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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 II

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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OPENING STATEMENTS

MR. ENGLISH: Thank you, Your Honor.

Good afternoon, ladies and gentlemen. My name is Greg English. I'm an attorney with the Wyche Law Firm here in town. With me is Larry Robertson. Larry will be posting the exhibits for you all to review as we go through this case. And we are proud to represent the plaintiff in this action, Julia Sibley-Jones. Julia is the personal representative of her father's estate. Her father, her late father was William -- Bill Sibley who passed away last year.

We also represent Ms. Joyce Featherstone who's sitting here with us. She is the widow of the late Ernie Featherstone.

This is an action against a corporation, the defendant which is named Decide4Action, Inc.

Now, this story started about 33 years ago in 1988 when the late Bill Sibley, Julia's father, and Ernie Featherstone formed a company called Computer Control + Integration. And I'm going to call that CC+I for simplicity throughout the case.

CC+I was in the business of providing software and computer systems for large manufacturing plants like textile manufacturing plants and even Coca-Cola. So they built up a pretty good business. And over the years, Bill

1 Sibley and Ernie Featherstone added four other shareholders
2 to the company, and then they added several other
3 employees, got up to nine other employees who were not
4 shareholders.

5 In March of 2017, which is when this dispute really
6 began, the defendant, Decide4Action, sent a nonbinding
7 letter of intent to purchase the stock of Computer Control
8 and Integration, or CC+I. A letter of intent, or LOI, as
9 you may know, is not a contract, but it's an offer to
10 negotiate a contract. And so that's when this all started.
11 And that offer was to purchase CC+I for \$4.4 million
12 excluding cash. Now, that last point is important,
13 excluding cash, because what that meant is the owners of
14 CC+I got to keep whatever cash the company had made at the
15 point of sale.

16 By May 2017, though, about two months later, the LOI
17 had expired, and it was not clear whether or not
18 Decide4Action was going to go forward with the purchase of
19 the stock.

20 Now, CC+I's fiscal year ended June 30 of 2017, June 30
21 of every year. In that sense it was like the government
22 fiscal year you may know runs from July 1 to June 30 of
23 each year. Well, that was CC+I's fiscal year instead of a
24 calendar fiscal year.

25 So they came to their fiscal year end, and they had a

1 good year in the year ending June 30, 2017. So the board
2 of directors, including Mr. Sibley and two other
3 shareholders who aren't parties, decided to pay bonuses not
4 just to themselves, but to all the employees including the
5 employees who were not shareholders. In other words,
6 instead of keeping all the cash for themselves, they
7 decided to share and give everybody big bonuses for a good
8 year.

9 About four months later on October 13, 2017,
10 Decide4Action agreed to purchase the stock of CC+I. And
11 even though they weren't required to do so by the stock
12 purchase agreement, the selling shareholders disclosed that
13 they had paid employee bonuses back in June.

14 So Decide4Action went forward with the purchase and
15 closed on October 16, 2017. But per the contract, they
16 only paid 90 percent of that \$4.4 million purchase price.
17 10 percent of that, or \$440,000, was placed in an escrow
18 account with United Community Bank, UCB, right across the
19 street here.

20 Now, pursuant to the contracts that were signed, that
21 \$440,000 was to be released one year later on October 16,
22 2018, unless the selling shareholders had breached the
23 contract or had done something that cost Decide4Action
24 money. But the selling shareholders didn't do anything
25 like that, and so they were entitled to receive that

1 remaining \$440,000 in October of 2018.

2 However, just before the escrow release date, in late
3 September 2018, Decide4Action's president, the sole
4 shareholder and sole director, a man named Richard Bergeron
5 who is sitting right over there, calls his lawyers here to
6 file a claim against the escrow to stop payment of that
7 \$440,000.

8 Now, when I tell you what his claim was, you may not
9 believe me, but the evidence will bear this out.

10 Decide4Action claimed that the sellers had damaged the
11 value of the company when they paid about \$325,000 of bonus
12 money to their employees back in June instead of just
13 keeping the cash for themselves, even though the contract
14 was clear that the shareholders, and Decide4Action admits
15 the shareholders were entitled to keep that cash. And
16 Decide4Action not only claimed to the escrow agent that
17 they were entitled to recover the amount of the employee
18 bonuses, they claimed they were entitled to recover nearly
19 4 times that amount, or \$1.3 million is the claim they
20 made. I promise I am not making this up.

21 Even after we wrote to the escrow agent and explained
22 that the claim was invalid, you'll see evidence
23 Decide4Action maintained its position, refused to release
24 the escrow, and required Mr. Sibley to file this lawsuit to
25 get the balance of the purchase price. And, of course, he

1 passed away before he ever got his share of that. That's
2 why Ms. Sibley-Jones is in court today.

3 As you probably already gathered, the evidence will be
4 clear that Decide4Action's claim was invalid, and it was
5 invalid for at least that I can count five separate and
6 independent reasons. First of all, when CC+I's board
7 decided to pay these bonuses to employees, there was no
8 binding contract in place. So they had no idea in June
9 whether or not Decide4Action was even going to purchase the
10 company.

11 Second, when the contracts were signed in October of
12 2017, those contracts allowed the shareholders to keep the
13 cash and do with it what they wanted. In fact, you'll hear
14 evidence that Decide4Action admits that if the shareholders
15 had just pocketed the money and not given it to their
16 employees, they would have no claim. You'll hear an
17 admission to that effect.

18 Third, the shareholders' generosity to their employees
19 in no way damaged Decide4Action. CC+I gave these bonuses
20 as a one-time discretionary bonus. They didn't give these
21 employees contractual rights to receive bonuses on into the
22 future. Decide4Action had no obligation to continue to do
23 this year after year, and, in fact, they haven't.

24 Fourth, you'll see the stock purchase agreement
25 disclosed that employee bonuses were paid, and CC+I's

1 shareholders gave Decide4Action all the information they
2 requested.

3 And fifth, you'll also see a provision in the contract
4 that explicitly and expressly prohibits the exact type of
5 claim that Decide4Action made with the escrow agent and is
6 maintaining through court today.

7 All of this means and the evidence will show that
8 Decide4Action breached the stock purchase agreement and a
9 separate indemnity escrow agreement and a separate
10 agreement regarding application of funds which all mean
11 that that escrow should have gone to the selling
12 shareholders back in 2018. Moreover, the evidence will
13 show that Decide4Action not only breached these contracts,
14 but they did so with fraudulent acts to try to hold the
15 seller's money hostage in hopes that they could get some of
16 it back.

17 So accordingly, we'll ask you to award the plaintiffs
18 not only the \$440- escrow, but also consider punitive
19 damages in this case.

20 Accordingly, after hearing all of the evidence, we are
21 confident that you'll render a verdict for Ms. Sibley-Jones
22 and Ms. Featherstone for \$440,000 and whatever punitives
23 you consider against Decide4Action.

24 I thank you for your time and your attention to what
25 is a very important case to my clients. Thank you.

1 THE COURT: All right. Mr. Puriefoy?

2 MR. PURIEFOY: May it please the Court, Your Honor.

3 Ladies and gentlemen, my name is Devon Puriefoy, and
4 I, along with my co-counsel, Kimberly Thomason, are here
5 today on behalf of the defendant and counterclaimant,
6 Decide4Action.

7 I would like to repeat some of the Court sentiments in
8 thanking each and every one of you for being here today. I
9 certainly understand that there are other places that you
10 would prefer to be on a beautiful Monday afternoon, but
11 your presence here today is extremely important to my
12 client, Mr. Richard Bergeron, who is the representative and
13 owner of Decide4Action.

14 Ladies and gentlemen, Mr. Richard Bergeron formed
15 Decide4Action in 2014, and similar to CC+I, it was a
16 software integration company. Mr. Bergeron had a single
17 goal: to work hard, to build his business, and to expand
18 both nationally and internationally. In between 2014 and
19 2016, that's exactly what Mr. Bergeron did. He worked
20 hard, he grinded, he put his nose to the grindstone and
21 grew a very successful business.

22 In 2016, Mr. Bergeron was introduced to William
23 Sibley, the late William Sibley. And at that time it
24 seemed to be the perfect storm. Mr. Sibley was ready to
25 reap the benefits of his hard work and move into

1 retirement. Mr. Bergeron was still continuing to grow his
2 business, and it was a perfect opportunity for him to
3 expand. And so as Mr. English pointed out to you earlier,
4 the two parties who are -- and this is very important --
5 very astute and sophisticated savvy businessmen began
6 negotiations in 2016. And what those negotiations resulted
7 in was the execution of the letter of intent.

8 Now, Mr. English stood before you a moment ago and
9 indicated that that is not a contract, yet these parties
10 signed their names to it. And what this letter of intent
11 did was set the rules of the game. It set the rules that
12 Mr. Bergeron was going to abide by. It set the rules that
13 Mr. Sibley was going to abide by. They both discussed with
14 each other what they could live with and what they could
15 not live without. And as a direct result of these
16 arm's-length negotiations, this letter of intent was
17 created. And I ask you, throughout the course of this
18 trial, to use that as your guidepost, because Mr. Bergeron
19 relied on that letter of intent. The words that were
20 contained therein were not ambiguous. They were not open
21 to interpretation. They were very black and white, and
22 they served as the rules of the game.

23 Fast forward to October of 2017. In October 2017,
24 Mr. Bergeron and Mr. Sibley, after Mr. Bergeron had
25 conducted an extensive due diligence -- and due diligence

1 for those that don't know is an opportunity for
2 Mr. Bergeron to go into CC+I to look at the books and
3 records, to ask specific questions about how this company
4 was run, what its costs were, and specifically how much it
5 paid its employees both in salaries and bonuses. What the
6 evidence and testimony is going to demonstrate is that
7 Mr. Bergeron, during his due diligence process,
8 specifically asked these questions: please provide me with
9 the salaries of your employees; please provide me with all
10 bonuses paid to these employees. And the reason why
11 Mr. Bergeron asked those questions is because the roadmap,
12 the rules of the game specifically stated in the letter of
13 intent that all cash of the company was to be paid to the
14 shareholders. Not to the employees, but to the
15 shareholders.

16 Now, the plaintiffs in this case I suspect will
17 attempt to present evidence to you that, despite the plain
18 language of the letter of intent, there was no harm, no
19 foul. It was their cash and they could do whatever they
20 wanted with it. But, ladies and gentlemen, remember
21 throughout the course of this trial that the letter of
22 intent set the rules of the game, and Mr. Sibley didn't
23 have the ability or the authority to change those rules as
24 he saw fit. And in November of 2017, after the execution
25 of the stock purchase agreement which Mr. Sibley -- or,

1 excuse me, which Mr. English made a reference to just a
2 moment ago, the stock purchase agreement consummated the
3 transaction between Decide4Action and CC+I. And once
4 again, the stock purchase agreement spoke to one very
5 particular issue. It was Mr. Sibley's reaffirming that all
6 cash of the company was paid to the owners. Not a dime was
7 to be paid to the employees. And there's a very specific
8 reason for that.

9 Ladies and gentlemen, Mr. Bergeron conducted the
10 valuation in this case. He decided what he thought the
11 business was worth, and he made an offer. Mr. Sibley
12 accepted that offer, and there were some very important
13 considerations that went into that valuation process, one
14 of them being the salaries and the bonuses. And so
15 Mr. Bergeron did not instruct CC+I to not pay bonuses
16 because they did not think that the employees were worth
17 it, but the rules of the game had already been set, and
18 Mr. Sibley was bound by them. And he reaffirmed that he
19 was going to continue and had been playing by those rules
20 in the stock purchase agreement.

21 What the evidence and testimony is going to
22 demonstrate, ladies and gentlemen, is in November of 2017,
23 nearly two months after the execution of the stock purchase
24 agreement, Mr. Bergeron made an absolutely horrifying
25 discovery. For the first time, Mr. Bergeron was informed

1 that CC+I had paid nearly \$400,000 of bonuses to non-owner
2 employees. There is uncontroverted evidence and testimony
3 that you're going to hear today that demonstrates that
4 fact. And I ask you, again, to remember what were the
5 rules of the game, and did the payment of these bonuses
6 violate the rules of the game. And what I am confident you
7 will find is that they absolutely did.

8 Now, the plaintiff will likely stand before you today
9 and argue that, although the rules of the game were written
10 by his client, Mr. Sibley, it was okay if he changed them.
11 I suspect that plaintiff will present to you that, although
12 Mr. Sibley wrote the rules of the game, had Mr. Bergeron
13 just dug a little deeper, he would have found out that,
14 although Mr. Sibley wrote the rules of the game, had
15 Mr. Bergeron been just a little bit smarter, he might have
16 caught them. But what the evidence and testimony is going
17 to make clear, the testimony of Mr. Sibley himself is going
18 to make clear that it was not until November of 2017, two
19 months after Mr. Sibley said, "I've been playing by the
20 rules of the game," that Mr. Bergeron found out that he
21 certainly had not. That is irrefutable.

