paul Baum <johnpaul@truluckthomason.com>, Greg English <genglish@wyche.com>

Subject: RE: Sibley v Decide4action

Devon,

The package arrived with the following documents:

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

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

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

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

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

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

Thanks, Greg



Gregory English | Wyche

200 East Camperdown Way | Greenville, SC 29601-2972

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

genglish@wyche.com | www.wyche.com/genglish | vCard

A Lex Mundi Member Firm

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

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

To: Greg English <genglish@wyche.com>; Brandi Larobardiere <brandi@truluckthomason.com>

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

Subject: Re: Sibley v Decide4action

Greg,

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

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

Very Respectfully,

From: Greg English <genglish@wyche.com>

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

To: Devon Puriefoy <devon@truluckthomason.com>, Brandi Larobardiere <brandi@truluckthomason.com>

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

Thanks – are you also updating the damages interrogatory?

Thanks, Greg



Gregory English | Wyche

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

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

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

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

Devon,

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

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

Thanks, Greg



Gregory English | Wyche

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

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

To: Greg English <genglish@wyche.com>

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

Subject: Sibley v Decide4action

Good afternoon,

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

Very respectfully,

Brandi Larobardiere



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

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(iv) notify the sender by return e-mail or call.
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
Defendant.

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

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

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

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

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

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

Bergeron admitted in his deposition that:

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

CONCLUSION

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

Respectfully submitted,

WYCHE, P.A.

By:


s/ Gregory J. English

Gregory J. English (SC #65470)

200 East Camperdown Way

Post Office Box 728

Greenville, SC 29602-0728

(864) 242-8200

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

July 27, 2021

EXHIBIT A

IN THE COURT OF COMMON PLEAS

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

Plaintiff,

VS.

Defendant.

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

Counterclaimant/Third-Party Plaintiff

Vs.

Counterclaim Defendant/Third Party
Defendant

INTERROGATORIES

RESPONSE:

Philippe Bergeron
205 Rosebank Way
Greenville, SC 29615

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

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

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

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

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

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

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

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

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

RESPONSE:

Please see Defendant's response to Interrogatory number 4.

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

RESPONSE:

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

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

RESPONSE:

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

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

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

RESPONSE:

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

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

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

RESPONSE:

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

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

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

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

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

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

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

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

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

RESPONSE:

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

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

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

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

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

RESPONSE:

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

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

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

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

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

RESPONSE:

See Defendant's response to Interrogatory number 14.

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

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

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

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

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

Question not applicable to Defendant.

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

RESPONSE:

Question not applicable to Defendant.

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

RESPONSE:

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

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

RESPONSE:

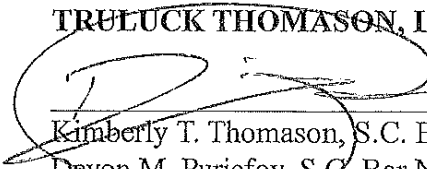
Devon Puriefoy

Kimberly Thomason

Richard Bergeron

Respectfully Submitted this 25th
day of October, 2019

TRULUCK THOMASON, LLC


Kimberly T. Thomason, S.C. Bar No. 79179

Devon M. Puriefoy, S.C. Bar No. 102097

1011 E Washington Street

Greenville, SC 29601

Phone: (864) 331-1751

kim@truluckthomason.com

devon@truluckthomason.com

Attorneys for Defendant/Third-Party Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

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

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

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

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

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

Bergeron admitted in his deposition that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. made any intentional misrepresentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

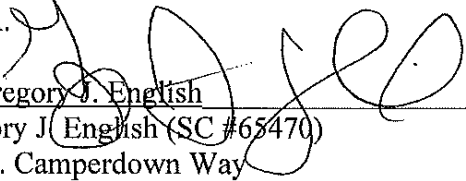
7. Plaintiff is entitled to directed verdict on her breach of contract claim.

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

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

Respectfully submitted,

WYCHE, P.A.

By: 
s/ Gregory J. English
Gregory J. English (SC #65470)
200 E. Camperdown Way
Post Office Box 728
Greenville, SC 29602-0728
Telephone: 864-242-8200
Telefax: 864-235-8900

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

July 28, 2021

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE
02032

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

Plaintiff,

vs.

Decide4Action, Inc.

Defendant.

Decide4Action, Inc.

Counterclaimant/Third-Party Plaintiff)

vs.

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

Counterclaim Defendant/Third Party
Defendant

IN THE COURT OF COMMON PLEAS

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

MOTION TO RECONSIDER

To: Gregory J. English, Attorney for Plaintiff:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Punitive damages should be instructed to the jury.

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

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

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

Respectfully Submitted

TRULUCK THOMASON, LLC

s/ Kimberly Thomason
Kimberly Thomason, S.C. Bar No. 79179
s/Devon M. Puriefoy
Devon M. Puriefoy, S.C. Bar No. 102097
3 Boyce Avenue
Greenville, South Carolina
Telephone: (864) 331-1751
Fax: (864) 243-8115
kim@truluckthomason.com
devon@truluckthomason.com

*Attorney for Defendant/
Third-Party Plaintiff*

Conclusion of Value

for



as of March 31, 2017

prepared by



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1. PURPOSE AND APPROACH

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

Purpose

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

Standard of Value

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

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

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

Premise of Value

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

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

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

Approach and Scope of Work

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

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

We obtained extensive information pertaining to the Company:

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

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

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

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

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

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

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

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

Representations

Conduct of the Engagement

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

This report was completed on June 08, 2017

Obligation to Update the Report

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

Subsequent Events

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

2. CONCLUSION OF VALUE

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

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

Proposed Acquisition Structure: Asset Purchase

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

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

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

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

3. COMPANY DESCRIPTION

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

Products and Services:

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

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

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

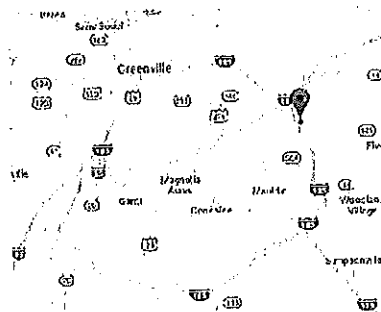
The vast majority of systems provided by CCI are Microsoft Windows based applications utilizing Microsoft SQL Server relational databases combined with standard, off-the-shelf hardware employing standard networking technology. Many of the most recent systems supplied by CCI were developed as HTML5 Web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

334110

Development, Sales, and service of computer systems

Facilities

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



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Market

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

Competition

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

Employees and Management

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

Ownership Structure

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

4. INCOME STATEMENT

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

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

Source: Basis:	Internal Cash 12 mos Jun-2013	Internal Cash 12 mos Jun-2014	Internal Cash 12 mos Jun-2015	Internal Cash 12 mos Jun-2016	Internal Cash 9 mos Mar-2017
(\$)					
REVENUE	\$ 864,000	\$ 916,000	\$ 2,080,000	\$ 2,361,000	\$ 3,179,400
Cost of Sales, excl depreciation					
Inventory Cost	12,000	76,000	236,000	360,500	328,000
Labor	-	-	-	-	86,000
Other Costs	-	-	-	-	-
Depreciation in COS	-	-	-	-	-
Total COGS	12,000	76,000	236,000	360,500	412,000
Gross Profit	842,000	840,000	1,844,000	2,000,500	2,767,400
Gross Margin (% Sales)	98%	92%	89%	85%	87%
Industry Gross Margin (RMA)					32%
Operating Expenses (excl dep, interest)					
Rent	25,000	29,000	27,000	27,000	28,900
Payroll (excluding owners)	14,000	35,000	116,000	120,000	223,630
Employee Benefits	25,000	30,000	37,000	68,000	92,612
Payroll Taxes	37,000	42,000	64,000	-	-
Advertising & Marketing	2,000	2,000	7,000	4,000	4,792
Travel and Entertainment	6,000	9,000	17,000	5,000	-
Merchant Fees	-	-	-	-	-
Insurance	7,000	10,000	8,000	5,000	3,900
Legal & Professional	4,000	13,000	41,000	3,400	5,870
Office Expense	37,000	31,000	45,000	42,600	40,000
Other Expenses	19,000	21,000	51,000	17,400	151,601
Owners Compensation	458,000	519,000	886,000	1,169,000	632,000
Total Operating Expenses	634,000	741,000	1,299,000	1,481,400	1,176,000
Total Operating Expenses as a % Sales	96.9%	80.9%	62.5%	61.9%	37.0%
Operating EBITDA	\$ 8,000	\$ 99,000	\$ 845,000	\$ 539,100	\$ 1,691,400
Depreciation	0	(2,000)	0	0	0
Amortization	0	0	0	0	0
Interest Expense	(9,000)	(9,000)	(7,000)	0	0
Interest Income	0	0	0	0	1,000
Other Income (Expense)	1,000	1,000	0	0	30,000
NET INCOME BEFORE TAX	\$ -	\$ 89,000	\$ 538,000	\$ 539,100	\$ 1,622,400
Adjustments:					
1. Comparable compensation	(460,000)	(460,000)	(610,000)	(610,000)	(457,500)
2. Owners' compensation	458,000	519,000	886,000	1,169,000	632,000
3. Depreciation/Amortization	-	2,000	-	-	-
4. Interest expense	9,000	9,000	7,000	-	(1,000)
5. Non-operating/One-time expenses	7,000	16,000	46,000	44,000	2,706.07
6. Annualized earnings	-	-	-	-	599,535
Adjusted EBITDA	\$ 14,000	\$ 175,000	\$ 867,000	\$ 1,142,100	\$ 2,389,141
Revenue	864,000	916,000	2,080,000	2,361,000	3,179,400
Revenue Adjustments	-	-	-	-	1,059,800
Adjusted Revenue	864,000	916,000	2,080,000	2,361,000	4,239,200
Adj. EBITDA as a % of Revenue	2.1%	19.1%	41.7%	48.4%	56.6%

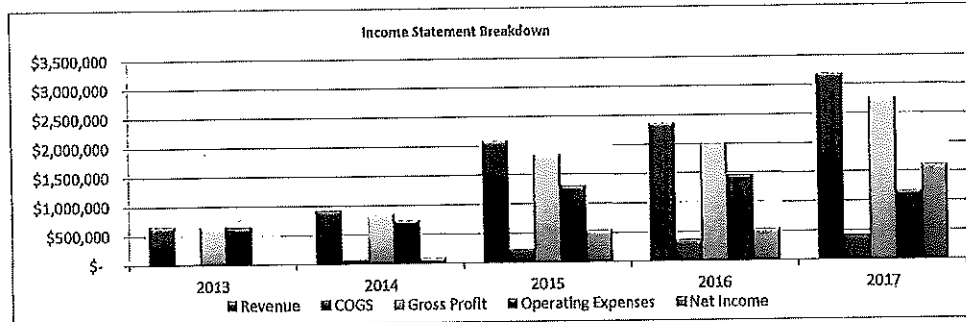
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Adjusted EBT

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



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

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Notes to Financial Statements

Revenues

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

COGS

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

Expenses

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

NOTES TO INCOME STATEMENT ADJUSTMENTS:

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

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

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

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

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

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

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

No other income statement adjustments were considered necessary.

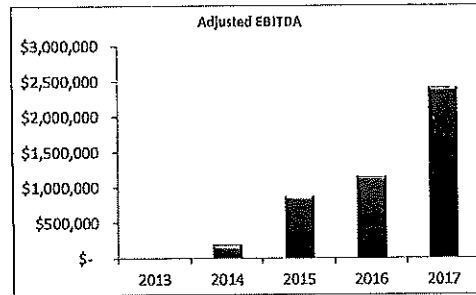
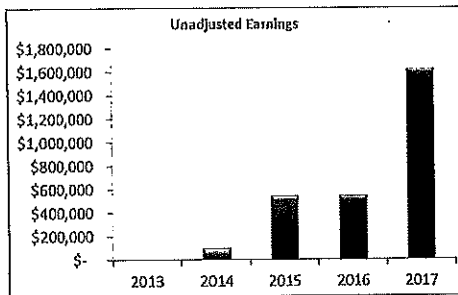
WEIGHTED AVERAGES

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

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

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

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



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

5. BALANCE SHEET

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

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

COMMON SIZE BALANCE SHEET

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

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

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

Working Capital Analysis

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

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

Depreciation/Capital Spending

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

Weighted Averages

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

6. PROJECTED CASH FLOW

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

PROJECTED CASH FLOW

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

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

Revenue growth	The compound annual growth rate over the past 4 years was 65% per year. Growth has been driven by their increased sales tied to two customers. Management has a good idea of their projected projects and revenue going forward. We have used their projections to estimate near future revenue growth.
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COGS	COGS as a % of revenue has been growing over the past three years. We utilized this trend in margins and took into account management's projections of future COGS.
------	---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. RISK ASSESSMENT, COMPARATIVE ANALYSIS

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

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

334110

Development, Sales, and service of computer systems

RISK ASSESSMENT TABLE

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

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

ANALYSIS OF COMPANY COMPARED TO INDUSTRY NORMS

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

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

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

RECAP OF RISK FACTORS:

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

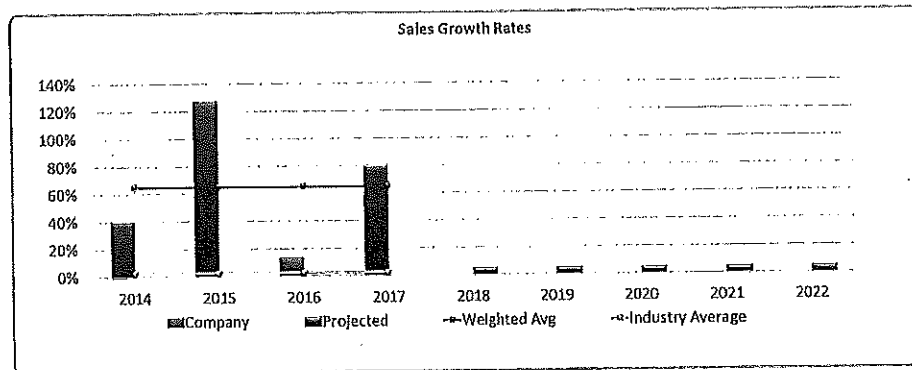
Our analysis suggests that the general risk in this business is low compared to the industry. Considering the above, the Company appears to be in above average financial condition.