22 At the conclusion of this case, ladies and gentlemen,
23 the judge is going to read you the law of the case and then
24 will instruct you to weigh the evidence and the testimony
25 against the law. And unlike a criminal trial which we're

1 used to hearing the burden of proof beyond a reasonable
2 doubt, in this courtroom today, the burden of proof is
3 simply this: it's preponderance of the evidence. And the
4 easiest way to make this demonstration, ladies and
5 gentlemen, call in the scales of justice. And if you take
6 everything that you heard from the plaintiff and you put it
7 on this scale, all of the evidence, all of the testimony
8 and the credibility of the witnesses, and then you take
9 everything that you've heard from the defendant, all the
10 evidence, all the testimony and the credibility of the
11 witnesses, and if you decide that what the defendant,
12 Decide4Action, has presented to you even ever so slightly
13 outweighs the evidence being presented by the plaintiff,
14 you must find in favor of the defendant.

15 Ladies and gentlemen, this case is not as complicated
16 as the plaintiff has made it out to be. I ask you one
17 thing when you step back into that deliberation. Ask
18 yourself did the parties write the rules of the game and
19 who followed the rules of the game. What I certainly
20 understand and believe you will find is that the plaintiff,
21 William Sibley, violated the rules of the game.

22 Thank you.

23 THE COURT: All right. Plaintiff, call your first
24 witness.

25 MR. ENGLISH: Plaintiff calls Julia Sibley-Jones.

1 THE COURT: Ms. Jones, if you'll come around.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 WHEREUPON,

5 JULIA SIBLEY-JONES,

6 After having been duly sworn, testified as follows:

7 THE CLERK: Please state your name.

8 THE WITNESS: My name is Julia Sibley-Jones.

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: You can remove your mask while you're up
11 here testifying.

12 DIRECT EXAMINATION

13 BY MR. ENGLISH:

14 Q Good afternoon. Ms. Sibley-Jones, can you tell the
15 jury your full name?

16 A Sure. My name is Julia Wiley Sibley-Jones.

17 Q And can you raise the microphone so that you're
18 speaking into it? You're a little quiet.

19 A Is that better?

20 Q It's a little better.

21 A Is that better?

22 Q Yeah. Just try to speak loud.

23 A Is it on?

24 THE COURT: I don't have those controls any more.

25 MR. ENGLISH: You need to tap it to make sure it's on.

1 THE COURT: Before we had all this computer stuff, I
2 had those controls, but I don't any more.

3 (Pause in proceedings.)

4 THE WITNESS: Julia Wiley Sibley-Jones.

5 BY MR. ENGLISH:

6 Q Thank you. And where do you live?

7 A I live in Greenville.

8 Q For how long?

9 A I've lived here for almost ten years now, and I was
10 born here. I was born, and we moved away, and we moved
11 back ten years ago.

12 Q And are you married?

13 A I am.

14 Q To whom?

15 A My husband is John Mark Sibley-Jones. He works at the
16 South Carolina Governor's School for arts and humanities.
17 He's a teacher there.

18 Q How long have y'all been married?

19 A 19 years.

20 Q Y'all have any children?

21 A We have two children. We have a 13-year-old boy who's
22 a rising eighth grader at Greenville Middle; and I was
23 going to say 9, she's 8 years old, a rising third grader at
24 Blythe Academy.

25 Q Did you go to college?

1 A I went to the University of the South in Sewanee,
2 Tennessee, and then did a master's at the University of
3 South Carolina in Columbia.

4 Q And when did you get that?

5 A The master's or the ---

6 Q The master's.

7 A The master's was in 1993.

8 Q And do you work?

9 A I do.

10 Q Where?

11 A I do. Right now I am the director of development for
12 a nonprofit here called Upstate Fatherhood Coalition.

13 Q Okay. What does it do?

14 A We work to engage or re-engage men in the lives of
15 their children and help them to overcome whatever barriers
16 are keeping them from doing that. I wish I could tell you
17 all about that, because that's really interesting. But
18 that is what I do.

19 Q And what did you do before that?

20 A Before that I was the endowment administrator for
21 Buncombe Street United Methodist Church.

22 Q And are you active in any civic groups or
23 organizations?

24 A Right. So yes. Definitely both of the schools -- or
25 actually all three schools because Governor's School as

1 well we're very involved with. We're involved at Fourth
2 Presbyterian Church here in town among the session, and my
3 husband sings in the choir. I'm on the development and
4 foundation board at Montreat Conference Center in North
5 Carolina, which is another Presbyterian affiliated
6 organization.

7 Q All right. Let's talk about your father, William
8 Sibley. You're the personal representative of your
9 father's estate?

10 A That's correct.

11 Q What happened to your father?

12 A My father died on August 4, 2020, following a pretty
13 complicated surgery in the hospital. And he did okay
14 through the immediate, but died in the hospital about a
15 week later.

16 Q And were you appointed personal representative under
17 his will?

18 A I was.

19 Q Let me show you what we marked as Plaintiff's Exhibit
20 Number 18. What is this document?

21 A This is -- this is the certificate of appointment for
22 me to be the personal representative of the estate.

23 Q And what is your role regarding the estate's assets?

24 A To collect and manage and disburse whatever assets
25 there are.

1 Q Do you have other siblings?

2 A I have two brothers. They're both in Atlanta.

3 Q Now, was one of the assets that Mr. Sibley owned stock
4 in Computer Control + Integration, or CC+I we're calling
5 it?

6 A It was, yes.

7 Q What did CC+I do?

8 A It designed computer software for manufacturing, and
9 especially along assembly-line manufacturing.

10 Q Did Mr. Sibley sell that stock?

11 A He did.

12 Q To whom?

13 A To Decide4Action.

14 Q At the time of your father's death, had he collected
15 all of the proceeds from the sale of that stock?

16 A No, he had not.

17 Q How much had not been paid by Decide4Action?

18 A 10 percent of the selling price, which was \$440,000,
19 was not collected yet.

20 Q All right. Let me refer you to what we've marked as
21 Plaintiff's Exhibit Number 1.

22 A Okay.

23 Q What is this document?

24 A This is the letter of intent to acquire CC+I.

25 Q And whose letterhead is this letter of intent on?

1 A It was from Decide4Action.

2 Q And what's the date of this?

3 A March 10, 2017.

4 Q Look under Section 1 on this first page, this first
5 bullet point. What was the purchase price for CC+I?

6 A The purchase price was \$4,400,000.

7 Q Now look down at the fourth bullet point. How much of
8 the purchase price was paid at closing versus put in
9 escrow?

10 A 90 percent of the purchase price was paid in cash at
11 the time, and then the remaining 10 percent was put in
12 escrow.

13 Q Now look down at the last bullet point, the seventh
14 bullet point. Did the purchase price exclude cash?

15 A Yes. It excluded the cash.

16 Q And what does that mean?

17 A That means that whatever cash was there was not part
18 of the original purchase price.

19 Q Now look over to the last page of this. I'm sorry.
20 The next to the last page. This is page 4 in Section 5.

21 MS. THOMASON: Object. Your Honor, can you give us
22 just a minute. I think there may be some confusion on the
23 document itself. I'm not sure this is ---

24 THE COURT: Can you take it down?

25 This would be a good time to take a break since we've

1 been going at it for a while. At this time, if you go back
2 into your jury room, I'm going to give you an assignment,
3 and that is, of the original 12, the alternate you cannot
4 participate in this, but y'all need to select your
5 foreperson of the jury. So y'all select between the 12 of
6 you. And the foreperson is really somebody that just
7 communicates with the Court and maybe leads discussion
8 during deliberation.

9 Do not discuss the case, and we'll bring you back in
10 just a few minutes.

11 (WHEREUPON, the jury exits the courtroom at 3:02 p.m.)

12 THE COURT. All right. And the witness cannot --
13 you're in what I call my witness bubble. Once you started
14 testifying, you cannot discuss with your attorneys anything
15 about your testimony or get any coaching or anything like
16 that.

17 THE WITNESS: Right.

18 THE COURT: So I'm going to let you step down.

19 All right. Discuss.

20 (WHEREUPON, a recess is taken at 3:03 p.m.)

21 (WHEREUPON, the jury entered the courtroom at 3:14 p.m.;
22 Court's Exhibit Number 1 was marked for identification.)

23 THE COURT: All right. Ms. Durkin, I believe you've
24 been appointed as the foreperson. I forgot to tell you you
25 don't get any more pay for that. It's the same pay as

1 everybody else.

2 We just took a break. I just wanted to make sure
3 everything was on the same page. This is something kind of
4 new for us and we have all this new technology that allows
5 y'all to see stuff. And that's why I'm a little bit -- not
6 quite up to speed on some of this.

7 But anyway, Mr. English, you may continue your direct
8 testimony.

9 MR. ENGLISH: Thank you, Judge.

10 BY MR. ENGLISH:

11 Q Ms. Sibley-Jones, we're back on Plaintiff's Exhibit 1
12 and page 4 under Section 5, Other.

13 A Okay.

14 Q And we're on the third bullet point, if we can enlarge
15 that. Read that to the jury, please.

16 A "The buyer and the seller shall have 90 days to agree
17 on the SPA. If within that period the SPA is not
18 essentially agreed, then this LOI shall be null and void."

19 Q All right. Now, does the SPA refer to a stock
20 purchase agreement?

21 A Yes.

22 Q Now I'm going to ask you to do some math, and I
23 apologize for that. But if you take 90 days from the date
24 listed on the first page, go back to the first page, and
25 that date is March 10th, when is 90 days?

1 A March, April, May -- June 10th.

2 Q Maybe June 8th because March and May have 31 days,
3 right?

4 A Right.

5 Q Okay. So if these are the rules of the game -- who
6 wrote this?

7 A Well, it came from Decide4Action and CC+I agreed to
8 it. But it came from Decide4Action.

9 Q And so this LOI would have expired if the stock
10 purchase agreement was not entered by June 8, 2017; is that
11 right?

12 A Correct.

13 Q Was a stock purchase agreement entered by June 8,
14 2017?

15 A It was not.

16 Q Okay. Let's look at what we marked as Plaintiff's
17 Exhibit Number 8.

18 A Okay.

19 Q What is this document?

20 A This is the stock purchase agreement.

21 Q And what is it dated?

22 A It is dated October 13, 2017.

23 Q All right. Now I want you to turn to page 6. And I'm
24 referring to the page numbers in the middle of the page.
25 It's page 7 if you're looking at the bottom right corner.

1 A Okay.

2 Q And look at Subsection I. Read that to the jury,
3 please.

4 A "Events subsequent to May 17, 2017. Except as set
5 forth in Section 4(i) of the disclosure schedule, since
6 May 17, 2017, there has not been any material adverse
7 change, and target has conducted its business in the
8 ordinary course of business."

9 Q Now I want you to turn to Section 4(i) of the
10 disclosure schedule referenced here, which is the last page
11 of the stock purchase agreement.

12 A Okay.

13 Q Schedule 4(i). And let's enlarge -- yeah, just that
14 whole section.

15 So what is Schedule 4(i) called?

16 A This is Events Subsequent to May 17, 2017.

17 Q And then read Item 3.

18 A Item 3: "Target paid a fiscal year-end bonus and
19 subsequently has paid special bonuses to employees on three
20 occasions."

21 Q And who is target?

22 A CC+I, the sellers.

23 Q And when was CC+I's fiscal year end?

24 A On June 30 of every year. But June 30, 2017, in this
25 case.

1 Q So did the stock purchase agreement disclose that CC+I
2 had paid year-end bonuses around June 30, 2017?

3 A Absolutely.

4 Q Now look at what we've marked as Plaintiff's Exhibit
5 Number 9. What is this document?

6 A This is Indemnity Escrow Agreement.

7 Q And what is it dated?

8 A It is dated October 16, 2017.

9 Q And who is this agreement between and among?

10 A It's among Decide4Action as the buyer, the seller is
11 CC+I, and United Community Bank that was holding the escrow
12 money.

13 Q Now, you look down in Section 1(a) and it refers to
14 establishment of escrow. How much was placed in escrow?

15 A 10 percent of the purchase price, which was \$440,000.

16 Q Now look over to page 2, Item C. And read that first
17 -- well, let me just ask it this way. When was the closing
18 date referenced by this agreement?

19 A The closing date was October 16, 2017.

20 Q And so when was the escrow release date?

21 A A year from then, so October 16, 2018.

22 Q So -- and that's the reference to the first
23 anniversary of the date of the closing date?

24 A Yes.

25 Q All right. Now look down to that same page at

1 Subsection D. Read the first three sentences into the
2 record, please.

3 A "Disbursement on the indemnification escrow release
4 date. On the first business day following the
5 indemnification escrow release date, the escrow agent shall
6 release the remaining balance of the escrow fund, less the
7 aggregate amount of pending claims defined here and below
8 to sellers. The escrow agent shall not distribute and will
9 continue to hold the portion of the escrow fund equal to
10 the aggregate amount of all pending claims, if any, against
11 the escrow fund pursuant to the purchase agreement."