COMPARATIVE ANALYSIS

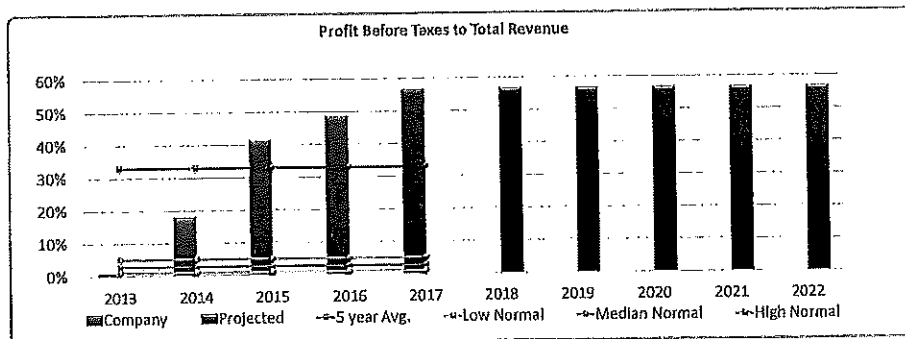
The following discussion of the Company's financial condition relative to the industry makes reference to the financial ratios presented above and in the preceding sections. We analyzed the company using financial ratios in relation to profitability, liquidity, and asset efficiency. Income statement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

PROFITABILITY AND OPERATING RATIOS

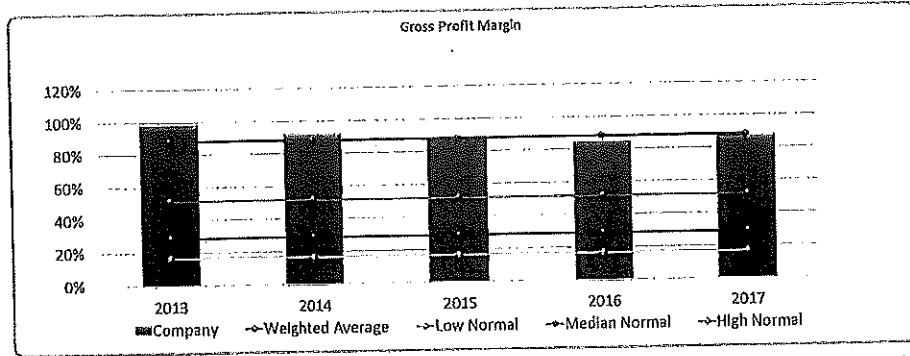
Profitability and operating ratios are derived from income statement profitability analysis and are designed to assist in the evaluation of management performance.



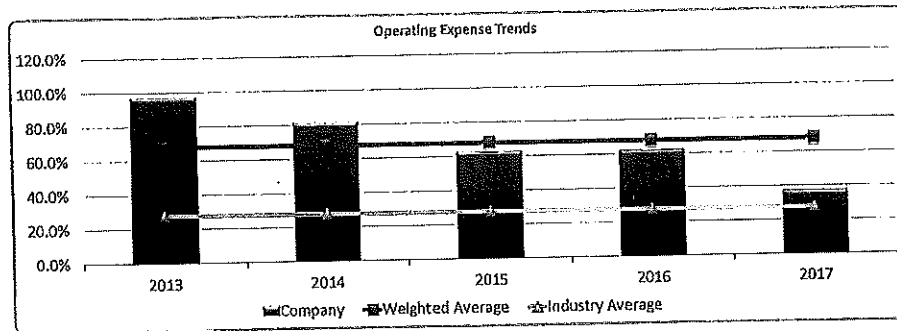
The sales growth rate of the company over the last five periods is shown above along with the projected sustainable growth rate and industry revenue growth. Over the past 4 years, the Company's sales growth has been phenomenal with a compound average growth rate of 65%. The Company has been able to utilize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



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



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



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

8. APPROACHES TO VALUE

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

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

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

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

9. CAPITALIZATION RATES AND MULTIPLIERS

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

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

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

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

Risk Free Rate

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

Equity Risk Premium

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

Size Risk Premium

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

Industry Risk Premium

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

Specific Company Risk Premium

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

The summation requires an additional risk premium of 5%.

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

Expected Sustainable Growth Rate

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

Rate to Factor Conversion

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

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

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

10. COMPUTATION OF VALUE

SUMMARY OF VALUATION METHOD RESULTS

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

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

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

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

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

NOTES TO THE SUMMARY OF VALUATION METHODS

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

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

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

10a. ASSET APPROACH

10a.1 ADJUSTED NET WORTH

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

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

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

10b. INCOME APPROACH

10b.1 MIDYEAR DISCOUNTED CASH FLOW (DCF)

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

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

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

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

DISCOUNT RATE

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

CALCULATION OF VALUE

Following are the projected earnings for the company

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

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

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

11. ADJUSTMENTS TO VALUE

ADJUSTMENT FOR LACK OF MARKETABILITY

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

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

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

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

Marketability of Controlling Interests

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

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

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

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

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

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

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

12. CASH FLOW COVERAGE

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

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

AMORTIZATION OF PURCHASE DEBT

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

CASH ON CASH RETURN ON DOWN PAYMENT

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

Coverage Ratio for \$3.1 million dollar loan

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

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

13. CERTIFICATION

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

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

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

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

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

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

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

Patton & Associates

Patton & Associates, LLC
Jun 08, 2017

14. APPRAISER'S CREDENTIALS

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

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

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

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

Experience: Patton and Associates, LLC – Managing Partner.

January 2005 – Present

Leads the Business Valuation Group as Analyst and Litigation expert.

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

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

Archer Investment Corporation, Inc. – President

Responsible for the management of The Archer Funds.

July 2005 – Present

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

(Stock Options, Phantom Stock)

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

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

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

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

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

Accounting and technical experience include:

- Preparation of extensive Business Valuations across all industries.
- Extensive consulting regarding Business Valuations for buy-sell, divorce, estate, liquidation, minority interests
- Direct and assist executives/owners in implementation of strategic planning concepts.
- Provide attorneys extensive consulting on non prepared valuations
- Preparation of financial statements for public and private entities.
- Preparation of registration statements, 10K filings, and other financial presentations for the SEC and other agencies.
- Presentation of financial results and other matters to executive clientele.
- Assisted in the preparation of engagement proposals and budgeting.
- Train colleagues in technical and technological matters.

Achievements, presentations and professional affiliations:

- American Institute of Certified Public Accountants.
- Indiana CPA Society
- 2008 Top 40 CPA's in the U.S.A. by Thomson/Reuters
- 2005 Named Outstanding CPA in public practice by the Indiana CPA Society
- Editorial Board for Accounting Technology -- responsible for shaping the discussion of practice management and areas of interest to the CPA community (2009/10)
- 1990 Member of USA Wrestling team to compete in Yugoslavia against communist block countries.
- Recognized in 2003 as top 5 CPA's in Indiana under 35.
- Guest speaker for CPA Societies in Valuations of CPA Firms.
- Over 150 hours of Continuing Professional Education in last three years.
- Guest Speaker for the American Association of Individual Investors for their Annual Conference with 800 attendees -- 2008
- Developed the Valuation Template for one of the nation's leading publicly traded banks for lending to professional practices
- Published, "Three things every Accountant should know about Business Valuations" for New Clients, Inc. Distributed to over 10,000 CPA's across the country. (2008)
- Consultant to the American Dental Association
- Lead Instructor for the ADA for courses on Dental practice valuation, operations, financing, etc.
- Lead Instructor and author of the CPE class: "How to consult on value without being an expert in valuations."
- Lead Instructor for CLE class: "Business Valuation and Divorce, the Complicated Relationship"
- Has Testified in Virginia, Florida, Indiana, Ohio, and California. Has prepared valuations in every State of the United States except for Alaska.
- Lead Instructor for Clear Law Institute: "Valuations For Businesses under \$10 million in Revenue"

16. SOURCES OF INFORMATION

In the course of this study, the following documents and materials were considered:

Federal Tax Returns 12/31/2012 - 12/31/2016

Internal Financials 12/31/2012 - 3/31/2017

Detailed Revenue 2014-2016

AR Detailed

Offering Memorandum

Management Interview conducted by Kurt Tobin, CVA

Management Statements and Projections

Statment Studies, Risk Management Associates - summary statistics on more than 600 industries, based on approximately 80,000 financial statements submitted by commercial banks.

IBIS World - Industry Profiles and Outlooks

Key Value Data

Bureau of Labor Statistics salary and compensation database

Federal Reserve Bank, Monthly Summary of Economic Activity

Blzcomps Database of Closely Held Company Sales, describing sales of closely held companies with sales prices typically in the range of \$50,000 to \$5 million.

Pratt's Stats Database, describing sales of closely held companies of all sizes.

16. CONDITIONS AND ASSUMPTIONS

Conditions

The historical financial information presented in this report is included solely to assist in the development of the value conclusion presented in this report, and it should not be used to obtain credit or for any other purpose. Because of the limited purpose of this presentation, it may be incomplete and contain departures from generally accepted accounting principles. We have not audited, reviewed, or compiled the historical accounting statements and express no assurance on them. The financial information presented in this report includes normalization adjustments made solely to assist in the development of the value conclusion presented in this report. Normalization adjustments are hypothetical in nature and are not intended to present restated historical results or forecasts of the future in accordance with AICPA guidelines.

Readers of this business valuation report should be aware that business valuations are based on future earnings potential that may or may not materialize. Any financial projections presented in this report are included solely to assist in the development of the value conclusion presented in this report. These presentations do not include all disclosures required by the guidelines established by the AICPA for the presentation of financial projections. The presentation includes financial projections. The actual results may vary from the projections, and the variations may be material.

This report should not be used to obtain credit or for any purposes other than those listed in this valuation. This report is only to be used in its entirety, and for the purpose for which it was prepared. No third parties should rely on the information contained in this report without the advice of their attorney or accountant, and without confirming for themselves the information contained herein.

The value of a business changes over time in response to changes in its markets, the economy, its internal operations, and a myriad of other factors both within and outside the control of its owners and managers. The value discussed in this report was developed using data pertinent to a specific point in time. The value conclusions in this report therefore cannot be assumed to be meaningful at any other point in time.

We have no responsibility to update this report for events and circumstances occurring subsequent to the date of this report. We do not purport to be guarantor of value. Valuations of closely-held companies is an imprecise science, with value being a question of fact, and reasonable people can differ in their estimates of value. We have, however, used conceptually sound and commonly accepted methods and procedures of valuation in determining the estimate of value in this report.

The valuation analyst, by reason of performing this valuation and preparing this report, is not to be required to give expert testimony nor be in attendance in court or at any government hearing with reference to the matters contained herein.

General Assumptions

The opinion of value given in this report is based on information provided in part by management of the Company and other sources contained herein. This information is assumed to be accurate and complete; we have not audited or attempted to confirm this information for accuracy or completeness.

We have relied upon the representations contained in the public and other documents in our possession concerning the value and useful condition of all investments in securities or partnership interests, and any other assets or liabilities except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances, or that the owner has good title to all the assets.

We have also assumed that the business will be operated prudently and that there are no unforeseen adverse changes in the economic conditions affecting the business, the market, or the industry. This report presumes that the management of the Company will maintain the character and integrity of the Company through any sale, reorganization or reduction of any owner's or manager's participation in the existing activities of the Company.