12 Continue? Or ---

13 Q Yes.

14 A "The escrow agent shall only continue to hold a
15 portion of the escrow fund for the pending claims if buyer
16 has provided to escrow agent and seller's representative no
17 fewer than three business days prior to the indemnification
18 escrow release date a written notice describing the pending
19 claims in reasonable detail, indicating the estimated
20 amount and methodology for determining the amount of
21 pending claims, pending claims amount, and the provision or
22 provisions under the purchase agreement upon which some
23 such claim is based."

24 Q All right. Now look at what we marked as Plaintiff's
25 Exhibit Number 10.

1 A Okay.

2 Q What is this document?

3 A This is a letter from Decide4Action's attorneys to the
4 United Community Bank that was holding the escrow.

5 Q And what was this letter doing?

6 A This letter was saying that they wanted to maintain
7 the escrow account and not release it.

8 Q And did this letter contain Decide4Action's claim on
9 the last page?

10 A It does.

11 Q Let's look at the last page.

12 A Yes.

13 Q If you look down at the bottom, what is the claim that
14 Decide4Action -- how much is the claim is Decide4Action
15 making against the escrow?

16 A \$1,314,034.

17 Q Now, if you look up at the calculations immediately
18 above that total, how does Decide4Action calculate this?

19 A Well, it looks as though they are taking the salaries
20 and bonuses given ---

21 Q Yeah. Salaries and bonuses changed?

22 A In 7/17 and continuing that out as though it needed to
23 happen every year with the multiple error effect at the
24 bottom.

25 Q Now, I want you to look back at the stock purchase

1 agreement now, and specifically, that's Plaintiff's Exhibit
2 Number 8, and look on page 21.

3 A Page 21. Okay.

4 Q And look down at subsection B, the last sentence.

5 A "In addition, in no event shall any seller be liable
6 to buyer for any punitive, incidental, consequential,
7 special or indirect damages including loss of future
8 revenue or income, loss of business reputation or
9 opportunity relating to the breach or alleged breach of
10 this agreement or diminution of value or any damages based
11 on any type of multiple."

12 Q Now, was the claim that we just looked at previously
13 made by Decide4Action a claim of diminution of value based
14 on a multiple?

15 A Yes.

16 Q Was that type of claim allowed by the stock purchase
17 agreement?

18 A It was not.

19 Q So do you consider Decide4Action's claim against the
20 escrow to be fraudulent?

21 A I do.

22 Q Why?

23 A Because they're doing exactly what this stock purchase
24 agreement forbid and estimating some type of negative
25 impact on the company based on a multiple error effective

1 of bonus that in no way needed to happen annually.

2 Q All right. Now look at what we marked as Plaintiff's
3 Exhibit Number 11.

4 A Okay.

5 Q What is this document?

6 A This is a document from our attorneys to United
7 Community Bank requesting that the escrow be released.

8 Q And can you read the last sentence on this page?

9 A "In sum, Decide4Action's claim against the escrow is
10 invalid on its face."

11 Q No. I'm sorry. The last sentence.

12 A The very last. Sorry. "By" -- this one?

13 Q Yeah. "By copy."

14 A "By copy of this letter, I am requesting that
15 Decide4Action's attorney, Kimberly Thomason, Esquire,
16 confirm to you that the escrow should be released
17 immediately to the selling shareholders."

18 Q Now look at what we marked as Plaintiff's Exhibit
19 Number 12. What is this document?

20 A This is a letter from the Decide4Action's attorneys
21 back to us saying that they refuse to release the escrow.

22 Q And what was that dated?

23 A December 13, 2018.

24 Q All right. Now look at what we've marked as
25 Plaintiff's Exhibit Number 16.

1 A Okay.

2 Q What is this document?

3 A This is Agreement Regarding Application of Funds.

4 Q And what is it dated?

5 A This is also dated October 16, 2017, the closing date.

6 Q And who is it among?

7 A This is among Decide4Action and the sellers of CC+I.

8 Q Look at the second "whereas" clause.

9 A Okay.

10 Q How much does this agreement say that UCB has been
11 holding in escrow since October 16, 2017?

12 A \$440,000.

13 Q All right. And look on the next page at the top,
14 Section 5.

15 A Okay.

16 Q According to this section, to whom is that escrow --
17 to whom is that escrow payable?

18 A It should be paid to the sellers.

19 Q Does that include your father?

20 A My father and Mr. Featherstone and the other
21 shareholders.

22 Q Now look at what we marked as Plaintiff's Exhibit
23 Number 17. What is this document?

24 A This is Contribution and Indemnification Agreement.

25 Q And what's the date of this?

1 A October 16, 2017.

2 Q And who is it among?

3 A It is among the sellers and Decide4Action -- no. Just
4 among the sellers, the shareholders.

5 Q Right. Okay. Now look over to page 2 under
6 Section 2, Notice and Defense of Third-party Claims, and
7 look at Subsection B. And can you read the first sentence
8 of Subsection B?

9 A "The selling party's representative defined in the
10 following paragraph shall assume and control the defense
11 with respect to any indemnification obligation or action
12 with counsel to be chosen by the selling party's
13 representative."

14 Q Was Decide4Action's claim against the escrow and
15 indemnification obligation under this agreement?

16 A Yes.

17 Q And look on the next page, Subsection C, the first
18 sentence.

19 A Okay. Sorry. Yes.

20 Q Who was designated to represent the selling
21 shareholders in the event of an indemnification obligation
22 like Decide4Action's claim?

23 A My father, William A.L. Sibley, Jr., was designated as
24 the selling party's representative.

25 Q All right. And have you stepped in your father's

1 shoes in that role as selling party's representative?

2 A I have.

3 Q Look at what we marked as Plaintiff's Exhibit
4 Number 20.

5 A Okay.

6 Q What is this document?

7 A This is the Appointment of Selling Party's
8 Representative. And so this is the appointment of me as
9 the representative now that my father is deceased.

10 Q Okay. All right. So as the selling party's
11 representative, what are you asking this jury to do?

12 A I am asking the jury to award the sellers \$440,000
13 that has been held in escrow since 2017.

14 Q And are you asking for that award to be made to you as
15 the selling party's representative?

16 A To me as the representative, and then I will
17 distribute it proportionally to the other shareholders.

18 MR. ENGLISH: Okay. Thank you, Ms. Sibley-Jones.
19 Please answer any questions the defendant's attorneys have
20 for you.

21 THE COURT: Cross-examination.

22 CROSS EXAMINATION

23 BY MS. THOMASON:

24 Q Hi, Ms. Sibley-Jones. How are you?

25 A Good. Thank you.

1 Q First, let me say we're very sorry for your loss. I
2 know it's difficult to come here and testify in this way.
3 So you have our sympathies.

4 Now, you testified regarding documents that you read
5 from that were part of plaintiff's exhibits that have been
6 premarked and admitted ---

7 A Correct.

8 Q --- to the Court; is that right?

9 A Correct, yes.

10 Q Now, did you ever work in the company?

11 A I did not.

12 Q And you weren't a part of the negotiations of the
13 sale?

14 A I was not.

15 Q And you weren't a part of the negotiations that your
16 dad had with the broker he had list the company for sale,
17 were you?

18 A I was not.

19 Q Now, were you in any meetings where the terms were
20 discussed or any of the circumstances surrounding the
21 letter of intent were discussed?

22 A I was not.

23 Q So is it fair to say all of your knowledge here today
24 is just based on you having read the documents?

25 A I have read the documents, yes.

1 Q Okay. Now, you are the PR, the personal rep on the
2 estate, your dad's estate; is that correct?

3 A I am.

4 Q Now, are there other beneficiaries? Who are the other
5 beneficiaries on this estate?

6 A I have two other brothers who -- I have two brothers.
7 They are both in Atlanta.

8 Q Okay. And I believe there's a trust also that the
9 will references. Are you the trustee ---

10 A I am.

11 Q --- as well of the family trust? Okay.

12 Now, have you had any conversations with the other
13 shareholders, I'm not going to ask you specifically about
14 them, since this has happened regarding the terms of the
15 conditions for the sale?

16 A Mrs. Featherstone and I have been in conversation to
17 prepare for this trial with the attorney.

18 Q To your knowledge, was Ms. Featherstone in any of
19 those negotiations regarding the sale?

20 A That, I do not know.

21 Q Now, you've had a chance to review the letter of
22 intent, and that is Plaintiff's Exhibit 1 that we were
23 referring to. You read from that a moment ago regarding
24 the fact that all of the cash was to come out of the
25 savings and checking and go to the shareholders only. You

1 have no firsthand knowledge as to why that was an important
2 term, do you?

3 A Well, it seems like this says that it excludes the
4 cash at closing, but it doesn't say what needs to happen to
5 it other than it's just not part of the selling price.

6 Q So can I have you turn to page 2 under Paragraph 3?

7 A (Witness complies.)

8 Q Do you see that third bullet point from the bottom?
9 Well, actually, I'm looking up here. So if you look down
10 to where it says "The cash at the time of closing," do you
11 see that bullet point?

12 A Sure.

13 Q "The cash at the time of closing will be distributed
14 to the current shareholders." Can you read the rest of
15 that?

16 A Sure. "The cash at the time of closing will be
17 distributed to the current shareholders prior to closing.
18 Any cash not distributed prior to closing will be forfeited
19 by the seller.

20 Q Now, does that give an indication of who had to
21 receive the cash?

22 A That at the time of closing, everything left should be
23 divided among the shareholders.

24 Q And the cash that it's referring to, you weren't a
25 part of those negotiations, but all cash out of the

1 business is excluded and it's to be paid to shareholders,
2 correct?

3 A At the time of closing, yes.

4 Q Or prior to closing.

5 A Prior to closing.

6 Q Okay. Did that happen? Did all the cash get paid to
7 the shareholders prior to closing?

8 A I think prior to closing, all of the cash was
9 distributed.

10 Q To shareholders only?

11 A The part that I think you're asking me to refer to is
12 the bonuses that were paid at the end of -- prior to the
13 fiscal year before closing. But after all -- after all of
14 that, then at closing, yes, all was distributed to
15 shareholders.

16 Q But you weren't a part of the negotiations.

17 A I was not.

18 Q So you don't -- you have no firsthand knowledge as to
19 the reasons that all of the cash from the time this LOI was
20 signed until due diligence was complete and the sale was
21 consummated, you have no knowledge as to why that was to
22 happen?

23 A I was not part of those negotiations, no.

24 Q Okay. Now, you testified also that the LOI -- to the
25 date of the LOI, and that stock purchase agreement had to

1 be agreed upon within 90 days of the date of this LOI.

2 A Correct.

3 Q But you have no knowledge of any extensions, do you?

4 A I don't.

5 Q And so you have no knowledge that there were at least
6 two extensions to this LOI that the parties agreed upon?

7 A I do not know.

8 Q And you have no knowledge that the -- that due
9 diligence actually ended May 29th, do you?

10 A The question is whether or not I knew that before.
11 No, I did not know that before.

12 Q And so you're really not certain when the LOI actually
13 terminated or when it was consummated?

14 A This is what I have in front of me, and that is what
15 I'm basing it on.

16 Q Fair enough.

17 Now, you also -- and I'll direct you to Plaintiff's
18 Exhibit 8, the stock purchase agreement. And you
19 referenced in here the disclosures on 4(i). So you go to
20 the back. That's the last exhibit to this. Do you know
21 why these disclosures are important to the stock purchase
22 agreement?

23 A Yes.

24 Q Please let me expand. What is your understanding as
25 to why they are important?

1 A Because the sellers were disclosing everything the
2 buyer needed to know prior to sale.

3 Q And so there were reps and warranties saying we didn't
4 do certain things; is that fair? Or at least that's what
5 the document says. You don't have firsthand knowledge, but
6 that's what the document says that you read from before?

7 A I'm sorry. Could you repeat the question part of
8 that?

9 Q I'm going to go back to the reps and warranties and
10 I'll start at the page we referred to originally. There's
11 a list of reps and warranties that the sellers will agree
12 on. If you turn to page 8.

13 A Page 8 in the middle or page 8 on the right?

14 Q Oh, I'm sorry. It's actually both. It's page 8 and
15 then Exhibit 8.

16 A Right. There's a page number in the middle of the
17 page and there's a page number on the right hand.

18 Q I see where you're going. Page 8, if you'll look at
19 -- we'll just start at the top. Would you agree these are
20 a list of things that the seller is saying they have not
21 done, the target is saying they have not done?