We have been informed by management that there are no environmental or toxic contamination problems, and no significant lawsuits, or any other undisclosed contingent liabilities which may potentially affect the business, except as may be disclosed elsewhere in this report. We have assumed that no costs or expenses will be incurred in connection with such liabilities, except as explicitly stated in this report.

It is implicit in the value calculations that in the event of a sale of the business to a willing buyer, the current management would remain in place at least long enough to effect an orderly transition with no loss of essential management skills and productivity.

In the event of a sale, it is also implicit in the calculation of value that the current owners would be willing to commit to a non-competition agreement. Such agreements are an element of almost all business sales, and the absence of such an agreement would generally reduce the value of the business as a going concern.

17. REVENUE RULING 59-60

This valuation was conducted under guidelines established by Treasury Department and the Internal Revenue Service in its determination of fair market values of closely held business enterprises for income tax, estate tax, gift tax, and other related purposes. The Internal Revenue Code, Section 2031(b), specifies that the value of stocks and securities of corporations not listed on an exchange or freely traded "...shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities, of corporations engaged in similar line of business which are listed on an exchange."

The basic rules for tax-related valuations were laid down in Revenue Ruling 59-60 issued by the Internal Revenue Service in March 1959. In Revenue Ruling 65-193 the Treasury Department extended the use of Revenue Ruling 59-60 to include the determination of fair market value of closely held businesses for income and other tax purposes. These rulings have been widely adopted as the primary authority for determination of fair market value of a business enterprise in virtually all valuation situations.

The rulings define "fair market value" as follows:

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

Court decisions frequently state, in addition, that the hypothetical buyer and seller are assumed to be able and willing to trade and be well informed about the property and concerning the market for such property.

This definition is widely accepted and used in courts of law and in tax literature and is the most widely used approach in valuing closely held securities. It is the basic definition upon which we rely in determining the fair market value of a Company's stock.

Revenue Ruling 59-60 requires that the following factors be considered:

- 1 The history of the Company and the nature of the business.
See Section 3. COMPANY DESCRIPTION
- 2 General economic outlook and the outlook of the particular industry.
See Section 3. COMPANY DESCRIPTION
See Appendix I ECONOMIC CONDITIONS AND OUTLOOK
See Appendix II INDUSTRY PROFILE
- 3 Book value of the stock and the financial condition of the business.
See Section 5. BALANCE SHEET
See Section 7. RISK ASSESSMENT, COMPARATIVE ANALYSIS
- 4 Earnings capacity of the Company.
See Section 4. INCOME STATEMENT
- 5 Dividend paying capacity.
See Section 10. COMPUTATION OF VALUE
See Section 6. HISTORICAL AND PROJECTED CASH FLOW
- 6 Whether the enterprise has goodwill or other intangible value.
See Section 2. CONCLUSION OF VALUE
See Section 10. COMPUTATION OF VALUE
- 7 Sales of stock and the size of the block to be valued.
See Section 10. COMPUTATION OF VALUE
- 8 Market prices of stock other comparable companies traded on exchanges.
NO COMPARABLE TRANSACTIONS WERE FOUND

These eight factors are fundamental to any appraisal of closely held securities. They are not, however, all-inclusive. All other factors relevant to the subject valuation must also be considered. Specifically, an appraiser must consider comparability of accounting methods and discounts for fair market value determinants.

Appendix I: Economic Overview

After strong improvements in many areas since November, the national economic picture dimmed in March, although the downgrades were likely to be temporary. Most notably, after growing faster than expected in Q4 2016, the U.S. economy weakened in the first quarter of 2017, according to the U.S. Commerce Department's first estimate of Q1 economic growth. Overall, the first quarter's growth came in at a meager 0.7%, its weakest performance in three years, following a 2.1% gain in Q4 2016. The situation was a virtual repeat of 2016 as a whole, as the economy last year grew by an anemic 1.6%, down from the already modest 2.6% growth in 2015 and the economy's worst annual performance since 2011. Likewise, after adding 219,000 new jobs in January and 216,000 in February, the U.S. economy in March created just 98,000 new nonfarm jobs, the lowest since last May, the U.S. Labor Department reported. More positively, the U.S. unemployment rate fell from 4.7% in February to 4.5% in March, a nearly 10-year low.

Other concerns persist. Although the budget deficit for FY 2015 fell to a seven-year low, the FY 2016 deficit rose by 33.8% to \$587.4 billion, and both Federal spending and taxation again hit new highs. That said, the consumer outlook remained upbeat, with the Conference Board and Bloomberg gauges hitting 16- and 10-year highs, respectively, although two other measures retreated slightly. In other areas, on the positive side, the U.S. national debt actually fell by \$114 billion from the previous month's level, industrial production was up by 0.5%, new- and existing-home sales rose sharply, wages were up, consumer prices fell by 0.3%, and crude oil and gasoline prices were stable. On the negative side, stocks' post-election surge ended (albeit after the Dow had reached 21,000 for the first time), auto sales fell for a third straight month, and retail sales dipped.

U.S. Economic Growth Weakens to 0.7% in First Quarter

After growing more strongly than expected in 2016's fourth quarter, the U.S. economy weakened in the first quarter of 2017, according to the U.S. Commerce Department's first estimate of the first quarter's economic growth, released on April 28. Overall, the Q1 growth rate came in at a meager 0.7%, its weakest performance in three years, following a 2.1% mark in the fourth quarter of 2016. Economists, however, predicted that the slowdown would be temporary. Previously, for 2016 as a whole, the economy grew by only 1.6%, down sharply from the already modest 2.6% growth rate in 2015 and the economy's worst annual performance since 2011. The last time the U.S. economy topped an annual 3% growth rate—the historical average is 3.3%—was in 2005.

U.S. Job Market Sags in March

After adding a downwardly revised 219,000 new jobs in January and a downwardly revised 216,000 new jobs in February, the U.S. economy in March created just 98,000 new nonfarm positions, the lowest since last May, the U.S. Labor Department reported on April 7. Economists had expected an increase of 180,000 jobs for the month. At the same time, January's and February's gains were lowered by 19,000 for each month. More positively, after having fallen from 4.8% in January to 4.7% in February—the lowest level since August 2007—the U.S. headline unemployment rate dove further to 4.5% in March, reaching a decade-long low, the U.S. Labor Department said on April 7.

Budget Deficit Up in FY 2016

After topping \$1 trillion each year from FY 2009 to FY 2012, the Federal budget deficit fell sharply from FY 2012's \$1.08 trillion level to \$438.9 billion in FY 2015, which ended on September 30, 2015. However, the Federal budget deficit jumped back up to \$587.4 billion in FY 2016, which ended on September 30, 2016—representing an increase of 33.8% over the FY 2015 level (although the final FY 2016 figure was down from the \$600 billion projection issued for FY 2016 last July 15).

U.S. National Debt Falls Back

After hitting a record \$19.908 trillion in November, the U.S. national debt ended 2016 by slipping to \$19.749 trillion. Thereafter, the debt by Inauguration Day 2017 reached \$19.944 trillion and climbed further to \$19.960 trillion on February 28. But by March 31, it had declined to \$19.846 trillion—a one-month falloff of \$114 billion.

Federal Spending and Tax Collections Again Set New Records

Federal spending hit another all-time record in FY 2016, which ended on September 30, 2016, with spending for the year coming in at an estimated \$3.854 trillion vs. \$3.688 trillion in FY 2015, an increase of 4.5%. The government also took in another new record of \$3.27 trillion in taxes in FY 2016, up from the \$3.25 trillion collected the previous year.

Stocks' Post-Election Surge Ends

U.S. stocks' post-election surge that took place from November through February continued into the first part of March. After closing above 20,000 on February 3, the Dow Jones Industrial Index remained above that level throughout the month. Then, on March 1, the Dow closed above 21,000 (21,115.55) for the first time ever, in what was one of the fastest 1,000-point advances in the index's history. After remaining above 21,000 through March 3, however, the Dow, along with the S&P 500, went on to post their first 1% fall in 5 months, declining by 1.2% and ending the longest streak of stock-market calm since 1995. Nevertheless, for the entire first quarter of 2017, the S&P 500 posted its biggest quarterly gain since the end of 2005, rising by 5.5%.

Industrial Production Up by 0.5% in March

After inching up by an upwardly revised 0.1% in February, U.S. industrial production rose by a solid 0.5% in March, the U.S. Federal Reserve reported on April 18.

Productivity Sags in the Fourth Quarter

After falling for three straight quarters, U.S. nonfarm productivity—or the level of employee output per hour—bounced back by a downwardly revised 3.3% in 2016's third quarter before sagging to a 1.3% growth rate in the fourth quarter.

U.S. Auto Sales Fall Again in March

After posting a record high in 2016 following strong gains in November and December, U.S. auto sales retreated by 2.0% in January and by another 1.1% in February before declining by 1.6% in March, according to an April 3 report from auto-data firm Autodata.

Obamacare Premiums to Rise by 25% in 2017

The U.S. Department of Health & Human Services announced last October 26 that premiums for midlevel Obamacare health plans would rise by a projected average of 25% in 2017 in the 39 states that use the Federal

HealthCare.gov—triple the increase in premiums for 2016—with rates in some states climbing by between 40% and 116%.

New- and Existing-Home Sales Up Sharply

After rebounding in January and rising sharply in February, U.S. single-family new-home sales in March climbed to a eight-month high, the U.S. Commerce Department said on April 25. At the same time, after reaching a 10-year high in January, the number of contracts to buy previously-owned U.S. homes fell in February before rebounding in March to reach another 10-year high, the National Association of Realtors (NAR) said.

Consumer Confidence Mixed But Still Strong in March

After post-election surges, consumer confidence in March was mixed but still strong. Notably, the Conference Board's Consumer Confidence Index hit a 16-year-high and Bloomberg's Consumer Comfort Index reached a 10-year high. Two other indices fell.

Wages Increase in March

After steadily increasing from December to February, U.S. hourly wages edged up again in March from February's \$26.09 to \$26.14, the U.S. Labor Department reported on April 7. March's figure was 2.8% higher than that of one year earlier.

Consumer Spending Unchanged in March

Following gains of 0.2% in January and 0.1% in February, U.S. consumer spending was unchanged in March, the U.S. Commerce Department reported.

Retail Sales Dip in March

After falling by 0.3% in February (vs. an originally reported 0.1% gain), U.S. retail sales declined by 0.2% in March, the U.S. Department of Commerce reported on April 14.

Consumer Prices Fall by 0.3% in March

The U.S. Consumer Price Index (CPI) for all goods fell by 0.3% in March after having jumped by 0.6% in January (its largest increase in four years) and having edged up by 0.1% in February. The index for all items less food and energy declined by 0.1% in March after having risen by 0.3% in January and by 0.2% in February.

Crude Oil and Gasoline Prices Stable in March

After hitting \$54.00 per barrel on February 28, crude oil prices on March 8 dipped below \$50 a barrel for the first time since December before ticking back up to \$50.54 per barrel on March 31. Likewise, after slipping to \$2.23 per gallon on February 27, the average retail price of a gallon of regular unleaded fuel held at that level on March 27.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**CONSENT ORDER COMPELLING
 DISCOVERY**

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

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

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

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

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

IT IS SO ORDERED.

WE CONSENT:

WYCHE, P.A.

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

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

Attorneys for Plaintiff

TRULUCK THOMASON, LLC

By: s/ Devon Puriefoy
Devon Puriefoy
Kimberly Thomason

1011 East Washington Street
Greenville, SC 29601

Attorneys for Defendant

Judge Gravely's Signature Page to Follow



Greenville Common Pleas

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

Case Number: 2019CP2302032

Type: Order/Consent Order

So Ordered

s/ Honorable Perry H. Gravely, #2755

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

THE LAW OFFICES OF
TRULUCK THOMASON, LLC

ATTORNEYS

Kimberly Thomason, Managing Partner
Rachael Hardin, Associate
Devon Puriefoy, Associate

LOCATION

1011 E. Washington Street
Greenville, SC 29601

CONTACT

P & F 864-331-1751

September 19, 2018

United Community Bank
Attn: Sharon Whitney
306 East North St.
Greenville, SC 29601

Re: Computer Control + Integration Purchase, October 16, 2017

Dear Ms. Whitney:

Please let this letter serve as United Community Bank's notice that Decide4Action ("Buyer") has pending claims against William A.L. Sibley, Jr., Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, and Robert E. Leviner (collectively "Sellers") in the amount of at least One Million Three Hundred Fourteen Thousand Thirty-Four Dollars and No/100 (\$1,314,034.00). As set forth below, Decide4Action seeks indemnification from all Sellers and requests United Community Bank ("Escrow Agent") hold all funds in escrow until written notice from all parties shows the pending claims have been resolved.

On October 16, 2017, Buyer and Sellers entered into a Stock Purchase Agreement ("SPA") whereby Buyer would purchase from Sellers all issued and outstanding capital stock of Computer Control + Integration, Inc. ("CC+I"). Pursuant to the SPA, certain Seller warranties would survive closing for a period of twelve months after the date of signing. The SPA in relevant part provides in Paragraph 8(a) "[a]ll of the representations and warranties of Sellers contained in §4 above shall survive the Closing and continue in full force and effect until the date that is 12 months after the Closing Date..." Additionally, Paragraph 8(b) directs Buyer to:

"make a written claim for indemnification against Sellers pursuant to §10(h)¹ within the Survival Period (if there is an applicable survival period pursuant to §8(a) above), then such Seller shall indemnify Buyer or Target from and against any and all Adverse Consequences

¹ Which is presumably 10(g) that speaks to notice whereas 10(h) speaks to governing law of South Carolina.

suffered or incurred by Buyer or Target that arise from or are attributable to such breach; provided, however, that Sellers shall not have any obligation to indemnify Buyer or Target from and against any Adverse Consequences arising from or attributable to the breach of any representation or warranty or Sellers contained in §4 above (other than the representations and warranties in §4(a), §4(b), §4(c) and §4(d) above) (A) until Buyer has suffered Adverse Consequences by reason of all such breaches in excess of \$25,000.00 (the “Threshold”), after which point sellers will be obligated to indemnify Buyer from and against all such Adverse Consequences, including those counted towards the Threshold...”

As part of the SPA, Buyer and Sellers agreed to hold funds in escrow with Escrow Agent, the terms of which were memorialized in the Agreement Regarding Application of Funds (“Escrow Agreement”) executed by Buyer, Sellers, and Escrow Agent (collectively “Parties”). Pursuant to the Escrow Agreement, “Buyer must provide to the Escrow Agent and Sellers’ representative, no fewer than three (3) Business Days prior to the Indemnification Escrow Release Date (October 16, 2018), a written notice describing the Pending Claims in reasonable detail, indicating the estimated amount and methodology for determining the amount of the Pending Claims (the “Pending Claims Amount”) and the provision or provisions under the Purchase Agreement upon which such claim is based.” Therefore, as required by the SPA and Escrow Agreement, Buyer provides the following:

I. Pending Claims and Relevant SPA Provisions:

On June 22, 2017 and June 26, 2017, Sellers increased one (1) non-owner employee’s salary and paid seven (7) bonuses to non-owner employees that in effect doubled their annual salaries for one year, totalling approximately Three Hundred Fifty-Nine Thousand Eight Hundred Seventy-Four Dollars (\$359,874.00). In an announcement to the company, Sellers justified these bonuses to non-owner employees based on CC+ I’s “very profitable” previous fiscal year. Payment of these undisclosed bonuses occurred after the Due Diligence period ended on May 17, 2017 and materially and adversely affected the value of CC+1. In addition to bonuses being paid after the end of Due Diligence, Sellers failed to disclose the bonuses to Buyer prior to the closing on October 16, 2017. Sellers were bound by certain representations and warranties pursuant to the SPA, Paragraph 4(i) which provides, in relevant part:

(i) Events Subsequent to May 17, 2017. Except as set forth in § 4(i) of the Disclosure Schedule, since May 17, 2017, there has not been any Material Adverse Change and Target has conducted its business in the Ordinary Course of Business. Without limiting the generality of the foregoing, since May 17, 2017:

(xv) Target has not entered into or terminated any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(xvi) Target has not granted any increase in the base compensation of any of its directors, officers, or employees outside the Ordinary Course of Business;

(xvii) Target has not adopted, amended, modified or terminated any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees (or taken any such action with respect to any other Employee Benefit Plan);

Additionally, Schedule 4(i), Events Subsequent to May 17, 2017, provides in relevant part:

(3) Target paid a fiscal year-end bonus and subsequently has paid special bonuses to employees on three occasions.

Sellers directly breached the above warranties when they awarded non-owner employees with bonuses and increased one non-owner employee's salary after failing to disclose these material adverse changes in violation of the representations and warranties agreed to pursuant to Paragraph 4(i)(xv), (xvi), and (xvii) of the SPA. As a result of these undisclosed changes, Buyer has suffered damages and intends to pursue all available legal remedies against Sellers.

II. Amount of Pending Claims:

Sellers' payment of bonuses to non-owner employees has significantly and adversely affected the value of CC + I, resulting in the loss of several of the non-owner employees on the anniversary of the annual bonuses. Sellers previously disclosed the value of only three (3) bonuses totalling approximately Thirty-Five Thousand Dollars (\$35,000.00), a fractional amount in comparison to the actual value of bonuses paid to non-owner employees. Buyer alleges that as a result of the payment of these undisclosed bonuses, the non-owner employees elected to leave the company when these bonuses were not matched by Buyer in 2018, and Buyer has suffered damages in excess of One Million Three Hundred Fourteen Thousand Thirty-Four and No/100 Dollars (\$1,314,034.00). Included with this notice is a damages analysis attached as **Exhibit A**.

Therefore, based on the foregoing, Buyer requests United Community Bank hold all funds deposited pursuant to the Escrow Agreement of approximately Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00) because Buyer's claims exceed that amount. If you have any questions regarding this notice please do not hesitate to contact me at the number above.

Very Respectfully,

TRULUCK THOMASON, LLC


Kimberly Thomason, Esq.

CC: William A.L. Sibley
Andrew Coburn, Esq.
Joyce Featherstone
James T. Clark
Frank T. Starrett, Jr.
Scott W. Dozier
Robert E. Leviner

From OM:

OM Date: 1/18/2017
Base Year: 2016
Sales: \$2,500,000 Page 4
EBITDA: **\$1,173,000** Page 4
Salary and Wages (Non owners) \$116,000 Page 24

Offer Made based on OM

First LOI Submitted: 2/8/2017
Second LOI Submitted: 3/10/2017
Offer: **\$4,400,000**
EBITDA Multiple: **3.75**

Non Owners Salaries and Bonuses disclosed during due diligence - 5/17/17

Name	Position	At the time of Due Diligence	
		Salary	Bonus
Kimberly French	Admin	\$37,500	\$0
Taylor, Joseph B.	Soft Dev	\$46,000	\$15,000
Herrmann, Nathan D.	Soft Dev	\$63,874	\$15,000
Viveros, Carlos A.	Soft Dev	\$75,000	\$5,000
Clark, Ryan O.	Production	\$50,000	\$0
Jones, Christopher L.	IT	\$45,000	\$0
Pavatte, Justin D.	Soft Dev	\$75,000	\$0
		\$392,374	\$35,000

Calculation of Tax and Insurance Rate applicable in 2017

Salaries and Wages: \$3,229,784
Payroll Taxes: \$125,127
Medical Insurance: \$101,150
Total: \$226,277 7.0%

Impact of Unapproved Changed on Company Value

Salary & Bonus changed after 5/17/17: \$327,374
Prorated Payroll Taxes and Insurance: \$22,936 7.0%
Effect on Company Value: \$350,310
EBITDA From OM: \$1,173,000
Reduction of EBITDA for Bonus & New Payroll: **(\$350,310)**
ACTUAL: EBITDA \$822,690
Multiple from OM: 3.75
Claim for reduction of Company Value: **\$1,314,034**

Applicable SPA Clause: 4. (i)
4. (Xiv)
4. (Xv)
4. (Xvi)
4. (Xvii)
4. (Xviii)

At the time of closing		Date Changed	Difference (Annualized)	
Salary	Bonus		Salary	Bonus
\$40,000	\$10,000	7/31/2017	\$2,500	\$10,000
\$46,000	\$46,000	6/30/2017	\$0	\$31,000
\$63,874	\$63,874	6/30/2017	\$0	\$48,874
\$75,000	\$75,000	6/30/2017	\$0	\$70,000
\$50,000	\$50,000	6/30/2017	\$0	\$50,000
\$45,000	\$45,000	6/30/2017	\$0	\$45,000
\$75,000	\$70,000	6/30/2017	\$0	\$70,000
			\$2,500	\$324,874
			\$327,374	

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
 Defendant.

PLAINTIFF’S AND
THIRD-PARTY DEFENDANT’S
MOTION TO ALTER AND AMEND
JUDGMENT TO INCLUDE ACCRUED
INTEREST, PREJUDGMENT INTEREST,
AND COSTS

Plaintiff Julia Sibley-Jones and Third-Party Defendant Joyce Featherstone (collectively, “Sellers”) hereby move the Court, pursuant to Rules 54, 58, and 59, SCRCP, and other applicable law, to alter and amend the Judgment in favor of Plaintiff against Defendant Decide4action Inc. (“Decide4action”) to include awards of: (1) actual damages in the amount of \$443,869.43 being held by United Community Bank (“UCB”) in escrow, plus accrued interest (the “Escrow Fund”); (2) prejudgment interest on the \$440,000 held in the Escrow Fund from October 16, 2018, to August 16, 2021; and (3) costs, as follows:

Escrow Fund as of July 16, 2021	\$443,869.43 (plus accrued interest)
Prejudgment interest to August 16, 2021	109,833.33
Costs	<u>+ 999.31</u>
Total Judgment vs. Decide4action, Inc.	\$554,702.07 (plus accrued interest)

This motion is made upon the following grounds:

1. **The Judgment should be altered and amended to clarify that Decide4action is liable to Plaintiff in the amount of \$443,869.43 plus accrued interest on her breach of contract claim.**

In its Judgment in a Civil Case dated July 28, 2021, and filed July 30, 2021 (the “Judgment”), the Court granted Plaintiff’s motion for directed verdict and ordered the Escrow Fund be released to Plaintiff. *Id.* at p. 2 (“The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by [UCB] under the [Escrow Agreement].... [T]he Court granted Plaintiff’s Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff.”).

This granting of directed verdict to Plaintiff on her breach of contract claim was correct because the Indemnity Escrow Agreement, Plaintiff’s Exhibit 9 (the “Escrow Agreement”), at p. 2, § 3(d), required that Decide4action prove a “Pending Claims Amount” in order recover any amount from the Escrow Fund.

Decide4action never proved a Pending Claims Amount. In fact, Decide4action admitted in its Rule 30(b)(6) deposition published in court that the claim it submitted to UCB was not the claim it wanted to try to prove to the jury. This is because what Decide4action submitted to UCB, Plaintiff’s Exhibit 10, was prohibited by the Stock Purchase Agreement (“SPA”), which provided:

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

(Plaintiff’s Exhibit 8, p. 21, Section 8(b)) (emphasis added)

This language is absolute and applied to bar Decide4action’s claim to UCB, which was a claim of diminution in value of the Company based upon a multiple of EBITDA. Accordingly,

the Court correctly ruled that Decide4action breached the Escrow Agreement and Plaintiff was entitled to directed verdict against it on her breach of contract claim.

The Judgment for Plaintiff was listed as \$440,000 plus accrued interest. In addition to the original \$440,000 placed in the Escrow Fund, Sellers were also entitled to “any earnings and income thereon.” Escrow Agreement at 1, § 1(b). Therefore, Judgment against Decide4action should include all amounts in the Escrow Fund.

As of July 16, 2021, the Escrow Fund totaled \$443,869.43. Plaintiff’s Exhibit 21. Therefore, the Court should direct the clerk to enter judgment in favor of Plaintiff against Decide4action in the amount of \$443,869.43, plus interest accruing thereafter. Rules 54(b), SCRCF (decision final upon entry of judgment adjudicating all the claims and rights and liabilities of the parties); 58(a), SCRCF (Circuit Court shall enter judgment upon decision granting multiple forms of relief).

2. The Judgment should be altered and amended to award Plaintiff prejudgment interest on \$440,000 from October 16, 2018, to August 16, 2021.

Under S.C. Code Ann. § 34-31-20(A), liquidated sums bear prejudgment interest at the legal rate of 8.75% per annum. *Robert E. Lee & Co. v. Commission of Public Works*, 248 S.C. 92, 149 S.E.2d 59, 62 (1966); *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789, 791 (1993); *T.W. Morton Builders v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87, 93 (Ct. App. 1994) (all finding that the law allows prejudgment interest on amounts that are liquidated).

Because the Closing Date was October 16, 2017, the \$440,000 originally placed in the Escrow Fund should have been released to Sellers on October 16, 2018. Escrow Agreement, p. 2, § 3(d) (Escrow Fund to be released to Sellers “on the first Business Day following the Indemnification Escrow Release Date,” defined as “the first anniversary of the date of the Closing Date”); Agreement regarding Application of Funds, Plaintiff’s Exhibit 16 (“Fund Agreement”), at

p. 2, § 5 (“on the first anniversary of the Closing (i.e., twelve (12) months following the Closing), any remaining amounts in the Escrow Account shall be paid to Sellers”).