22 A Okay.

23 Q They're warranting that these things did happen or
24 these things didn't. And as a part of this, all the things
25 that they are warranting that they didn't do, it's your

1 testimony then that any disclosure are them saying, well,
2 we didn't do most, but we might have done this; is that
3 fair?

4 A I think they are disclosing everything that they were
5 needing to disclose.

6 Q Okay. When you go back to the last page of the
7 exhibit, and I'm sorry having you flip back and forth, in
8 4(i), would you read Paragraph 3 on page 51?

9 A "Target paid a fiscal year-end bonus and subsequently
10 has paid special bonuses to employees on three occasions."

11 Q You don't have knowledge of what your dad defined as
12 employees, do you?

13 A What he defined as employees?

14 Q Uh-huh.

15 A I think the employees were the nonshareholders.

16 Q Would you be surprised if that differed from your
17 dad's testimony in his deposition?

18 MR. ENGLISH: Objection. Pitting.

19 THE COURT: I'm going to allow it.

20 BY MS. THOMASON:

21 Q If your dad testified that employees were both owners
22 and nonowners, would that surprise you?

23 A It would not surprise me other than I don't -- I'm not
24 part of this business and so I do not know what he was
25 thinking at the time.

1 Q Okay. And then Exhibit 9 is the indemnity escrow
2 agreement, Plaintiff's Exhibit 9.

3 A Yes.

4 Q Do you know who drafted this agreement?

5 A I don't.

6 Q Has the Wyche firm represented your dad for many
7 years?

8 A I do not know how long they have represented my
9 father.

10 Q So you have no knowledge if they drafted this
11 agreement in particular or not?

12 A I don't know.

13 Q Okay. All right. The last thing is in regards to
14 testimony regarding the multiplier, again, you don't really
15 have knowledge about what was referenced when they were
16 talking about a multiplier with regard to damages.

17 A True.

18 Q Okay. And nobody's discussed what that actually meant
19 with you, and as you sit here today, you don't know what
20 they were referencing there.

21 A I understand what it means, but if I -- if you're
22 asking whether I was in all of it and did the negotiations
23 and know precisely what it means, then no, I do not.

24 Q Okay. And, again, just to clarify, on Plaintiff's
25 Exhibit 16, Agreement Regarding Application of Funds, as

1 you're sitting here today, you were not a party to
2 negotiating the terms or what the parties discussed or the
3 intent of the parties prior to executing this, are you?

4 A I was not part of the negotiation or anything, no.

5 Q Give me one minute. I might be done.

6 One more question. Going back to Plaintiff's
7 Exhibit 8, that last page of that, I think it's page 51,
8 assuming that the employees were both owners and nonowners
9 for purposes of that, you can't tell from that description
10 of what was paid out, how much was paid out to nonowners
11 versus owners, can you?

12 A No. My understanding is this would show that there
13 were, and then if you were interested in it, then the
14 sellers would provide whatever information.

15 Q But you don't know that firsthand. I don't want you
16 to tell me what your attorneys told you.

17 A I don't know what was requested after this, but I know
18 that that disclosure means that if there are any other
19 questions, that they could request information for it.

20 Q Actually, the disclosure, isn't it true it says we are
21 disclosing payments were made out, year-end bonuses to
22 employees?

23 A I'm sorry. Was that a question?

24 Q Doesn't it say that year-end bonuses were paid out to
25 employees?

1 A Yes.

2 Q But as you sit here, you can't tell from that if they
3 were nonowner employees or owner employees; is that fair?

4 A That's true. The disclosure shows that there was
5 something if they had other questions.

6 MS. THOMASON: Thank you.

7 THE COURT: All right. Redirect?

8 You are through, aren't you? No more questions?

9 MS. THOMASON: No.

10 THE COURT: All right.

11 MR. ENGLISH: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. ENGLISH:

14 Q Ms. Sibley-Jones, Ms. Thomason asked you about
15 Plaintiff's Exhibit Number 1, the letter of intent.
16 Specifically, she asked you about page 2, Section 3. So
17 this is Plaintiff's Exhibit 1, the letter of intent,
18 page 2, Section 3. And Ms. Thomason was asking you about
19 the ninth bullet point ---

20 A Yes.

21 Q --- where it says the cash at the time of closing will
22 be distributed to the current shareholders prior to
23 closing. Does this prohibit the current shareholders from
24 distributing or doing with the cash what they want?

25 A It does not.

1 Q And then it says "the cash at the time of closing."
2 When was the time of closing?

3 A In October 16, 2017.

4 MS. THOMASON: Objection, Your Honor. It's a
5 mischaracterization. It says "prior to closing."

6 THE COURT: I'll allow it. Overruled.

7 BY MR. ENGLISH:

8 Q Ms. Sibley-Jones, when was the time of closing?

9 A October 16, 2017.

10 Q And at that time of closing, had this LOI expired on
11 its own terms?

12 A It had.

13 MR. ENGLISH: Thank you. That's all.

14 THE COURT: All right. You may step down.

15 Everybody on the jury okay?

16 All right. All right. Call your next witness.

17 MR. ENGLISH: Thank you, Judge. At this time, we
18 would read from the deposition of Mr. Bill Sibley.

19 THE COURT: Okay. Ladies and gentlemen, as I kind of
20 mentioned in some of my preliminary remarks, sometimes
21 parties take depositions in preparing for a case. And when
22 they take a deposition, a deposition is set up just kind of
23 like it is here. The person is placed under oath, there's
24 a court reporter and the testimony is taken down by the
25 court reporter and then a transcript prepared. In this

1 particular case, you are to consider this deposition
2 testimony the same as if the person were present and live
3 in a courtroom testifying. In this particular case -- this
4 is Mr. ---

5 MR. ENGLISH: Sibley.

6 THE COURT: --- Sibley who is no longer with us, and
7 this gentleman will be reading on his behalf.

8 And, again, just like all evidence, you are to give it
9 the weight that you feel is appropriate.

10 All right. You may proceed.

11 MR. ENGLISH: Thank you, Judge.

12 DEPOSITION TESTIMONY OF WILLIAM SIBLEY, JR.

13 MR. ENGLISH: Beginning on page 5, line 23.

14 "Q All right. I know you just did this, but Mr. Sibley,
15 could you give me your full name for the record?

16 "A Yes. William Augustus Longstreet Sibley, Jr.

17 "Q All right. Do you have any family members, adult
18 children, wife that reside in Greenville County?

19 "A I have a daughter.

20 "Q And what's your daughter's name?

21 "A Julia Sibley-Jones. She's married to Mark Jones.

22 "Q And does she reside in Greenville County?

23 "A She does.

24 "Q Where were you born?

25 "A I was born in Spartanburg.

1 "Q In what year?

2 "A 1935.

3 "Q Did you attend high school in Spartanburg?

4 "A Union.

5 "Q What high school was that?

6 "A Union High.

7 "Q And what year did you graduate, or did you graduate?

8 "A '53.

9 "Q After high school did you attend any secondary
10 schools?

11 "A Georgia Tech.

12 "Q And when did you graduate from Georgia Tech?

13 "A '57.

14 "Q What did you major in?

15 "A Textile engineering.

16 "Q And where was your first job?

17 "A West Point Manufacturing Company, West Point, Georgia.

18 "Q And what was your job title?

19 "A Trainee.

20 "Q So you graduated from Georgia Tech in 1957. Would you
21 have started with West Point Manufacturing in 1957 as well?

22 "A No, because I spent some time with the U.S. Army.

23 "Q Okay. How long were you in the Army?

24 "A Six months active duty. So I started with West Point
25 in '58.

1 "Q Were you discharged from the Army?

2 "A Yes. It was a program, a new program that had just
3 been offered whereby you can go six months active duty and
4 six and a half years in the reserves, and so you really
5 didn't have to spend a whole lot of time on active duty.

6 "Q And did you spend those six years in the reserves?

7 "A I did, yes, while I was working.

8 "Q After West Point Manufacturing what was your next job?

9 "A I went with a textile chemical concern in East Point,
10 Georgia known as Southern Sizing Company.

11 "Q And you said that you were with them for how long?

12 "A About two years. I went to work for J.P. Stevens next
13 in '61 here in Greenville, came in July '61.

14 "Q And what was your job title with J.P. Stevens?

15 "A I was in the corporate engineering department as an
16 engineer.

17 "Q How long were you with J.P. Stevens?

18 "A Twenty-seven years, till they got sold in July of '88.

19 "Q All right. After J.P. Stevens, is that when you
20 formed Computer Controls?

21 "A It is.

22 "Q So at the time CCI is formed were you the only
23 principal? Were you the only shareholder of the company?

24 "A No. Actually I gave away the stock to those other
25 three, and then the fourth one came later and purchased

1 some stock from the others. I had 51 percent. I gave away
2 49 percent to keep us all together. And the three of them
3 gave up and sold a little bit of their stock for a fourth
4 gentleman to join us, and so that again said that the four
5 of them had 49 percent and I had 51.

6 "Q Who are those individuals?

7 "A Robert Leviner was the fourth one. The first one was
8 Ernest Featherstone, Frank Starrett, Tim Clark, and the
9 fourth was Robert Leviner. Then in 2000 we hired Scott
10 Dozier, and at that time it worked out that I sold him five
11 percent of my stock so that he could be a stockholder, and
12 he came aboard in 2000, and at that point in time my stock
13 percentage dropped from 51 to 46 because I sold him five
14 percent.

15 "Q And you said that was in 2000?

16 "A 2000.

17 "Q And then at the time of the sale of CCI to
18 Decide4Action it was the same shareholders?

19 "A Yes, except for the fact that Ernest Featherstone was
20 deceased.

21 "Q When did he pass away?

22 "A December 16, 2016, and so -- the purchase of course
23 occurred in '17. So he was deceased at that time.

24 "Q Following Mr. Featherstone's death did his wife play
25 an active role in CCI at all?

1 "A No.

2 "Q Did you have any sort of buy-sell agreement with
3 Mr. Featherstone? Was his estate paid any funds in
4 exchange for the repurchase of his shares?

5 "A No. She inherited, so to speak, his stock.

6 "Q Okay. So she just took control of whatever his
7 percentage was?

8 "A Yes.

9 "Q But she wasn't active in the business?

10 "A No.

11 "Q At what point did you decide or start really
12 considering the potential sale of CCI and kind of what
13 prompted that?

14 "A Well, I was getting very old.

15 "Q You're not old by any means.

16 "A Both Ernie and I were old and ready for retirement,
17 and so we started thinking about selling the company I
18 guess maybe as far back as 2005, 2006. My wife died in
19 2006, and, again, that was a motivation, you know, to look
20 for retirement.

21 "Q The financial condition of the company in 2014,
22 strong, mediocre?

23 "A Coming back from being down, because the textile
24 industry had exported itself offshore, so to speak, and so
25 we were coming back and doing fairly well and the business

1 outlook was good. We had developed ourselves into a
2 company that was specializing with the bottling industry
3 and concentrating in that area as opposed to textiles.

4 "Q Now I'm going to show you what we've marked as
5 Defendant's 1. Do you recognize this document?

6 "A Yes.

7 "Q And what is it that's been marked as Defendant's 1?
8 What is this document?

9 "A What is it called?

10 "Q Yes.

11 "A A Letter of Intent.

12 "Q And if you'll just flip to the last page of the Letter
13 of Intent, it looks like Mr. Bergeron, yourself,
14 Mr. Dozier, Mr. Clark, Mr. Starrett, and Mr. Leviner all
15 signed this Letter of Intent?

16 "A That's what it looks like.

17 "Q Do you know if Ms. Featherstone ever signed a
18 counterpart to this? Was her signature ever required for
19 this Letter of Intent?

20 "A I don't think her signature was required.

21 "Q Okay. If you look at the first page of this Letter of
22 Intent, the first bullet point under paragraph one, Selling
23 Price, it says that the purchase price was going to be for
24 4.4 million for 100 percent of the CCI stock. Do you see
25 that?

1 "A Yes.

2 "Q And it looks like the fourth bullet point, 90 percent
3 of the purchase price will be paid in cash at closing with
4 the remaining 10 percent to be put in escrow for 12 months.
5 Do you see that provision?

6 "A Yes.

7 "Q All right. Do you recall how long the original due
8 diligence period was for this? I'm sorry. Do you know how
9 long the original due diligence that was allowed under the
10 Letter of Intent lasted?

11 "A Seems like they may -- he had put a requirement in
12 there.

13 "Q If you look at the fourth page, it looks like under
14 paragraph five, it looks like there was a 90-day due
15 diligence period. Do you see that?"

16 MR. ENGLISH: Fourth page, Plaintiff's 1.

17 "Q Fourth page, paragraph five, it looks like there was a
18 90-day due diligence period. Do you see that?

19 "A Well, that was what I was thinking.