Because it prevented Sellers from receiving the Escrow Fund for nearly three years and because it is liquidated amount, Decide4action is liable for prejudgment interest on the \$440,000. It does not matter that Decide4action disputed the amount. As noted by the Supreme Court:

The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty. **The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest.** The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.

Smith-Hunter Const. Co., Inc. v. Hopson, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (emphasis added; citations omitted).

The \$440,000 originally placed in the Escrow Fund is a liquidated sum because it is “certain or capable of being reduced to a certainty.” *Builders Transport, Inc. v. South Carolina Property & Casualty Ins. Guaranty Ass’n*, 307 S.C. 398, 415 S.E.2d 419, 424 (Ct. App. 1992); *Weeks v. McMillan*, 291 S.C. 287, 353 S.E.2d 289, 293 (Ct. App. 1987). “It is well settled in this state that the award of prejudgment interest is a function of the trial court” *Bickerstaff v. Prevost*, 380 S.C. 521, 524, 670 S.E.2d 660, 661 (Ct. App. 2008) (citing *Smith-Hunter Constr. Co. v. Hopson*, *supra*, and *Babb v. Rothrock*, *supra*). Therefore, the Judgment should have included prejudgment interest on the \$440,000.

The Judgment, however, incorrectly ruled that the lack of a provision in the Escrow Agreement for prejudgment interest precluded an award of prejudgment interest. The law, however, is that where a contract is silent on the rate of interest and Plaintiff is entitled to a liquidated amount, the Plaintiff is entitled to prejudgment interest at the legal rate set forth in S.C.

Code Ann. § 34-31-20(A). *Burnett Dubose Co., Inc. v. Starnes*, 284 S.C. 196, 324 S.E.2d 651 (Ct. App. 1984) (holding the statutory interest rate prescribed by Section 34-31-20 is applicable “in the absence of a written agreement between the parties fixing a different rate of interest.”); *Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc.*, 272 S.C. 289, 251 S.E.2d 738 (1979) (same).

Pursuant to the parties’ Escrow Agreement, the \$440,000 in the Escrow Fund was to be released to Sellers on October 16, 2018. *Id.* at p. 2, § 3(c); Fund Agreement at p. 2, § 5. Therefore, Decide4action owes Plaintiff interest on the \$440,000 from October 16, 2018, to August 16, 2021, or 2 years and 10 months, at the legal rate of 8.75% in the amount of \$109,833.33 ($\$440,000 \times .0875 \times 2 \frac{10}{12}$).

Accordingly, the Judgment should be altered and amended to add prejudgment interest of \$109,833.33. S.C. Code Ann. § 34-31-20(A); Rule 59(e), SCRCP.¹

3. The Judgment should be altered and amended to award Plaintiff costs of \$999.31.

Plaintiff should also be awarded the following costs under Rule 54(d), SCRCP:

\$180.32	Filing fee for summons and complaint (Rule 54(e)(2), SCRCP)
31.74	Filing fee for motion to compel (Rule 54(e)(2), SCRCP)
<u>+787.25</u>	Deposition of Decide4action (S.C. Code Ann. § 15-37-40)
\$999.31	

See Exhibit A.

“Once a trial judge awards costs to the prevailing party the clerk shall insert in the judgment costs of ‘the fees of witnesses’ and ‘the reasonable compensation of commissioners in taking depositions.’ S.C. Code Ann. § 15-37-40 (1976). In addition, the Rules of Civil Procedure

¹ Of course, once received by Plaintiff, the Escrow Fund, including interest accrued thereon from October 16, 2017, will be credited against and reduce the amount owed by Decide4action on the Judgment.

recognize that the prevailing party shall be allowed costs per a trial court's ruling. Rule 54(d), SCRCP.” *Peterson v. National R.R. Passenger Corp.*, 365 S.C. 391, 618 S.E.2d 903, 908 (2005). Accordingly, the Judgment should be altered and amended to add \$999.31 in costs. Rule 59(e), SCRCP.

CONCLUSION

For the foregoing reasons, the Court should alter and amend the Judgment, and direct the Clerk of Court to enter judgment in favor of Plaintiff against Defendant Decide4action Inc. as follows:

Escrow Fund as of July 16, 2021	\$443,869.43 (plus accrued interest)
Prejudgment interest to August 16, 2021	109,833.33
Costs	+ <u>999.31</u>
Total Judgment vs. Decide4action, Inc.	\$554,702.07 (plus accrued interest)

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English
 Gregory J. English (SC #65470)
 200 E. Camperdown Way
 Post Office Box 728
 Greenville, SC 29602-0728
 Telephone: 864-242-8200
 Telefax: 864-235-8900

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

August 9, 2021

EXHIBIT A

Greg English

From: noreply@portal.sc.gov
Sent: Thursday, April 11, 2019 3:44 PM
Subject: Greenville County Circuit Court E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Greenville County Circuit Court
Contact Email
Contact Url
Contact Phone
Contact Address 305 East North Street ,
Suite 226
Greenville, SC 29601

Transaction Summary

Description	Amount
Greenville County Circuit Court - E-Filings	\$175.00
SC.GOV TOTAL	\$180.32

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name Gregory Jacobs English
Company Name
Local Reference ID F_1634182_2194
Receipt Date 4/11/2019
Receipt Time 03:44:19 PM EDT

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number *****7598
Order ID 70842970
Billing Name Wyche, PA

Billing Information

Billing Address PO Box 728
Billing City, State Greenville, SC
ZIP/Postal Code 296020728
Country US
Phone Number 864-242-8247

Greg English

From: noreply@egov.com
Sent: Thursday, December 10, 2020 11:17 AM
Subject: Greenville County Common Pleas Court - E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Greenville County -
Common Pleas - 23002 -
E-Filings

Transaction Summary

Description	Amount
Greenville County - Common Pleas - 23002 - E-Filings	\$30.00
ServiceFee*SC.GOV	\$1.74
TOTAL	\$31.74

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name Gregory Jacobs English
Company Name
Local Reference ID F_3265833_2194
Receipt Date 12/10/2020
Receipt Time 11:16:54 AM EST

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number *****7357
Order ID 111584516
Billing Name Wyche PA

Billing Information

Billing Address PO Box 728
Billing City, State Greenville, SC
ZIP/Postal Code 296020728
Country US
Phone Number 864-242-8247
This receipt has been emailed to the address below.
Email Address genglish@wyche.com

ORIGINAL
INVOICE

Since 1976.

GREG ENGLISH, Esquire
WYCHE, PA
44 EAST CAMPERDOWN WAY
POST OFFICE BOX 728
GREENVILLE, SC 29601

Invoice Number: 14 20010
Federal ID: 57-0628151
Invoice Date: 12/06/2020

Terms: Payment Due Ten (10) Days After Invoice Date

Office: SPARTANBURG

Date Taken: 09/29/2020

Order Number:

Case: SIBLEY VS DECIDE4ACTION

Location: GREENVILLE

Service Provided

	Pages/Quantity	Total
APPEARANCE FEE	1.00	190.00
10:00 - 2:30 P.M.		
ORIGINAL and ONE COPY	141.00	556.95
R. BERGERON		
EXHIBITS	202.00	30.30
DELIVERY	1.00	10.00

COMMENTS:

THANK YOU FOR YOUR BUSINESS

Invoice Total: **\$787.25**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
 Defendant.

**REPLY IN SUPPORT OF PLAINTIFF'S
 AND THIRD-PARTY DEFENDANT'S
 MOTION TO ALTER AND AMEND
 JUDGMENT TO INCLUDE ACCRUED
 INTEREST, PREJUDGMENT INTEREST,
 AND COSTS**

Plaintiff Julia Sibley-Jones and Third-Party Defendant Joyce Featherstone (collectively, “Sellers”) hereby reply to Defendant Decide4action Inc.’s (“Decide4action”) memorandum in opposition to Sellers’ motion pursuant to Rules 54, 58, and 59, SCRPC, and other applicable law, to alter and amend the Judgment in favor of Plaintiff against Decide4action to include awards of: (1) actual damages in the amount of \$443,869.43 being held by United Community Bank (“UCB”) in escrow, plus accrued interest (the “Escrow Fund”); (2) prejudgment interest on the \$440,000 held in the Escrow Fund from October 16, 2018; and (3) costs, as follows:

- 1. The Judgment should be altered and amended to clarify that Decide4action is liable to Plaintiff in the amount of \$443,869.43 plus accrued interest on her breach of contract claim, which was requested throughout the case and would not result in a “double recovery.”**

In its Judgment in a Civil Case dated July 28, 2021, and filed July 30, 2021 (the “Judgment”), the Court granted Plaintiff’s motion for directed verdict and ordered the Escrow Fund be released to Plaintiff. *Id.* at p. 2 (“The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by [UCB] under the [Escrow Agreement].... [T]he Court granted Plaintiff’s Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff.”).

If the Court had not granted directed verdict, Plaintiff would have taken her breach of contract claim to the jury and gotten a verdict for damages and then money judgment against Decide4action. The Escrow Fund – which acts a security for the money judgment to which Plaintiff is entitled – would be applied to reduce the judgment. Contrary to Decide4action’s memo, that is what Plaintiff requested in her complaint:

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

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

* * *

WHEREFORE, Plaintiff prays that she be granted judgment against DECIDE4ACTION (a) for actual damages, including but not limited to the \$440,000 plus interest in the Escrow Account, prejudgment interest at 8.75% on the foregoing amounts, plus costs ... [and] (c) declaring that the funds in the Escrow Account should be paid to Plaintiff and applied to SIBLEY’s and the other Selling Shareholders’ damages

Complaint at 3, 4.

Granting Plaintiff a money judgment and then applying the Escrow Fund to reduce that judgment are not “inconsistent remedies” and would not result in “double recovery.” Plaintiff would just be receiving the full amount she is entitled to receive and requested in her complaint

and in court: \$440,000, plus interest in the Escrow Account, plus prejudgment interest at 8.75% on the foregoing amounts, plus costs. This judgment would be paid from the Escrow Fund and Decide4action to the extent the Escrow Fund does not cover the full amount of the judgment.

As of July 16, 2021, the Escrow Fund totaled \$443,869.43.¹ Plaintiff's Exhibit 21. Therefore, the Court should direct the clerk to enter judgment in favor of Plaintiff against Decide4action in the amount of \$443,869.43, plus interest accruing thereafter. Rules 54(b), SCRCP (decision final upon entry of judgment adjudicating all the claims and rights and liabilities of the parties); 58(a), SCRCP (Circuit Court shall enter judgment upon decision granting multiple forms of relief).

2. The Judgment should now be altered and amended to award Plaintiff prejudgment interest on \$440,000 from October 16, 2018, through September 24, 2021.

As noted above, Plaintiff requested prejudgment interest on the \$440,000 Escrow Fund in her complaint and throughout the case, which was allowed under S.C. Code Ann. § 34-31-20(A) (liquidated sums bear prejudgment interest at the legal rate of 8.75% per annum). *See also Robert E. Lee & Co. v. Commission of Public Works*, 248 S.C. 92, 149 S.E.2d 59, 62 (1966); *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789, 791 (1993); *T.W. Morton Builders v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87, 93 (Ct. App. 1994) (all finding that the law allows prejudgment interest on amounts that are liquidated).

Contrary to Decide4action's memo, the evidence presented at trial was clear that Plaintiff was entitled to and should have received the liquidated sum of \$440,000 on October 16, 2018, and therefore was entitled to prejudgment interest when Decide4action prevented Plaintiff from receiving that amount on that date. The Indemnity Escrow Agreement, Plaintiff's Exhibit 9 (the

¹ In addition to the original \$440,000 placed in the Escrow Fund, Sellers were also entitled to "any earnings and income thereon." Escrow Agreement at 1, § 1(b).

“Escrow Agreement”), at p. 2, § 3(d), required that Decide4action prove a “Pending Claims Amount” in order recover any amount from the Escrow Fund. Decide4action never did so. In fact, Decide4action admitted in its Rule 30(b)(6) deposition published in court that the claim it submitted to UCB was not the claim it wanted to try to prove to the jury. This is because what Decide4action submitted to UCB, Plaintiff’s Exhibit 10, was prohibited by the Stock Purchase Agreement (“SPA”), Plaintiff’s Exhibit 8, p. 21, Section 8(b)) (stating “in no event shall any Seller be liable to Buyer for ... diminution of value or any damages based on any type of multiple.”).

Because the Closing Date was October 16, 2017, the \$440,000 originally placed in the Escrow Fund should have been released to Sellers on October 16, 2018. Escrow Agreement, p. 2, § 3(d) (Escrow Fund to be released to Sellers “on the first Business Day following the Indemnification Escrow Release Date,” defined as “the first anniversary of the date of the Closing Date”); Agreement regarding Application of Funds, Plaintiff’s Exhibit 16 (“Fund Agreement”), at p. 2, § 5 (“on the first anniversary of the Closing (i.e., twelve (12) months following the Closing), any remaining amounts in the Escrow Account shall be paid to Sellers”).

Because it prevented Sellers from receiving the Escrow Fund for nearly three years and because it is liquidated amount, Decide4action is liable for prejudgment interest on the \$440,000.

Also contrary to Decide4action’s memo, the law does not require the parties to agree to prejudgment interest, just a “sum is certain or capable of being reduced to certainty.” *Smith-Hunter Const. Co., Inc. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005). The \$440,000 placed into and due to be released from the Escrow Fund clearly satisfies that requirement.

Decide4action’s memo is also wrong that the parties agreed to a rate of interest in the Escrow Agreement. They simply agreed that the Escrow Fund, plus whatever interest UCB paid on those funds between October 16, 2017, and October 16, 2018, would be paid to Plaintiff on

October 16, 2018, if Decide4action had no legitimate Pending Claims Amount. The Escrow Agreement was silent as to the interest that would be due if Decide4action prevented the Escrow Funds from being paid on October 16, 2018. Because the contract was silent on the rate of interest to which Plaintiff was entitled on the liquidated amount after October 16, 2018, Plaintiff is entitled to prejudgment interest at the legal rate set forth in S.C. Code Ann. § 34-31-20(A). *Burnett Dubose Co., Inc. v. Starnes*, 284 S.C. 196, 324 S.E.2d 651 (Ct. App. 1984) (holding the statutory interest rate prescribed by Section 34-31-20 is applicable “in the absence of a written agreement between the parties fixing a different rate of interest.”); *Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc.*, 272 S.C. 289, 251 S.E.2d 738 (1979) (same).

Pursuant to the parties’ Escrow Agreement, the \$440,000 in the Escrow Fund was to be released to Sellers on October 16, 2018. *Id.* at p. 2, § 3(c); Fund Agreement at p. 2, § 5. Therefore, Decide4action owes Plaintiff interest on the \$440,000 from October 16, 2018, to September 24, 2021, or 2 and 49/52 years, at the legal rate of 8.75% in the amount of \$113,278.84 ($\$440,000 \times .0875 \times 2 \frac{49}{52}$).

Accordingly, the Judgment should be altered and amended to add prejudgment interest of \$113,278.84. S.C. Code Ann. § 34-31-20(A); Rule 59(e), SCRCP.²

3. The Judgment should be altered and amended to award Plaintiff costs of \$999.31.

Plaintiff should also be awarded the following costs under Rule 54(d), SCRCP:

\$180.32	Filing fee for summons and complaint (Rule 54(e)(2), SCRCP)
31.74	Filing fee for motion to compel (Rule 54(e)(2), SCRCP)
<u>+787.25</u>	Deposition of Decide4action (S.C. Code Ann. § 15-37-40)
\$999.31	

² As noted above, once received by Plaintiff, the Escrow Fund, including interest accrued thereon from October 16, 2017, will be credited against and reduce the amount owed by Decide4action on the Judgment.

Although Decide4action argues that these costs were not included in an affidavit, the filing fees for the summons and complaint and motion to compel are matters of public record (see <https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAgency=23002&Casenum=2019CP2302032&CaseType=V&HKey=108109119897010756549811755565210567799811597846510247118819052106667083103491205377837470681205773>), the deposition was read into the record in this case and the receipt was attached to the motion, and Decide4action does not question the amounts, so that the Court can take judicial notice of these costs. Rule 201, SCRE. To the extent the Court deems an affidavit to be necessary, one is filed herewith. *See* Exhibit A.

Accordingly, the Judgment should be altered and amended to add \$999.31 in costs. Rule 59(e), SCRC.P.

CONCLUSION

For the foregoing reasons, the Court should alter and amend the Judgment, and direct the Clerk of Court to enter judgment in favor of Plaintiff against Defendant Decide4action Inc. as follows:

Escrow Fund as of July 16, 2021	\$443,869.43 (plus accrued interest)
Prejudgment interest to August 16, 2021	113,278.84
Costs	<u>+ 999.31</u>
Total Judgment vs. Decide4action, Inc.	\$558,147.58 (plus accrued interest)

[Signature on following page]

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English
Gregory J. English (SC #65470)
200 E. Camperdown Way
Post Office Box 728
Greenville, SC 29602-0728
Telephone: 864-242-8200
Telefax: 864-235-8900

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

September 21, 2021

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

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

Case No. 2019-CP-23-02032

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

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,
vs.

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

Counterclaim Defendant/Third Party
Defendant.

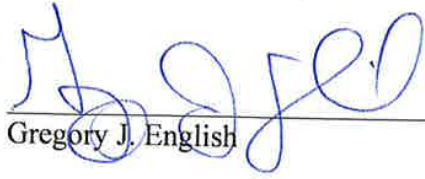
**AFFIDAVIT OF
GREGORY J. ENGLISH, ESQ.**

PERSONALLY appeared before me Gregory J. English, Esq., who being duly sworn,
states as follows:

1. I am an attorney for Plaintiff in the above-entitled action.
2. The following costs are correct and were necessarily incurred by Plaintiff in this
action:

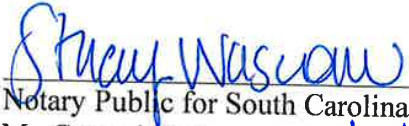
\$180.32	Filing fee for summons and complaint (Rule 54(e)(2), SCRCP)
31.74	Filing fee for motion to compel (Rule 54(e)(2), SCRCP)
<u>+787.25</u>	Deposition of Decide4action (S.C. Code Ann. § 15-37-40)
\$999.31	

FURTHER AFFIANT SAITH NOT.



Gregory J. English

SWORN to before me this
21st day of September, 2021.



Notary Public for South Carolina
My Commission expires: 3/30/26

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

94862
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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Perry H. Gravely, Circuit Court Judge

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

Appellate Case No.

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

Respondent,

v.

Decide4Action, Inc.,

Appellant.

NOTICE OF APPEAL

Decide4Action, Inc. appeals the Orders in this matter filed on July 30, 2021 and August 6, 2021. Copy of the written Orders are attached to this Notice as Exhibit "A" and Exhibit "B".

Dated this 13th day of October, 2021

TRULUCK THOMASON, LLC

s/Devon M. Puriefoy
Devon M. Puriefoy
SC Bar No.: 102097
Kimberly T. Thomason
SC Bar No.: 70179
3 Boyce Avenue
Greenville, SC 29601
devon@truluckthomason.com
kim@truluckthomason.com
P: 864-331-1751

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

Plaintiff,

v.

Decide4Action, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT

C.A. FILE NO. 2019-CP-23-02032

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OCT 18 2021

SC Court of Appeals

NOTICE OF FILING

To: Clerk of Court and Plaintiff of Record

Please take notice that Defendants have filed the attached notice of appeal to the South Carolina Court of Appeals.

Dated this 13th day of October, 2021

TRULUCK THOMASON

s/Devon M. Puriefoy
Devon M. Puriefoy
SC Bar No.: 102097
Kimberly T. Thomason
SC Bar No.: 79179
3 Boyce Avenue
Greenville, SC 29601
devon@truluckthomason.com
kim@truluckthomason.com
P: 864-331-1751

CERTIFICATE OF SERVICE

I, the undersigned, served a copy of this document on the following counsel of record this 13th day of October, 2021, by email and U.S. mail to the following addresses of record:

Gregory J. English
200 East Camperdown Way
P.O. Box 728
Greenville, SC 29602-0728
genglish@wyche.com

s/Devon M. Puriefoy
Devon M. Puriefoy
SC Bard No.: 102097
3 Boyce Avenue
Greenville, SC 29601
devon@truluckthomason.com

Attorney for Defendant

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OCT 18 2021

SC Court of Appeals



THE LAW OFFICES OF
TRULUCK THOMASON, LLC

3 Boyce Avenue • Greenville • SC • 29601
Phone (864) 331-1751 • Facsimile (864) 243-8115

Kimberly T. Thomason
Thomas C. Brissey
Devon M. Puriefoy
John-Paul Baum

kim@truluckthomason.com
sonya@truluckthomason.com
devon@truluckthomason.com
johnpaul@truluckthomason.com

October 13, 2021

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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OCT 18 2021

SC Court of Appeals

Re: William A.L. Sibley, Jr. v. Decide4Action, Inc.
Case No.: 2019-CP-23-02032

To Whom It May Concern:

Enclosed for filing find Notice of Supersedeas and Notice of Appeal in the above captioned matter as well as the required filing fees in the amount of \$300.

TRULUCK THOMASON, LLC

Very respectfully,

Brandi Larobardiere
Legal Assistant
brandi@truluckthomason.com

enclosures
cc: Gregory English

 THE LAW OFFICES OF
TRULUCK THOMASON, LLC
3 Boyce Avenue | Greenville, SC 29601

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SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2019-CP-23-02032
COUNTY OF GREENVILLE	)	
	)	
JULIA SIBLEY-JONES, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
WILLIAM A.L. SIBLEY, JR.,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DECIDE4ACTION, INC,	)	
DEFENDANT.	)	
	)	
DECIDE4ACTION, INC,	)	
COUNTERCLAIMANT/THIRD PARTY	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
JULIA SIBLEY-JONES, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
WILLIAM A.L. SIBLEY, JR., AND	)	
JOYCE FEATHERSTONE,	)	
COUNTERCLAIM DEFENDANT/THIRD	)	
PARTY DEFENDANT.	)	
	)	

July 26, 27, 28, 2021
Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE, and a Jury.

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

GREGORY ENGLISH, ESQ.
Attorney for the Plaintiff/Counterclaim Defendant

KIMBERLY T. THOMASON, ESQ.
DEVON MARC PURIEFOY, ESQ.
Attorney for the Defendant/Counterclaimant

CHERYL A. SMITH
Circuit Court Reporter

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(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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(Reporter's Note: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.)

EXHIBITS

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(Plaintiff's Exhibits)			
1	Letter of Intent, 3/10/17	6	9
2	Salaries/Bonuses, 4/28/17	6	9
3	Due Diligence, 6/22/17	6	9
4	Tax Return, 6/30/2016	6	9
5	Profit & Loss, July 2017	6	9
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8	Stock Purchase Agreement, 10/13/17	6	9
9	Indemnity Escrow Agreement, 10/16/17	6	9
10	Defendant's Escrow Claim, 9/19/18	6	9
11	Plaintiff's Escrow Rsp, 10/30/18	6	9
12	Defendant's Escrow Rpl, 12/13/18	6	9
13	(Not used)		
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16	Agreement RE Application of Funds	6	9
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P R O C E E D I N G S

MONDAY, JULY 26, 2021

(WHEREUPON, proceedings commenced at 10:26 a.m.;
Plaintiff's Exhibits 1 through 12 and 16 through 20 and
Defendant's Exhibits 3 through 9 were premarked.)

THE COURT: All right. I guess just for some
housekeeping matters, when you are talking, you can pull
your mask down. And here's what I tell the jury, what I've
told them before is when they're in their little cone of
silence, which is what I call it, I will let them take
their mask off. I had a lady in Oconee who passed out.
She had her mask on and she -- was one of those things, and
somebody told me they're a lot hotter than normal. She
passed out. Her blood sugar dropped, and was going to take
a little break. It was a murder trial, too, so it was like
we didn't want to lose a juror. That was the first
witness, so . . .

All right. As far as deposition designations, I guess
y'all have exchanged those.

Mr. English, for some reason, your letter didn't come
in when I tried to print it or pull it up.

MR. ENGLISH: I have a hard copy of that for Your
Honor, and I also have a courtesy copy of the exhibits that
we've agreed on for you.

THE COURT: Okay. How about voir dire? Have you each

1 looked at each other's voir dire?

2 MR. PURIEFOY: We have, Your Honor.

3 MR. ENGLISH: Yes.

4 THE COURT: All right. Any questions or problems with
5 any of them?

6 MR. PURIEFOY: We don't have any objections with what
7 we've seen.

8 MR. ENGLISH: We object to the defendant's second
9 bullet point ---

10 THE COURT: Let me pull that up here.

11 MR. ENGLISH: --- on the grounds we think that's
12 one-sided and it's a commentary on the case.

13 THE COURT: I'll reword that to something just
14 regardless of your feelings, do you feel like you can
15 follow the law, or something like that.

16 MR. ENGLISH: Thank you.

17 THE COURT: Other than that, everything's good.

18 So I've got defendant counterclaimant's supplemental
19 voir dire. Was there an original one?

20 MR. PURIEFOY: There wasn't. We just call it
21 supplemental as it's a supplement to your voir dire.

22 THE COURT: Okay. And then we have plaintiff and
23 third-party defendants, voir dire, and a witness list from
24 plaintiff. Do we have a witness list from defendant?