20 "Q Now, due diligence, it looks like this was executed in
21 March of 2017. As I understand it, Generational Equity
22 generated a virtual data room for the sharing of documents.
23 Do you recall that?

24 "A Yes.

25 "Q So if you look at Defendant's Exhibit 4, this appears

1 to be an Excel spreadsheet for the fiscal year 2013 through
2 2017, specifically April 28, 2017. Do you see that?

3 "A Yes.

4 "Q It looks like in 2016 Mr. Clark had an annual salary
5 of 150,000, Mr. Dozier 103,888, Mr. Leviner 60,141,
6 yourself 150, 150,000, Mr. Starrett 92,321, and
7 Ms. Featherstone \$24,000?

8 "A Yes.

9 "Q Do you see that? It also looks like in 2015 and 2016
10 there were also owner bonuses that were paid. Do you see
11 those?

12 "A I do.

13 "Q How do you determine the frequency and amount of owner
14 bonuses that were paid?

15 "A We would first consider whether or not the company was
16 profitable. If the company were profitable and cash flow
17 was permitting, we would use a bonus to reward performance.
18 It was strictly discretionary in every respect every year.

19 "Q The decision to issue bonuses, owner businesses for
20 '15 and '16, who have the final say, if anybody, in whether
21 those bonuses were issued?

22 "A The directors.

23 "Q And by the directors, are you referring to the six
24 shareholders?

25 "A No. The directors were myself, Tim Clark, and Scott

1 Dozier, three directors, determined the bonuses.

2 "Q When you were determining who was going to get a bonus
3 and how much, what was the informal process for
4 determining?

5 "A The three directors would discuss it.

6 "Q And what did y'all discuss specifically --

7 "A Performance.

8 "Q -- if you recall?

9 "A Performance and amount.

10 "Q Did your employees have target goals that they were
11 supposed to hit that was ever, you know, formally given to
12 them in any formal documentation?

13 "A No.

14 "Q How did you determine the salaries that were going to
15 be used for those three individuals?

16 "A We used a national search, employee search firm, and
17 they found the candidates for us, and they recommended the
18 starting salaries.

19 "Q Who was that firm that you used?

20 "A Modus.

21 "Q And they made the original suggestion on their
22 starting salaries?

23 "A Yes.

24 "Q Okay. Now at some point during the due diligence
25 process do you recall Mr. Bergeron and a CPA doing a site

1 inspection?

2 "A Yes. They were -- they were here. His CPA came with
3 him I believe the second physical meeting when he came to
4 Greenville he brought his CPA with him.

5 "Q And I believe that occurred on May 17, 2017?

6 "A I presume, yes. I can't remember exactly. I was in a
7 wheelchair.

8 "Q And so I guess that kind of is a segue into my next
9 question. Were you present when he was on-site --

10 "A Yes.

11 "Q -- at CCI? Can you kind of walk me through what that
12 inspection kind of entailed?

13 "A It was financial with his CPA, requesting financials
14 from us also with conversation with our CPA.

15 "Q Who was your CPA?

16 "A Cherry Bekaert.

17 "Q The financials that he was reviewing at that site
18 inspection, was that in addition to financials that had
19 already been uploaded to that data room?

20 "A I think there were some of both. I think there were
21 some extras as well as some that had been uploaded.

22 "Q At the time of the site inspection on May 17th --

23 "A The site inspection?

24 "Q When Mr. Bergeron came --

25 "A Yeah, yeah.

1 "Q -- to CCI, would that have been within the scope of
2 the original due diligence period?

3 "A Well, I presume the Letter of Intent established that,
4 did it not?

5 "Q And so I believe the original 90-day period would have
6 been from March 10th to June 10th, which would have been a
7 90-day period. Is that your understanding?

8 "A You know, I never thought about it.

9 "Q Let me ask you this then. At the time, would you have
10 been of the belief that the bonuses were allowed to be
11 paid?

12 "A The bonuses were strictly discretionary. The
13 discretions were activated if the company was profitable
14 and if performance of employees warranted it. It was -- it
15 was ordinary business. We had been doing it for years,
16 taking that same procedure, and we were following that same
17 procedure in '17 like we had done in '16 and '15 and '14
18 and '13 and '12 and 2011, all the way back to when we
19 started.

20 "Q Do you recall other than 2016 any instance where
21 non-owner bonuses were paid?

22 "A Absolutely, yes.

23 "Q So I guess my direct question was did you believe that
24 they were allowed to be issued, and I guess that
25 response --

1 "A Why not?

2 "Q -- would be yes?

3 "A Yes. It was normal business."

4 MR. ENGLISH: And on page 81, line 2.

5 "Q I'm going to show you what's been marked as
6 Defendant's Exhibit 13. Was the increase of \$2500 to
7 Ms. French's salary part of the ordinary course of business
8 as you understand it?

9 "A Yes.

10 "Q Was her bonus payment also part of the ordinary course
11 of business?

12 "A Yes.

13 "Q All right, Mr. Sibley, we're back on the record. If
14 you would look at what's in front of you as attached to the
15 Stock Purchase Agreement Schedule 4(i), Events Subsequent
16 to May 17, 2017, do you see that?

17 "A I do.

18 "Q Do you see paragraph three under Schedule 4(i) of the
19 Stock Purchase Agreement and the Disclosure Schedule?

20 "A Yes.

21 "Q And could you read that?

22 "A You want me to read it?

23 "Q Yes, please.

24 "A 'Target paid a fiscal year-end bonus and subsequently
25 has paid special bonuses to employees on three occasions.'

1 "Q And this disclosure schedule 4(i) was a disclosure
2 schedule attached to the Stock Purchase Agreement?

3 "A It was.

4 "Q Do you recall if the bonus letters that were sent to
5 each of the employees was ever forwarded to Mr. Bergeron?
6 Did he receive a copy of that?

7 "A Before closing?

8 "Q When was he first made aware that those bonuses were
9 paid out? Do you know?

10 "A He was first made aware in August when we had
11 requested in July, late July, a P&L statement that was from
12 July 1, '16 through June 30 of '17, our most recent fiscal
13 year. He had requested a P&L statement.

14 "Q And in that P&L statement --

15 "A Salaries and --

16 "Q -- it specifically stated salaries and bonuses?

17 "A Yes.

18 "Q Did it break out who those bonuses were paid to?

19 "A No.

20 "Q Simply that the bonuses were issued?

21 "A Correct.

22 "Q Correct, but, again, not who it was paid to?

23 "A That's correct. He also got the fiscal 2017 federal
24 tax return. That federal tax return on the first page,
25 rows 11 and 12, I believe -- you're familiar with that?

1 "Q I am.

2 "A -- breaks it out between those officers and
3 non-officers.

4 "Q And this was provided to Mr. Bergeron when?

5 "A September, late September. It was filed by Cherry
6 Bekaert late September.

7 "Q Okay. I'm going to mark this as Defendant's 14. So
8 if you flip to the fourth page, this looks like a cover
9 letter dated September 21, 2017, to Computer Control Plus
10 Integration from Cherry Bekaert?

11 "A Correct.

12 "Q So this tax return is for the year ending June 30,
13 2017?

14 "A Correct.

15 "Q And I believe you previously indicated that looking at
16 I believe it's lines 12 --

17 "A 12 and 13.

18 "Q -- to 13 --

19 "A Yes.

20 "Q -- of this tax return?

21 "A Correct.

22 "Q Can you tell me where this breaks out bonuses that
23 would have been paid to the employees of CCI?

24 "A It's in line 13.

25 "Q And what does line 13 --

1 "A The employees' salaries and wages.

2 "Q \$687,405?

3 "A Correct.

4 "Q When you add up all the employees wages, does it come
5 to this number, or is this number inclusive of bonuses as
6 well?

7 "A Inclusive.

8 "Q So of the three documents that we've referred to, the
9 disclosure schedule, the P&L statement, and the year-end
10 June 30, 2017 tax return, none of them specifically
11 detailed who bonuses were paid to?

12 "A Not individually, but in total.

13 "Q And the disclosure schedule that I made reference to,
14 schedule 4(i), Events Subsequent to May 17, 2017, was
15 included in that closing, the Stock Purchase Agreement?

16 "A It was part of the Stock Purchase Agreement. I think
17 the Stock Purchase Agreement was signed on October 13, I
18 believe.

19 "Q And the closing took place on October 16?

20 "A That's as I recall.

21 "Q Okay. I'm going to show you what we'll mark as
22 Defendant's 16. Have you had a chance to review this?

23 "A Yes.

24 "Q And what is this document?

25 "A And what?

1 "Q What is this document you're looking at?

2 "A What is this document?

3 "Q Yes.

4 "A Says Agreement Regarding Application of Funds.

5 "Q And what do you understand the purpose of this
6 document to be?

7 "A Escrow, setting up an escrow account.

8 "Q Specifically paragraph five of this agreement, that
9 escrow was to be held for a period of 12 months?

10 "A Yes.

11 "Q And upon the expiration of that 12 months, whatever
12 funds remained in that escrow account would be distributed
13 to the shareholders?

14 "A Yes.

15 "Q My question to you is at what point did you decide to
16 move forward with legal action against Mr. Bergeron?

17 "A Oh, okay. When the time of escrow payment passed,
18 which was 12 months after closing, and we waited until
19 November to see if there would be any changes or any
20 alterations, and no action from Richard had been received.
21 So we proceeded to pursue legal action.

22 "Q When did you first become aware that Mr. Bergeron
23 voiced concerns with the escrow agent about payment of
24 those funds?

25 "A Well, I got a copy of his letter to her.

1 "Q Do you recall when that was?

2 "A Prior to October 16th. Probably -- probably late
3 September or early October of --

4 "Q Of 2018?

5 "A Yes.

6 "Q Under your first cause of action you allege breach of
7 contract. What contract are you alleging Mr. Bergeron
8 breached?

9 "A Well, we're challenging his claim on the escrow.

10 "Q And what was the fraudulent act?

11 "A Stopping the payment on the escrow.

12 "Q So is it your position that his claim of damages is
13 fraudulent?

14 "A Yeah.

15 "Q Mr. Sibley, let me ask you about some provisions of
16 documents that Mr. Puriefoy did not ask you about. First,
17 look at Defendant's Exhibit 1, the Letter of Intent. If
18 you'll look on the first page, the last bullet point, what
19 does that say about cash?

20 "A 'The offer excludes the cash at closing for both
21 checking and savings account and includes the balance of
22 accounts receivable and accounts payable at closing.'

23 "Q So the offer that Decide4Action made back in March was
24 4.4 million excluding cash?

25 "A Correct.

1 "Q And the selling shareholders would get to keep the
2 cash?

3 "A Correct.

4 "Q All right. Now look at the Stock Purchase Agreement
5 on page 17, and on page 17, section (c), Cash. What does
6 that first phrase say about cash?

7 "A 'Sellers shall ensure that all target cash is
8 distributed or otherwise made out to sellers no later than
9 closing.'

10 "Q Did it require for the seller -- did it require for
11 the sellers to ensure that all CC+I cash is distributed or
12 otherwise paid out to sellers no later than closing?

13 "A Right.

14 "Q And is that what you all did?

15 "A Yes.

16 "Q Now look at Defendant's Exhibit 4. This is the
17 spreadsheet you gave to Mr. Bergeron in May of 2017 that
18 outlined the employees' 2017 salaries as of April 28, 2017.
19 Is that right?

20 "A Correct.

21 "Q So if Mr. Bergeron had added up the non-owner salaries
22 and annualized them, he would have seen that they would
23 have been receiving annual salaries of under 330,000 per
24 year?

25 "A Correct.

1 "Q Now if you look at Defendant's Exhibit 14, the tax
2 return that you say provided -- you provided to
3 Mr. Bergeron, under line 13, salaries and wages, what's the
4 amount listed there for non-owner salary and wages?

5 "A 687,405.

6 "Q So if Mr. Bergeron cared about how much in bonuses had
7 been paid to the non-owner employees, would it have been
8 readily apparent from the tax return that you all paid out
9 around \$350,000 in bonuses?

10 "A Absolutely. Can I just point out one other thing?

11 "Q Sure.

12 "A He also knows from this what the stockholders were
13 paid.

14 "Q Right. But the stockholders -- on the tax return, the
15 compensation of officers in line 12 is a separate line item
16 for shareholders.

17 "A True, true.

18 "Q Now, these employee bonuses, I think you testified,
19 were paid out on June 26, 2017. Is that right?

20 "A That was the last -- I think that was the last payroll
21 day, yes.

22 "Q And when these non-owner employee bonuses were paid,
23 you did not have a signed Stock Purchase Agreement with
24 Decide4Action, did you?

25 "A Had never seen it.

1 "Q You didn't even have a draft of the Stock Purchase
2 Agreement from Decide4Action at that point, did you?

3 "A Had never seen anything but the Letter of Intent.

4 "Q And when you paid these employee bonuses, there was no
5 guarantee that Decide4Action was going to purchase CC+I,
6 was there?

7 "A There was a lot of doubt that we were going to buy it
8 -- that we were going to sell until we found out more about
9 Decide4Action.

10 "Q And even if you were not going to sell CC+I but you
11 were going to keep the company, would you have still paid
12 these non-owner employee bonuses?

13 "A Absolutely.

14 "Q In the same amount?

15 "A In the same amount.

16 "Q Why?

17 "A Because we were greatly appreciative of the extra
18 effort that they had put forth to help us have a stellar
19 sales year.

20 "Q Mr. Puriefoy asked you about page 21 of the Stock
21 Purchase Agreement and specifically subsection (b) on
22 Indemnification Provisions for Buyer's Benefit, but he
23 didn't ask you about the last sentence. Read that last
24 sentence beginning with 'in addition.'

25 "A 'In addition, in no event shall any seller be liable

1 to buyer for any punitive, incidental, consequential,
2 special, or indirect damages, including loss of future
3 revenue or income, loss of business reputation or
4 opportunity relating to the breach or alleged breach of
5 this agreement, diminution of value of any damages based on
6 any type of multiple.'

7 "Q Now, when you met with Mr. Bergeron in May of 2018 and
8 he had a spreadsheet claiming that he had been damaged, was
9 his calculation of damages based on a multiple of EBITDA?

10 "A It was.

11 "Q And was he claiming that the company based on a
12 multiple of EBITDA was not or had been diminished in value
13 by paying of these employee bonuses?

14 "A He did.

15 "Q Is that sort of claim allowed under the Stock Purchase
16 Agreement?

17 "A Not that I know of.

18 "Q Now, you also had -- aside from the Stock Purchase
19 Agreement, you had an indemnity escrow agreement with
20 Decide4Action and United Community Bank. Right?

21 "A Correct.

22 "Q And that agreement allowed for claims against the
23 escrow but only as authorized by the Stock Purchase
24 Agreement. Is that right?

25 "A Correct.

1 "Q Was Mr. Bergeron's claim against the escrow authorized
2 by the Stock Purchase Agreement?

3 "A I don't think so.

4 "Q Was it in fact prohibited by the Stock Purchase
5 Agreement?

6 "A I think it was.

7 "Q Do you consider that a fraudulent act by Mr. Bergeron,
8 to make a claim that was prohibited by the Stock Purchase
9 Agreement in order to keep UCB from releasing the escrow to
10 the selling shareholders?

11 "A Yes.

12 "Q That's all I've got for you, Mr. Sibley."

13 THE COURT: All right. You may step down.

14 Will counsel approach?

15 (WHEREUPON, a bench conference was held off the record.)

16 THE COURT: We're just conferring on our schedule over
17 here. We agree it's time to take a break for the day.

18 All right. Ladies and gentlemen, I'm going to --
19 you're going to hear -- every time you break, this is going
20 to be your rules, okay? One, do not discuss the case among
21 yourselves or your family members. I know it's tough to go
22 home and they say, "What have you been doing all day?" and
23 you say, "That mean old judge told me I could not talk
24 about the case."

25 Also, don't do any type of research on this. Don't

1 google the parties. Don't google anything about anything
2 you've heard or that may apply. That's not appropriate.
3 You'll get all the law and all the information you'll need
4 from this courtroom.

5 Do not pay any attention to any media coverage. I'm
6 not aware of any, but, you know, social media, any type of
7 media. Do not have -- do not pay any intention to that.

8 And I've never had this happen but I always say this,
9 if you're contacted by anybody other than somebody from the
10 clerk's office, please let the bailiff know that when you
11 get it in the morning.

12 Is 9:30 good for everybody? 9:30 in the morning. All
13 right. We'll see y'all back at 9:30 and we'll continue
14 with the plaintiff's case. Y'all have a good evening.

15 (WHEREUPON, the jury exits the courtroom at 4:15 p.m.)

16 THE COURT: All right. So I think that -- they're
17 already locked in those little booths, and I think if you
18 read another deposition, then we may have a mutiny.

19 So anything else from the plaintiff before we break
20 for the day?

21 MR. ENGLISH: No. Again, I have a motion in limine,
22 but it can wait till before the defendant's case.

23 THE COURT: All right. Anything else?

24 MR. PURIEFOY: Nothing from the defense, Your Honor.

25 THE COURT: And so whatever witnesses do you have?

1 MR. ENGLISH: We've got the deposition of
2 Decide4Action, we've got Ms. Featherstone, and we've got
3 Ms. Sharon Whitney from UCB. And then I've listed
4 Mr. Coburn. I might wait and call him in rebuttal if
5 necessary.

6 THE COURT: Okay. It sounds like we're moving along
7 pretty good. I was just checking.

8 MR. ENGLISH: Yeah. I definitely think we'll be in a
9 position to rest tomorrow.

10 THE COURT: All right. We'll see everybody in the
11 morning. Be ready to go at 9:30.

12 (Pause in proceedings; Juror Number 62 enters the
13 courtroom.)

14 THE COURT: I'm just going to put this on the record.
15 He recognized -- he told me he recognized the name as it
16 was written up there.

17 First of all, your name and number again?

18 JUROR NUMBER 62: Travis Ware, 62.

19 THE COURT: All right. And I believe you indicated
20 that once the documents got up there, you recognized one of
21 the names. And who was that?

22 JUROR NUMBER 62: Robert Leviner.

23 THE COURT: Okay. And I believe you said you didn't
24 know him, but you knew somebody.

25 JUROR NUMBER 62: He's got a son by the same name.

1 I've been knowing his son for 15 years.

2 THE COURT: All right. And the fact that you may know
3 his son, can you still be fair and impartial in the trial
4 of this case?

5 JUROR NUMBER 62: I'm sure I could.

6 THE COURT: All right. You can still listen to the
7 facts and still hear the case and make your decision based
8 on the facts.

9 JUROR NUMBER 62: Sure.

10 THE COURT: All right. Thank you very much. We'll
11 see you in the morning.

12 All right. Anything further from the parties in light
13 of that information?

14 MR. ENGLISH: None from the plaintiff.

15 MR. PURIEFOY: Nothing, Your Honor.

16 THE COURT: All right. Okay. I'll see y'all in the
17 morning.

18 (WHEREUPON, proceedings recessed at 4:20 p.m.)
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25

1 TUESDAY, JULY 25, 2021

2 (WHEREUPON, proceedings reconvened at 9:25 a.m.)

3 MS. THOMASON: Yesterday there was testimony, and
4 Mr. English referenced it in his opening also as to
5 breaches of other documents. And Mr. English pled very
6 specifically breach of the escrow agreement only, and
7 breach of company by a fraudulent act of the escrow
8 agreement. So it's only -- he's only pled one breach -- or
9 a breach of one document. So to the extent that we need to
10 -- limiting when dealing with jury instruction or whatever,
11 I just want to bring it to the Court's attention.

12 THE COURT: All right. Mr. English?

13 MR. ENGLISH: Judge, as I mentioned in opening and as
14 the evidence shows, there are actually three contracts that
15 are at play here. There's the stock purchase agreement,
16 there is the indemnity agreement, and then there is the
17 agreement regarding application of funds. And I think the
18 jury could find that any or all of those three contracts
19 were breached by the defendant's behavior. And as you
20 know, breach of contract accompanied by a fraudulent act
21 requires some act separate from the breach, and so I think
22 they could find a breach of, for example, the escrow
23 agreement, but find that the claim under the stock purchase
24 agreement was a fraudulent act. And I think the pleading
25 is broad enough to allow for that interpretation. To the

1 extent it's not, I'd ask for an amendment to the complaint
2 to conform to the evidence, and there'd be no prejudice to
3 the defendants from that because they've known and we've
4 had discovery about all of these contracts.

5 THE COURT: When you say "escrow agreement," what
6 exactly is the escrow agreement?

7 MS. THOMASON: There's a stock purchase ---

8 THE COURT: All right. I've got it. Let me get out
9 my little exhibit book here.

10 MS. THOMASON: So there is the stock purchase
11 agreement, and then there's the indemnity escrow agreement.

12 THE COURT: Which is Plaintiff's 8. All right.
13 Indemnity escrow is 9. And then what's the other?

14 MS. THOMASON: And then there is the fund application
15 agreement.

16 MR. ENGLISH: Which is 16.

17 MS. THOMASON: They have pled breach of the escrow
18 agreement itself, and they pled -- and as, Your Honor, the
19 Court's aware, you have to plead the fraud very
20 specifically. And they specifically pled that there was
21 fraud in ordering the escrow agent not to release the funds
22 in violation of the escrow agreement. I mean, he had two
23 very specific claims throughout this. And we have done
24 discovery, and it's all been based on those two claims.
25 Now, we have counterclaims as it relates to the stock

1 purchase agreement, but throughout the course of this, from
2 the time it was, you know, filed on and even through an
3 amendment, it's been those two claims. And there's no
4 allegation of fraud as it relates to the stock purchase.
5 The fraud alleged is general fraud as it relates to telling
6 the escrow agent not to pay. And we agree. We think the
7 fraud is the breach. You know, they're alleging no
8 separate act.

9 MR. ENGLISH: Your Honor, that mischaracterizes, I
10 think, the law and the complaint. The law is that breach
11 of contract accompanied by a fraudulent act is not the same
12 as common-law fraud. It doesn't have the same
13 particularity requirements as common-law fraud. So that's
14 a misstatement of the law.

15 It's also a misstatement of the complaint that
16 paragraph 23 says in addition to breaches of the contract,
17 which is defined as the escrow agreement by Decide4Action,
18 the circumstances described herein accompanying the breach
19 show a pattern of behavior and moderm that demonstrates both
20 fraudulent intent and fraudulent acts. So we did plead
21 specifically in addition to breaching that escrow
22 agreement, there were other breaches or other fraudulent
23 acts that the jury could use to find breach of contract
24 accompanied by a fraudulent act.

25 THE COURT: I guess ---

1 MS. THOMASON: But the law -- I'm sorry, Your Honor.

2 THE COURT: Yeah. Go ahead.

3 MS. THOMASON: The law does require that the fraud be
4 a separate act as it relates, and here the allegation is a
5 pattern as it relates to telling the escrow agent not to
6 release the funds. As a matter of fact, that is what we
7 were talking about when we were talking about referencing
8 other lawsuits where we're trying to -- we had a motion to
9 exclude that testimony was to show a pattern of behavior,
10 that was Mr. English's position, as it relates to holding
11 escrow funds.

12 THE COURT: Does this relate to any portion of the
13 deposition that is here to be read? All right. Because
14 what I'd like to do is review the complaint.

15 MS. THOMASON: Okay. All right.

16 THE COURT: All right. Was there two matters?

17 MR. PURIEFOY: There was, Your Honor. And Mr. English
18 and I have stipulated to the admission of Defendant's
19 Exhibits 3 through 9, which are certain bonus letters that
20 were attached to and referenced in Mr. Sibley's deposition.
21 I believe they're being admitted without objection.

22 MR. ENGLISH: That's right.

23 THE COURT: So Defendant's 3 through 9.

24 (WHEREUPON, Defendant's Exhibit Numbers 3 through 9 were
25 admitted into evidence.)

1 THE COURT: What -- again, do we have Defendant's
2 Exhibit 1 and then 3 through 9? We do not have 2, right?

3 MR. PURIEFOY: There's going to be a 2, Your Honor,
4 but the second exhibit is an offering memorandum that's
5 like going to be objected ---

6 THE COURT: Right. I just want to make sure that I
7 didn't admit something there.

8 All right. We've got them all?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. Anything else before I bring
11 the jury in?

12 MR. ENGLISH: No, Your Honor.

13 MR. PURIEFOY: Nothing, Your Honor.

14 THE COURT: All right. Bring the jury in.

15 (WHEREUPON, the jury entered the courtroom at 9:33 a.m.)

16 THE COURT: Good morning, ladies and gentlemen. I
17 hope everybody had a good evening, and we will now resume
18 the case. As you recall, the plaintiff is still in their
19 case in chief.

20 So, Mr. English, if you'll call your next witness.

21 MR. ENGLISH: Your Honor, at this time we would like
22 to read from the Rule 30(b)(6) deposition of the defendant,
23 Decide4Action.

24 THE COURT: All right. And as I told you yesterday, a
25 deposition is to be considered, for your purposes, the same

1 as if the person were testifying live.

2 DEPOSITION TESTIMONY OF RICHARD BERGERON

3 MR. ENGLISH: All right. And I'm beginning on page 5.
4 Beginning at page 5, line 21.

5 "Q Good morning, Mr. Bergeron. My name is Greg English,
6 and I represent the plaintiff in this action. It will be
7 Mr. Sibley's estate.