25 MR. PURIEFOY: We forwarded that to your attention

1 Your Honor, but I can ---

2 THE COURT: Okay. Is it in this list? Maybe it's
3 attached. Okay. It was attached to your deposition. All
4 right. I've got that. So I've got the plaintiff's witness
5 list. So we've got everything we need. And, again, that
6 will be at 1:30 when we strike that jury.

7 Deposition designations, any issues on those?

8 MR. PURIEFOY: Your Honor, we have, I believe, three.

9 THE COURT: Three issues or three designated?

10 MR. PURIEFOY: Three issues, yes, Your Honor.

11 THE COURT: Okay. Do y'all want to do those first?
12 Or, I mean, I don't -- did y'all have something else y'all
13 would rather talk about?

14 MR. PURIEFOY: We can do that. I think they'll be
15 fairly straightforward.

16 THE COURT: Is this letter like a personal letter to
17 me or is it ---

18 MR. ENGLISH: Yeah. It's the same thing we emailed.

19 THE COURT: Is there a check in it?

20 MR. ENGLISH: No. Sorry.

21 THE COURT: Cookies? No? Just checking. Okay. Your
22 designations. All right.

23 I'll just start with this. Plaintiff, I'll let you
24 tell me what issues you would like to address first.

25 MR. ENGLISH: Your Honor, first, just for the record,

1 I'm Greg English. I represent the plaintiff, Julia
2 Sibley-Jones, who's the personal representative of the
3 estate of Bill Sibley, and the third-party defendant, Joyce
4 Featherstone.

5 First, for the record, I'd like to note that the
6 parties have agreed on the admissibility of Plaintiff's
7 Exhibits 1 through 12 and 16 through 20, and so if I need
8 to formally move those into admission, I'd like to do that
9 now.

10 THE COURT: All right. And y'all are in agreement
11 with those?

12 MR. PURIEFOY: We are.

13 THE COURT: And y'all have already marked those and
14 the court reporter has them?

15 MR. ENGLISH: Yes, Your Honor.

16 THE COURT: Well, then those are admitted by
17 stipulation, Plaintiff's 1 through 12 and 16 through 20.

18 (WHEREUPON, Plaintiffs's Exhibit Numbers 1 through 12 and
19 16 through 20 were admitted into evidence.)

20 THE COURT: All right.

21 MR. ENGLISH: Next, Your Honor, on the defendant's
22 designations from the deposition of Bill Sibley -- and I've
23 got a copy of that deposition if it would help Your Honor
24 to hand that up.

25 THE COURT: Okay. All right.

1 MR. ENGLISH: The first defendant's designations we
2 object to is on page 30 beginning at line 15. And there is
3 discussion about a -- I'll let Your Honor get to it,
4 page 30 beginning at line 15.

5 THE COURT: Okay.

6 MR. ENGLISH: There's a reference in there to a report
7 by a third party called Generational Equity. It was an
8 offer memorandum that was issued prior to the contract at
9 issue in this case, which is a stock purchase agreement.
10 So we would object to that -- discussion of that report
11 coming in under the parole evidence rule. Also, it's
12 hearsay.

13 THE COURT: All right.

14 MR. PURIEFOY: Beg the Court's indulgence one moment,
15 Your Honor.

16 THE COURT: Okay.

17 MR. PURIEFOY: I'm pulling up that.

18 THE COURT: I assume that's one of these exhibits back
19 here.

20 MR. ENGLISH: That's not one of the plaintiff's
21 exhibits, Your Honor.

22 THE COURT: Okay. It wasn't one of the exhibits to
23 this deposition.

24 MR. ENGLISH: Oh, I don't think so, Your Honor.

25 THE COURT: In looking at -- let me just, while you're

1 looking at that, looking at the previous question, this was
2 an offer for this, I guess, stock by some other successor
3 -- I mean by a previous person. Is that what ---

4 MR. ENGLISH: There was an offer which took the form
5 of a letter of intent of March 17th, but this is actually
6 referring to a prior document, which is what's called an
7 offering memorandum. That was prepared by an outside party
8 called Generational Equity.

9 THE COURT: Okay.

10 MR. PURIEFOY: Well, Your Honor, to begin, I don't
11 believe this is -- it's not hearsay. And if you look at
12 the question that begins on line 15, it says, "It was your
13 understanding that the EBITDA in 2016 was 1.173 million."
14 That is personal knowledge. This is not testifying to
15 prove the truth of the matter asserted in the offering
16 memorandum. It's simply asking what his understanding of
17 that memorandum was. And if his answer was, "I don't know
18 what that document is," and I delved into the document
19 itself, that would certainly constitute hearsay. But the
20 question that was posed was, "What was your understanding
21 of that document?" I believe he's allowed to testify as to
22 what his personal understanding of what that document is.

23 THE COURT: All right.

24 MR. ENGLISH: Well, but his answer was in that report,
25 yeah. So, I mean, he's basically referring back to the

1 report that is the hearsay and is the parole evidence.

2 THE COURT: When do you expect that these deposition
3 designations will be presented?

4 MR. ENGLISH: Judge, that, I guess, is another issue.
5 We plan to maybe even read Mr. Sibley's deposition today,
6 at least our designations. I don't know if Your Honor
7 wants us to read their designations at the same time or let
8 them read theirs as part of their case. So we could defer
9 this till later if they're going to read their designations
10 later.

11 MR. PURIEFOY: And we would prefer -- I think it's
12 going to be easier for the jury, especially in our case in
13 chief, for us to read our designations at the time that
14 we're ready to read them, which would be at the beginning
15 of our case in chief.

16 THE COURT: Okay. We're going to bore this jury to
17 death. Well, there's nothing you can help on these kind of
18 cases. I know that was no reflection on the attorney.

19 MS. THOMASON: We get it.

20 THE COURT: In dealing with these kind of cases, I
21 know how sometimes you have to deal with that.

22 Let me just look at that. I'd like to kind of know a
23 little bit more about the case, I think. I mean, if it's
24 not going to prejudice you all, I would like to take that
25 one under advisement. So okay.

1 MR. ENGLISH: And it's the same issue on the next
2 page, Judge, page 31, again, lines 15 to 25. It's
3 discussing that Generational Equity offering memorandum.

4 THE COURT: Okay. And same response.

5 MR. PURIEFOY: It would be the same response, Your
6 Honor.

7 THE COURT: All right. Did you have another one?

8 MR. ENGLISH: And then the last one begins on page 37,
9 line 24 and goes over onto page 38, line 9. It's a
10 discussion of other employees, what they said about the
11 defendant's vision for the company. And, again, that's
12 hearsay. And one of those, Mr. Tim Clark, is deceased.

13 THE COURT: Mr. Puriefoy?

14 MR. PURIEFOY: Beg the Court's indulgence while I read
15 that section.

16 THE COURT: Okay. You're fine.

17 (Pause in proceedings.)

18 MR. PURIEFOY: Your Honor, so we will stipulate to the
19 removal of the portions of that designation that would
20 constitute hearsay, which would be page 38, lines 5 through
21 9. I believe the questions leading up to that do not give
22 rise to hearsay.

23 THE COURT: Mr. English?

24 MR. ENGLISH: Well ---

25 THE COURT: I don't see any problem with 1 through 4.

1 MR. ENGLISH: Okay.

2 THE COURT: So therefore, you'll be doing page 37, 24,
3 25 and 38, 1 through 4.

4 All right. Anything else from the plaintiff as far as
5 deposition designations?

6 MR. ENGLISH: No, Your Honor.

7 THE COURT: Anything else from the plaintiff?

8 MR. ENGLISH: No, Your Honor.

9 THE COURT: All right. Be glad to hear from you,
10 Mr. Puriefoy.

11 MR. PURIEFOY: Your Honor, we would object to
12 defendant's designation page 61 beginning on line 2 through
13 10.

14 THE COURT: 61 -- what lines?

15 MR. PURIEFOY: 2 through 10.

16 And, Your Honor, we'd simply ask that, under the rule
17 of completeness, that the remaining portion of that
18 response be also read into the record.

19 THE COURT: I think they've actually -- 1 through 5
20 and then 9 through 11. Page 61?

21 MR. PURIEFOY: I had, Your Honor, 61, lines 2 through
22 10. And if I'm mistaken, then I can certainly ---

23 THE COURT: They've got -- the letter that I've got is
24 61, 1 through 5 and 9 through 11.

25 MR. ENGLISH: That's right, Your Honor.

1 MR. PURIEFOY: One moment, Your Honor.

2 THE COURT: That's fine.

3 (Pause in proceedings.)

4 MR. PURIEFOY: So, Your Honor, I apologize. So let me
5 clarify. We were originally discussing the deposition
6 designations of Mr. Bill Sibley. There are also deposition
7 designations for Richard Bergeron pursuant to his 30(b)(6)
8 deposition.

9 THE COURT: Oh, okay.

10 MR. PURIEFOY: And we're referring to that deposition,
11 Your Honor. My apologies.

12 THE COURT: All right. And I do not have that
13 deposition.

14 MR. ENGLISH: I can hand up a copy of that.

15 THE COURT: All right. Okay. And I've got this, 2
16 through 10. And what's your response, Mr. English?

17 MR. ENGLISH: Well, clearly, if they want to
18 counter-designate that, I think that's their prerogative.

19 THE COURT: All right. So we'll just add -- you'll be
20 adding -- you want 2 through 9? What are you proposing to
21 be added?

22 MR. PURIEFOY: Well, Your Honor, the rule under 611
23 allows the party that's not submitting the designation
24 request the Court instruct the reading party to give full
25 context to either the question or the answer. We can

1 certainly designate it on our case in chief, but my concern
2 is the likelihood of confusion to the jury because we'll be
3 picking up in the middle of a sentence and continuing to
4 read.

5 THE COURT: So you can either -- it will be up to you.
6 You can either make him read it, or you can designate the
7 full amount in yours, whatever you want to do.

8 MR. PURIEFOY: We can just do it in ours, Your Honor.

9 THE COURT: Okay. All right. Is that all right with
10 you, Mr. English?

11 MR. ENGLISH: Yeah. And I don't mind while I'm up
12 there just asking -- telling him to go ahead and read it
13 all.

14 THE COURT: Okay. So what parts are we going to be
15 reading?

16 MR. ENGLISH: Just adding 10 through 17, all of 10
17 through 17.

18 THE COURT: I don't want to duplicate it, you know,
19 too much in this trial.

20 All right. So that will be 2 through 19, basically.

21 MR. PURIEFOY: Your Honor, we would ask for the same
22 to happen at page 68.

23 THE COURT: And they've got designated 11 through 19?

24 MR. PURIEFOY: Correct.

25 THE COURT: And you want what?

1 MR. PURIEFOY: Just the remaining portion of that
2 sentence.

3 THE COURT: You're talking about adding "You declare
4 it"?

5 MR. PURIEFOY: The -- my apologies, Your Honor. On my
6 copy I have 11 through 14, but I'm seeing now it's 11
7 through 19. So if the sentence is complete, then I have no
8 problem with that. I may have just -- I may have just
9 wrote this down incorrectly.

10 THE COURT: With all these I can understand.
11 All right. So you're good with what -- the
12 designation on page 68.

13 MR. PURIEFOY: 11 through 19.

14 THE COURT: Okay.

15 MR. PURIEFOY: Your Honor, then two more -- well,
16 technically, I guess three. On page 95, 19 through 25.

17 THE COURT: 95 at 19 through 25. Okay.

18 MR. PURIEFOY: And then -- well, I'll do each one
19 individually, Your Honor.

20 THE COURT: All right.

21 MR. PURIEFOY: 95, 19 through 25, it's our position
22 that any reference to the personal net worth of
23 Mr. Bergeron is irrelevant to this action and does not tend
24 to make more or less likely any claim or defense that's
25 been alleged in this suit. I don't understand why the

1 plaintiffs would need to speak about the personal wealth of
2 Mr. Bergeron, and we would certainly argue that that's not
3 relevant to this case.

4 MR. ENGLISH: Judge, we're not -- this doesn't go to
5 his personal net worth. This goes to how much money he's
6 taking out of the company.

7 Part of what you'll hear in the counterclaim is the
8 defendant is claiming the company was damaged in value in
9 part because of some employee bonuses that were paid and
10 that that may have been intended to continue or was
11 expected. And part of our counterargument to that is that
12 he's been taking out more and more money out of the
13 company. So that sort of undermines his claim that the
14 company's not doing well. It is doing well. And to the
15 extent money's coming out, it's going to him and not to
16 these employees that he's complaining about.