8 We're here today to take the 30(b)(6) deposition of
9 defendant Decide4Action. I understand that you have been
10 designated to testify for Decide4Action; is that right?

11 "A Yes.

12 "Q Now, this case concerns Decide4Action's purchase of
13 the stock of Computer Control + Integration; is that right?

14 "A Yes.

15 "Q I'm going to call Computer Control + Integration as
16 CCI. Is that okay?

17 "A Yes.

18 "Q I believe that acquisition or purchase of the stock
19 was closed on October 16 of 2017; is that right?

20 "A Well, we're not so sure if it was 16 or 17, but one of
21 those two dates.

22 "Q Either October 16 or October 17 of 2017; is that
23 right?

24 "A Yeah.

25 "Q That's when the purchase was completed?

1 "A Yes.

2 "Q All right. First of all, where were you born?

3 "A In Quebec City, Canada, 1964.

4 "Q Where did you go to school?

5 "A Laval University in Quebec.

6 "Q And when did you graduate?

7 "A 1988.

8 "Q What was your degree in?

9 "A Mechanical engineering.

10 "Q And after your -- is that an undergraduate degree?

11 "A Well, the educational system doesn't work the same
12 way. They call it the equivalent to a Master's here
13 basically.

14 "Q So you have experience in growing and managing
15 businesses?

16 "A Of course, yes.

17 "Q Let's talk now about Decide4Action. I believe it's a
18 corporation. What state is Decide4Action incorporated in?

19 "A It's an S Corporation in Florida.

20 "Q When was it incorporated?

21 "A 2011, under RV Consulting Engineering Services, Inc.

22 "Q What do you mean under?

23 "A That was the name at the time.

24 "Q So we changed names to Decide4Action?

25 "A Yes.

1 "Q Who were the shareholders of Decide4Action?

2 "A I am.

3 "Q One hundred percent?

4 "A Yes.

5 "Q Who are the directors of Decide4Action?

6 "A I am.

7 "Q Are you the sole director?

8 "A I think so.

9 "Q And what offices do you hold at Decide4Action? Are
10 you the president?

11 "A I'm CEO.

12 "Q Does Decide4Action have any other corporate officers
13 besides you?

14 "A No.

15 "Q I believe you said earlier that you began discussions
16 with CCI, or the owners of CCI, about purchasing their
17 stock in 2015; is that right?

18 "A I believe so.

19 "Q Why were you looking to buy a company?

20 "A Because that -- do I need a reason for that?

21 "Q I'm asking why.

22 "A Because that's what I do.

23 "Q You buy companies?

24 "A Well, I was interested. I told you -- I told you you
25 left my role at Exxelia in 2014. I was too young to

1 retire. I don't work very well -- I work better when I
2 make my own decisions and I didn't want to start from
3 scratch. So the best route is to buy an existing company.

4 "Q Let me show you what we're marking as Exhibit
5 Number 1. All right. Look at this. All right. Let's
6 look at this and tell me if these were the terms that you
7 offered? First of all, under the selling price was the
8 purchase price for one hundred percent of the stock of CCI
9 to be four point four million dollars?

10 "A Yes, it was.

11 "Q If you look at the fourth bullet point, was ninety
12 percent of that purchase price to be paid in cash at
13 closing?

14 "A Yes.

15 "Q Was the remaining ten percent to be put in escrow for
16 twelve months with interest for the sellers?

17 "A Yes.

18 "Q If you look at the last bullet point, does the offer
19 exclude the cash at closing for both checking and savings
20 accounts?

21 "A Yes.

22 "Q In other words, the owners of CCI were not selling the
23 cash as part of the four point four million, they were
24 entitled to keep the cash and do whatever they wanted to do
25 with it, right?

1 "A No.

2 "Q Why is that wrong?

3 "A You said that they were entitled to keep the cash.
4 That is a true statement. The second thing, you said they
5 were entitled to do whatever they want to do with it. That
6 is not a true statement.

7 "Q If you'll look over to the fourth page, Section 5,
8 Other, was it correct in the first bullet that
9 Decide4Action was to have forty-five days after the
10 signature of the LOI to complete its due diligence?

11 "A This is correct but it was extended at least once if
12 not twice.

13 "Q So the forty-five days from March 10th would have been
14 roughly April 25th of 2017. When do you think the due
15 diligence deadline was extended to?

16 "A Don't quote me but I think we had about -- the due
17 diligence was done I think in May, but I'm not sure one
18 hundred percent. We had to obtain a report from the CPA
19 and we had to submit that to the Small Business
20 Administration. We did all of that within the compass of
21 time.

22 "Q Let me show you what we're marking as Plaintiff's #2.
23 Is this a list of CCI employees' salaries and bonuses that
24 you received as part of due diligence?

25 "A It appears to be. It's very difficult to make sure in

1 the limited time that it was not modified in any way
2 because it has no signatures -- signature and it was not
3 the original, but it appears to be, yes.

4 "Q If you look in the first column, it says CC+I Fiscal
5 2017 as of April 28, 2017. So based on that do you think
6 it's fair to say that due diligence -- that Decide4Action
7 was still doing due diligence as of April 28th, 2017?

8 "A Yes. Well, hold on. April 28th was still -- yeah,
9 yeah, it was.

10 "Q Now, based on this document, do you understand that
11 CCI paid employees bonuses in its fiscal year 2016?

12 "A Yeah, thirty thousand dollars. No, twenty-five
13 thousand dollars. No, thirty-five.

14 "Q The owner employees also received bonuses in fiscal
15 year 2016, correct?

16 "A Yes.

17 "Q The fiscal year ended on June 30th of each year; is
18 that right?

19 "A Yes, that's correct.

20 "Q So at the time you were looking at this, you were
21 nearing the June 30, 2017 fiscal year end of CCI; is that
22 right?

23 "A Yes.

24 "Q But on Plaintiff's Exhibit 2, there was a column for
25 bonuses for fiscal year 2017, correct?

1 "A It's a blank. A zero is a zero.

2 "Q Zeros are not in that column for 2017, are they?

3 "A What's the point?

4 "Q There is a column for bonuses, right?

5 "A There is a column for bonuses.

6 "Q And if you look at the column for 2017 annual
7 salaries, it looks like the total owner salaries as of
8 April 28th, 2017 total about four hundred and fifty
9 thousand dollars. Does that look right to you?

10 "A I trust your math. I did not do the addition.

11 "Q Then if you went to the non-owner employees, it looks
12 like their salaries total about two hundred and fifty
13 thousand dollars. Do you agree with that?

14 "A If you say so, I believe you.

15 "Q If you look at the total annual salaries listed on
16 Plaintiff's Exhibit 2 as of April 28th, 2017 it's a total
17 of around seven hundred thousand dollars. Would you agree
18 with that?

19 "A You do the math better than I do, yes.

20 "Q Let me show you what I marked as Plaintiff's
21 Exhibit 3. Did you send a CPA to CCI to perform due
22 diligence?

23 "A Yes, I did.

24 "Q Was that Dan Carlton?

25 "A Yes.

1 "Q Is this his report to you about due diligence?

2 "A It looks like it.

3 "Q It says 'This report outlines the results of the due
4 diligence activities performed May 2nd [sic] and 17, 2017
5 during our visit to CCI'; is that right?

6 "A Yes.

7 "Q So is that when Decide4Action performed its due
8 diligence?

9 "A Yes, it is.

10 "Q Let me show you what's been marked Plaintiff's
11 Exhibit #5. What is this document?

12 "A It's a P&L.

13 "Q Of what?

14 "A Of CCI.

15 "Q As of what date?

16 "A As of July 2017.

17 "Q You see at the top there are some signatures. Do you
18 recognize those signatures?

19 "A I don't but I could compare them to the other people.
20 Personally I don't recognize signatures very well.

21 "Q Did you know that Mr. Sibley, Jr., was one of the
22 selling shareholders?

23 "A Of course I did.

24 "Q Was Tim Clark another selling shareholder?

25 "A Yes, he was.

1 "Q Do you think that's Mr. Clark's signature on this?

2 "A It's probably his but I'm not sure a hundred percent.

3 "Q And this version was signed by Mr. Clark and
4 Mr. Sibley?

5 "A It looks like it.

6 "Q If you look under expenses, the third category,
7 salary, wages and bonuses?

8 "A Yeah.

9 "Q The total for that is seventy-six thousand six hundred
10 and fifty-three dollars for July of 2017; is that right?

11 "A Yeah.

12 "Q Now look at what we're looking at, Plaintiff's
13 Exhibit 6. What is this document?

14 "A It's a P&L.

15 "Q Of CCI?

16 "A Yes.

17 "Q As of what date?

18 "A As of June 2017.

19 "Q Is this also signed by Mr. Clark and Mr. Sibley?

20 "A It is.

21 "Q Did you receive Exhibit 6 before closing?

22 "A Probably, yes.

23 "Q And if you look at Exhibit 6, what does it show
24 salaries, wages and bonuses were?

25 "A Two million four hundred sixty-eight eight-sixty-one

1 and seventy-eight cents.

2 "Q So this is significantly higher for June 2017 than it
3 was for the following month in July of 2017, right?

4 "A Of course. I fully expected that.

5 "Q You fully expected higher salaries, wages and bonuses?

6 "A I expected a very large amount of bonuses. They were
7 supposed to take care -- they were supposed to take the
8 bonuses out as owners. I fully expected that. That's what
9 they were supposed to do, to take it out as cash as owners.
10 There's a reason for that if you care to know.

11 "Q We'll come to that in a minute.

12 "Let me show you what we're marking as Plaintiff's 7.
13 What is this document?

14 "A The tax return.

15 "Q Of CCI for 2016?

16 "A Yeah.

17 "Q And is that year end as of June 30, 2017; is that
18 right?

19 "A Yeah.

20 "Q Is this a document that you received before closing?

21 "A Like a day before closing because they were really
22 late producing it.

23 "Q And if you look on line twelve, compensation of
24 officers is listed at a little over two point five million;
25 is that right?

1 "A Yeah.

2 "Q Below that salaries and wages are listed at six
3 hundred and eighty-seven thousand dollars; is that right?

4 "A Yeah, that's right.

5 "Q Look at Plaintiff's Exhibit #2 and tell me what the
6 total non-owner salaries were as of April 28, 2017?

7 "A You want me to calculate again?

8 "Q Mr. Bergeron, isn't it true that CCI's selling
9 shareholders told you that as of April 28th, 2017 the
10 non-owner employees had been paid approximately two hundred
11 and fifty thousand dollars?

12 "A I don't think so.

13 "Q Isn't that what Plaintiff's Exhibit 2 shows?

14 "A I don't think so.

15 "Q Well, then if you look at Plaintiff's Exhibit 7, the
16 tax return as of June 30, 2017, two months later the
17 salaries and wages is six hundred and eighty-seven thousand
18 dollars, correct?

19 "A Two months later?

20 "Q Yes.

21 "A Two months of what?

22 "Q Between Plaintiff's Exhibit 2 of April 28th, 2017, and
23 Plaintiff's Exhibit 7, the tax return ending June 30, 2017?

24 "A There's no link between this and this. What Exhibit 7
25 shows is that for fiscal year 2016, the plaintiff spent six

1 hundred eight-seven thousand four hundred and five dollars
2 in line thirteen in the tax return, which is salary and
3 wage less employment credit. That's all it does say. It
4 doesn't define what it is. I don't know what this is. I
5 never knew what was included in that line.

6 "Q You knew that compensation of owners was not included
7 because that was on line twelve, right?

8 "A If you say so, but I don't think if they pay some kind
9 of bonus it is legal to include that in that line. I'm not
10 a CPA. I didn't prepare the tax return. So I'm not going
11 to make conclusions from something I don't know.

12 "Q You were not required to close, were you? You had no
13 legal obligation to purchase the stock, did you?

14 "A No.

15 "Q You could have backed out at any time?

16 "A I could have.

17 "Q Is Plaintiff's Exhibit 8 a copy of that Stock Purchase
18 Agreement?

19 "A It looks like it is.

20 "Q It looks like that Decide4Action is the buyer and then
21 the selling stockholders are Mr. Sibley, Ms. Featherstone,
22 Mr. Clark, Mr. Starrett, Mr. Dozier and Mr. Leviner; is
23 that right?

24 "A Yes.

25 "Q If you look on page six of the Stock Purchase

1 Agreement, and actually it's -- I'm referring to the page
2 numbers in the middle so it's one page back. Page six of
3 the Stock Purchase Agreement at the bottom there's a
4 subsection, I believe it's 4(i). It says 'Events
5 Subsequent to May 17, 2017.' Then it begins 'Except as set
6 forth in 4(i) of the Disclosure Schedule, since May 17,
7 2017, there has not been any Material Adverse Change,'
8 correct?

9 "A Yes.