17 MR. PURIEFOY: Your Honor, I think Mr. English is
18 taking the allegations contained in our counterclaims too
19 far. Our allegations certainly have alleged that the
20 defendant in this case has been damaged; however, it's not
21 damage that was the result of the company doing poorly
22 financially following this transaction, rather the damage
23 that was suffered was the lack of information on the front
24 end that went into the valuation process that Mr. Bergeron
25 utilized to value the business. And so we certainly are

1 damaged, and the payment of these bonuses, I believe the
2 evidence and the testimony will show, would have changed
3 the value of this business on the front end. However, any
4 reference to Mr. Bergeron pulling money out of the company,
5 which, of course, would be going to him personally, is not
6 relevant to any claim or defense in this case.

7 MR. ENGLISH: But the way they value the company is to
8 project the income or -- and earnings going forward, and
9 he's claiming he has less earnings. And part of the reason
10 -- well, that's not true because he's personally taking
11 more and more out of the company. So I think it is
12 relevant.

13 MR. PURIEFOY: It's not -- Your Honor, it's not
14 projected earnings. The problem that we have with the
15 bonuses that were being paid was that that would have been
16 an additional expense that Mr. Bergeron would have had to
17 take into account at the time that he was making an offer
18 to purchase this business. So it certainly would have been
19 important for his valuation metric at the front end of his
20 valuation. Any money being taken out of the company speaks
21 directly to the viability of the company, which we made no
22 allegations that the company was harmed as a result of
23 having to pay additional moneys to employees or anything
24 along those lines. Our damage was strictly and directly
25 tied to the failure to disclose these bonuses on the front

1 end which would have been an additional expense that
2 Mr. Bergeron should have had the opportunity to take into
3 consideration at the time he was valuing the business. So,
4 again, to suggest that Mr. Bergeron pulling money out of
5 the company somehow speaks to our argument of damages is
6 incorrect.

7 THE COURT: I think I'm going to allow it, but I'll be
8 subject to change my mind on that. How about that?

9 All right. And, I guess, probably your next one on 96
10 is the same thing?

11 MR. PURIEFOY: It will be the same. It would be, Your
12 Honor.

13 THE COURT: All right. Is your objection to 95, 19
14 through 25 and 96, 1 through 25 and then 97, 1 through 9?

15 MR. PURIEFOY: That's correct, Your Honor.

16 THE COURT: All right. And right now I'm going to
17 allow it. I guess you'll need to make an appropriate
18 objection at the time.

19 MR. PURIEFOY: Yes, Your Honor.

20 THE COURT: And, I guess, is that a motion in limine?
21 I take that as a motion in limine then.

22 MR. PURIEFOY: That's fine, Your Honor. We do have
23 some additional motions in limine.

24 THE COURT: Right. And I'm going to deny that. But,
25 again, make sure you preserve all your -- the record for

1 that.

2 All right. Anything else on designations?

3 MR. PURIEFOY: Not on the designations, Your Honor.

4 THE COURT: All right. Additional -- you said you had
5 some additional motions?

6 MR. PURIEFOY: We do, Your Honor. We have some
7 additional motions in limine. May I approach, Your Honor?

8 THE COURT: Do you want your depositions back,
9 Mr. English?

10 MR. ENGLISH: Yes, sir.

11 THE COURT: All right. First of all, any agreement to
12 the motion in limine, Mr. English?

13 MR. ENGLISH: I'm just now seeing this.

14 THE COURT: Oh, okay. You want to look at it for a
15 second then?

16 MR. ENGLISH: Yeah.

17 THE COURT: I don't want to have to think unless I
18 have to.

19 MR. ENGLISH: Right.

20 THE COURT: It's early Monday morning.

21 MR. ENGLISH: The first one, we don't plan to make any
22 reference to any objections they made. We have put in
23 evidence Plaintiff's Exhibit Number 19, which is their
24 responses to request for admissions, but I don't think
25 there were any objections in those.

1 THE COURT: Okay.

2 MR. ENGLISH: So we don't plan to do Number 1.

3 Number 2, we don't plan to -- you know, Number 2 we
4 think should be mutual. We're going to read the deposition
5 of Mr. Sibley, but beyond that, we think that should be all
6 the testimony about what he said.

7 THE COURT: All right.

8 (Pause in proceedings.)

9 THE COURT: Are you pondering or ---

10 MR. ENGLISH: I thought you were pondering.

11 THE COURT: I was pondering whether you were
12 pondering.

13 MR. ENGLISH: I apologize.

14 THE COURT: No. That's fine.

15 MR. ENGLISH: I think Number 2 is fine as long as it
16 goes both ways.

17 THE COURT: All right. Any problem with that?

18 MR. PURIEFOY: No. That's fine.

19 THE COURT: How about Number 3?

20 MR. ENGLISH: On 3, the only thing, Mr. Sibley passed
21 away following surgery last year. That's all we were going
22 to say about it. I think when the jury hears somebody
23 passed away, you know, they wonder was it COVID. And I
24 just think we just have like a one-sentence statement about
25 that.

1 THE COURT: Any problem with that?

2 MR. PURIEFOY: Your Honor, as long as it's just a
3 general statement that he passed away and nothing regarding
4 the specifics of any condition he may have suffered.

5 THE COURT: I mean, it wasn't in reference to like
6 your cross-examination or something.

7 All right. Number 4?

8 MR. ENGLISH: We disagree with that. I think
9 Mr. Bergeron and Decide4Action, there's evidence has a
10 history of making claims like this against escrows when he
11 buys a company, and I think it's sort of a part of a
12 pattern. So I don't agree with Number 4.

13 THE COURT: All right.

14 MR. PURIEFOY: Your Honor, the litigation that's being
15 referenced is over ten years ago, I believe. And although
16 it was the only other lawsuit that he was involved in
17 regarding these types of matters, he prevailed in that case
18 when it was the exact same facts. However, that's really
19 immaterial. I don't understand for what purpose the
20 introduction of this evidence would serve. To the extent
21 that this is being offered to show that Mr. Bergeron
22 somehow acted in conformity with how he normally acts,
23 that's character evidence, which, of course, is
24 inadmissible. And so we would ask that any reference to
25 that litigation, especially if it's being offered to

1 demonstrate some pattern and it was a single occurrence
2 prior to this lawsuit, I don't think it finds its way
3 around the propensity box under the character.

4 THE COURT: Mr. English?

5 MR. ENGLISH: Judge, I think this is the second time
6 he's made a similar claim, and that is sufficient to show a
7 pattern that the jury should consider the probative value
8 of that.

9 THE COURT: And you're saying -- I mean, the result of
10 that was he was successful in his litigation?

11 MR. PURIEFOY: That's correct, Your Honor. And,
12 again, I don't believe under Rule 405 that this rises to
13 the level of demonstrating some pattern in engaging in this
14 type of conduct. And this certainly would be considered
15 character evidence, especially if it's being offered for
16 that reason. And so unless there can be some demonstration
17 through cross-examination of Mr. Bergeron, I suppose that
18 this does rise to the level of a pattern of practice, I
19 don't see how this could be admissible.

20 THE COURT: All right. Let me look at that. I'll let
21 y'all know what I come up with.

22 All right. Number 5?

23 MR. ENGLISH: Yeah. I agree. Neither side should
24 refer to motions in limine.

25 THE COURT: Right. Okay.

1 Number 6 is kind of standard law, too, isn't it?

2 MR. ENGLISH: Yeah. We don't plan to do that.

3 THE COURT: Number 7?

4 MR. ENGLISH: Again, we don't plan to make any
5 reference to his personal net worth. But the amounts he is
6 taking out of the company, we think, do show the company is
7 not doing as bad as he wants to claim.

8 THE COURT: But as far as net worth will not be
9 brought in.

10 MR. ENGLISH: Net worth.

11 THE COURT: And Number 8?

12 MR. ENGLISH: Disagree with that.

13 And, again, you know, we don't know exactly how the
14 defendant is going to try to prove what damages. But the
15 facts are Mr. Bergeron paid -- or agreed to pay \$4.4
16 million for this company. He paid 90 percent of that. So
17 this is a fight over
18 10 percent in escrow, that \$440,000.

19 They're saying there was a diminution in value of the
20 company, and he got valuations. One showed it was worth
21 \$7.3 million, and the other showed it was worth \$6 million.
22 So I think it is relevant that the company is more than he
23 paid for it -- or worth more based on, you know, his own
24 positions.

25 MR. PURIEFOY: Your Honor, that would be substantially

1 more prejudicial than probative. The value that
2 Mr. Bergeron placed on the business was based on his own
3 valuation. He did not have to pay what the ultimate
4 valuation number ended up being. He made an offer to
5 purchase his business for \$4.4 million, and Mr. Sibley
6 accepted that offer. To suggest to the jury that the
7 business is valued at \$7 million would likely confuse them
8 in so much that if they did render a verdict in our favor
9 finding that there was liability, the chances are they
10 would ultimately say although he may have been damaged, he
11 actually got the company for a steal. That should play
12 absolutely no part in the jury's deliberation in
13 determining whether or not the plaintiff in this case is
14 liable for the breach of contract that we have alleged, and
15 it certainly shouldn't play a factor in determining the
16 damages that have been alleged.

17 Again, there's been a misrepresentation of the
18 allegations that we've made. We've alleged that there was
19 a damage on the front end. Because Mr. Bergeron would have
20 an opportunity to revalue that business at that time has
21 nothing to do with the success of the business currently.
22 So to offer to the jury the existing value or the value of
23 that business at the time that it was actually purchased,
24 which would have been a difference of approximately
25 \$3 million, it is very likely that a jury will say, "In the

1 event liability is, in fact, established, he got the
2 company for a steal," that is substantially more
3 prejudicial than probative.

4 THE COURT: I'm not sure that I can make that
5 determination in a pretrial, you know, motion in limine. I
6 mean, I'll look at it, but I think I'm just going to have
7 to wait until that comes up.

8 And I guess the caption should -- have y'all amended
9 the caption?

10 MR. PURIEFOY: We've noticed that the caption should
11 have been counterclaim and counterclaim defendants.

12 THE COURT: I'm talking about doesn't it have to be --
13 isn't Mr. Sibley the one that passed away?

14 MR. ENGLISH: Yes. And I think the caption we've got
15 shows that.

16 THE COURT: Oh, okay.

17 MR. PURIEFOY: It was amended, Your Honor. I just
18 inadvertently used the wrong caption.

19 THE COURT: I'm just making sure. Yeah. Because it's
20 like -- all right. I see that on some of it. Yeah.
21 Right.

22 All right. So y'all really agreed on everything but 4
23 and 8, and those are the ones -- I'm going to look at 4 and
24 probably not be in a position to do 8; so is that correct?

25 MR. PURIEFOY: Yes, sir.

1 THE COURT: All right. Anything else from the
2 defendant?

3 MR. PURIEFOY: Nothing from the defendant.

4 THE COURT: All right. Anything else from the
5 plaintiff?

6 MR. ENGLISH: Judge, I do have a motion in limine. I
7 can wait until before the defendant begins its case. It
8 involves its counterclaim, and I don't know if you want to
9 take that up now or wait.

10 THE COURT: Let's do it then. Then we'll have a
11 little more grasp of the situation.

12 MR. ENGLISH: Do it now?

13 THE COURT: I mean do it at that time.

14 MR. ENGLISH: Okay. Yes.

15 THE COURT: Does that work for you?

16 MR. ENGLISH: Yeah. I think that makes sense.

17 THE COURT: Okay.

18 MS. THOMASON: Your Honor, We've also agreed on
19 exhibits. Some are crossover ---

20 THE COURT: Okay.

21 MS. THOMASON: --- exhibits that will be duplicated.
22 But we have ours as well.

23 MR. PURIEFOY: Your Honor, there is a single exhibit
24 that I will give to the court reporter.

25 THE COURT: Everything else is already in through

1 there?

2 MR. PURIEFOY: That's correct.

3 THE COURT: Okay. Except for Defendant's Exhibit ---

4 MR. PURIEFOY: I believe this is going to be just
5 Defense Exhibit 1.

6 THE COURT: All right. And that's one you've agreed
7 to, Mr. English?

8 MR. ENGLISH: Yes. This is the email stream beginning
9 May 3, 2017.

10 THE COURT: All right. And that's in without
11 objection. So that will be entered into evidence by
12 stipulation.

13 (WHEREUPON, Defendant's Exhibit Number 1 was marked for
14 identification and admitted into evidence.)

15 THE COURT: All right. Anything else?

16 MR. ENGLISH: None from plaintiff.

17 MR. PURIEFOY: Nothing from defendant, Your Honor.

18 THE COURT: All right. Second panel should be ready
19 to go by 11:30, correct?

20 THE CLERK: Yes, sir. I can call later to see if
21 they're ready.

22 THE COURT: All right. And then after that we'll have
23 a break for lunch, and then should be able to strike the
24 jury at 1:30.

25 (WHEREUPON, a recess is taken at 11:02 a.m.)