10 "Q Now, if you look at the last page of Plaintiff's
11 Exhibit 8, is that the -- it's page fifty-one, at the top
12 it says 'Schedule 4(i). Events Subsequent to May 17,
13 2017'?

14 "A Yes.

15 "Q Read what number three says?

16 "A 'Target paid a fiscal year-end bonus and subsequently
17 has paid special bonuses to employees on three occasions.'

18 "Q So you knew that bonuses had been paid after May 17,
19 2017, correct?

20 "A Yes, I did.

21 "Q Item three, the first part of that sentence before it
22 talks about three occasions, the first says 'Target paid a
23 fiscal year-end bonus,' right?

24 "A I don't read that the same way. It says 'Target paid
25 a fiscal year-end bonus.' So the three bonuses are

1 consequences of the year-end bonus.

2 "Q It says 'Target paid a fiscal year-end bonus and
3 subsequently has paid special bonuses to employees on three
4 occasions,' right?

5 "A Yes, from the consequence of the fiscal year-end bonus
6 -- bonuses is the three bonuses.

7 "Q It says 'Target paid a fiscal year-end bonus.' A
8 fiscal year-end bonus would be as of June 30, 2017, right?

9 "A Right.

10 "Q And that bonus would be included in the tax return on
11 Plaintiff's Exhibit 7 for non-owner employees in line
12 thirteen, right?

13 "A No. Because you say employee. The owners are
14 employees as well. They were on the payroll. They were
15 making a distinction between employees that are owners and
16 non-owners. This doesn't say that.

17 "Q You knew when you signed the Stock Purchase Agreement
18 that CCI had paid a fiscal year-end bonus after May 17,
19 2017, correct?

20 "A To owners, I know that. To owners, I know that.
21 Here's -- here when they asked the question verbally, they
22 say 'I assume that you've already seen it,'" which is this,
23 but they did not define what it was. They just did it.
24 Mr. Sibley in his testimony said -- say it was three
25 occasions they give bonuses to owners. So I don't know.

1 "Q But you said you thought the three occasions were 2016
2 bonuses on Plaintiff's Exhibit 2?

3 "A I thought that.

4 "Q Even though this sechedule is called Events Subsequent
5 to May 17th, 2017?

6 "A That's right.

7 "Q I understand your position that a bonus was paid but
8 why do you say that it was a plan, contract or commitment?

9 "A A plan, contract or a commitment?

10 "Q Or was it -- was paying that bonus a plan, contract or
11 commitment to pay a bonus in the future?

12 "A I would not know that. There's no way for me to prove
13 any of that. That's the reason in all the clauses in there
14 we made sure it did not happen. So those bonuses were
15 given without me knowing about it. The employee told me
16 verbally, 'The bonus is a thing we have to do every year.'
17 Are they saying the truth, lying, I don't know. They say,
18 'Well, no bonus I'm leaving.'

19 "Q Let me show you what we're marking is Plaintiff's
20 Exhibit 9. This is an Indemnity Escrow Agreement that the
21 selling shareholders entered with Decide4Action as of
22 October 16, 2017?

23 "A Yes, sir.

24 "Q Now, if you look in Section 1(a), there is a reference
25 to establishment of an escrow. Was that four hundred and

1 forty thousand dollars that was deposited with UCB?

2 "A Yes.

3 "Q And if you look at page two in Subsection C, was that
4 four hundred and forty thousand dollars to be released from
5 the escrow to the selling shareholders on the first
6 anniversary of the closing date, or by October 17, 2018?

7 "A Well, any escrow is there to be released if there's no
8 dispute. Because we have a dispute it was not released.

9 "Q Specifically you say dispute, but if you look in
10 Subsection D, the escrow would not be released if you
11 asserted something referred to as a pending claim; is that
12 right?

13 "A I think it's correct.

14 "Q Is it correct that in order to stop the release of the
15 escrow of any claim -- stop the release of the escrow any
16 claim, or pending claim, would need to be a legitimate
17 claim?

18 "A I'm not sure what you said. Of course a claim -- is
19 there an illegitimate claim?

20 "Q Right. In other words, a pending claim needs to be a
21 legitimate claim as opposed to an illegitimate claim,
22 right?

23 "A I'm not a lawyer. I don't know. I can't answer that
24 question. I don't -- I don't know what you're talking
25 about.

1 "Q Would you agree with me that if you asserted a claim
2 against the escrow in bad faith, that that would be a
3 breach of this Indemnity Escrow Agreement?

4 "A In bad faith? Is it like -- I guess if it were -- if
5 it was in bad faith and if -- and if it had no grounds
6 whatsoever, the claim would be dismissed in court and then
7 the people that suffered the consequence of the bad faith
8 would be entitled to damage. Is that what you're asking?

9 "Q Yes, thank you.

10 "And if you look on page five, the escrow agent was
11 United Community Bank; is that right?

12 "A I believe so.

13 "Q And any notice of any pending claims would have to be
14 made to the attention of Sharon Whitney at United Community
15 Bank; is that right?

16 "A I guess so. I'm not the one to decide this.

17 "Q Let me show you what we've marked as Plaintiff's
18 Exhibit 10. What is this document?

19 "A This is a letter from my lawyer to Sharon Whitney.

20 "Q At United Community Bank?

21 "A Yes.

22 "Q Did you have your lawyer send this letter to
23 Ms. Whitney at United Community Bank?

24 "A Yes.

25 "Q Was the purpose of this letter to -- for Decide4Action

1 to assert a pending claim against the escrow?

2 "A Yes, that was the case then.

3 "Q It says at the end of the first paragraph that
4 Decide4Action requests that United Community Bank, the
5 escrow agent, hold all funds in escrow until written notice
6 from all parties showing the pending claim has been
7 resolved?

8 "A Right.

9 "Q So you wanted to keep the selling shareholders from
10 getting the escrow money on the one-year anniversary under
11 the Escrow Indemnity Agreement, right?

12 "A Yeah.

13 "Q Now, if you look on page two under the pending claims,
14 this asserts that on June 22nd, 2017 and June 26 of 2017,
15 the selling shareholders increased one non-owner equity
16 salary, and paid seven bonuses to non-owner employees; is
17 that right?

18 "A That's right.

19 "Q And Decide4Action claims this was in breach of the
20 Stock Purchase Agreement?

21 "A Yes.

22 "Q And specifically Decide4Action claims at the end of
23 that paragraph under section one that sellers failed to
24 disclose the bonuses to the buyer prior to the closing on
25 October 16, 2017?

1 "A Yes.

2 "Q Is that Decide4Action's position?

3 "A Yeah.

4 "Q Decide4Action's position was that the sellers breached
5 the SPA by failing to disclose the bonuses to Decide4Action
6 prior to the closing on October 16, 2017?

7 "A No, no.

8 "Q That's not right?

9 "A No, it's not right. The seller breached the SPA by
10 giving two hundred fifty thousand dollars in bonuses to
11 non-owners.

12 "Q And in what document did the selling shareholders
13 agree not to pay bonuses to the non-shareholder employees?

14 "A In the SPA.

15 "Q What's the date of the SPA?

16 "A October 16th or 17th.

17 "Q Of 2017?

18 "A Yes.

19 "Q At that point the bonuses had already been paid?

20 "A Yes.

21 "Q Okay.

22 "A And the seller knew that.

23 "Q Then this letter to the escrow agent references the
24 three subsections of Section 4(i)?

25 "A Yes. Fifteen, sixteen, seventeen.

1 "Q Then on page three it says 'Sellers directly breached
2 the above warranties when they awarded non-owner employees
3 with bonuses and increased one non-owner employee's salary
4 after failing to disclose these material adverse changes,'
5 right?

6 "A Yeah.

7 "Q Now it says that the calculation of damages is
8 included as Exhibit A. If you look at the last page of
9 Plaintiff's Exhibit 10, were those the damage calculations
10 that Decide4Action gave to United Community Bank?

11 "A Yes.

12 "Q I'm trying to understand your calculation. If you
13 look back at the top where there is a calculation of
14 EBITDA, which is earnings before interest, taxes,
15 depreciation and amortization; is that right?

16 "A Yes.

17 "Q It says EBITDA, CCI, was one million one hundred and
18 seventy-three thousand, and there's a reference to page
19 four. Page four of what?

20 "A Page four of the sellers issuing offering memorandum.

21 "Q So that was a document that you looked at before you
22 issued the Letter of Intent and before the Stock Purchase
23 Agreement was signed; is that right?

24 "A Yes.

25 "Q But regardless, if you divide the purchase price of

1 four point four million by the EBITDA number, you believe
2 one point one seven three million, that gives you an EBITDA
3 multiple of three point seven five; is that right?

4 "A It does, right.

5 "Q And then you subtracted the twenty-five hundred dollar
6 salary and these bonuses along with payroll taxes from the
7 EBITDA to come up with the one point one seven three to
8 come up with a new EBITDA number; is that right?

9 "A With a potential number, yeah.

10 "Q That was what you called actual EBITDA of eight
11 hundred and twenty-two thousand; is that right?

12 "A Yeah.

13 "Q Then you multiplied that earnings number times the
14 three point seven five multiple and came up with a claim
15 for the reduction of the company value of one point three
16 million dollars; is that right?

17 "A An estimate of what a claim would be, but that's not
18 the claim. That's not -- that's not a claim. This letter
19 was a request to add the escrow and the claim is in the
20 lawsuit.

21 "Q That was the pending claim that was described to UCB
22 in order to have them hold the escrow, right?

23 "A They would not hold it unless we would give them an
24 idea that this was not a twenty thousand -- twenty thousand
25 dollars claim, for instance.

1 "Q Let me show you what we've marked as Plaintiff's
2 Exhibit 11. Have you seen this copy of my letter to UCB
3 dated October 30, 2018?

4 "A Yes, I did.

5 "Q Did you read the affidavits from the three employees
6 that you claim had left because they did not receive a
7 bonus?

8 "A Of course I did.

9 "Q And did you read these affidavits that they left the
10 employment of CCI not because they" --

11 MR. PURIEFOY: Objection. Objection, Your Honor.
12 This is cause for hearsay. He's reading the depositions or
13 the affidavits of individuals that were out of court
14 statements that are being offered to prove the truth of the
15 matter asserted. That certainly rises to the level of
16 hearsay.

17 THE COURT: Didn't we discuss all this in the
18 designation of deposition? I mean, this isn't anything
19 different then when he designated, is it?

20 MR. PURIEFOY: If it's not different, Your Honor, then
21 I'll allow it.

22 MR. ENGLISH: It's the same, yes.

23 THE COURT: Okay.

24 MR. ENGLISH: Back on line 6.

25 "Q Did you read the affidavits of the three employees

1 that you claim had left because they did not receive a
2 bonus?

3 "A Of course I did.

4 "Q And did you read these affidavits that they left the
5 employment of CCI not because they didn't receive a bonus,
6 but because they didn't enjoy working with you?

7 "A That's not what they say when they left.

8 "Q So does that mean you didn't believe the affidavits
9 they signed?

10 "A So was it taken out of context? Was part of not
11 liking to work with me? Absolutely, I believe that. I
12 believe they did not like to work with me, and there's a
13 lot of reasons why they would not like to work with me.
14 Those guys were not hired for the -- they advertise
15 themselves as software designers. All three of them, they
16 really were not software designers. They go from site to
17 site installing equipment. We ask them to write code.
18 Their ability was -- their ability was really, really low.
19 So they couldn't do the job they were supposed to do.

20 Of course, when someone asked you to do a job that you
21 can't do because the sales were really low, then of course
22 they didn't like working with me because I asked them to do
23 a job they couldn't do. Of course they didn't like it.

24 Did they leave because of that, I don't know. Is what
25 they -- is what they told me? No. So which -- which one

1 is it? I'm not the one to make the decision -- the
2 decision here.

3 "Q Let me show you what we're marking as Plaintiff's
4 Exhibit 12. Is it true that despite my letter and the
5 employee affidavits that Decide4Action refused to allow UCB
6 to release the escrow to the shareholders?

7 "A Yeah. We chose not to do it until the whole issue was
8 resolved.

9 "Q So is Decide4Action claiming different damages in this
10 case than it notified the escrow agent of?

11 "A Yes."

12 MR. ENGLISH: Page 95, line 19.

13 "Q In 2017 did you receive a W-2 salary from
14 Decide4Action?

15 "A Yes. Like I said, about a hundred thousand dollars.

16 "Q Then did you receive any other payments or
17 distributions?

18 "A I did.

19 "Q How much?

20 "A I don't remember. I'll have to check.

21 "Q What would be shown on your K-1?

22 "A Yeah, that's -- that's a Schedule K-1 that I would
23 have to pull out for the -- for that year.

24 "Q What about 2018?

25 "A The seller is the same. I would have to pull out the

1 Schedule K.

2 "Q What about 2019?

3 "A Yeah, it's also a hundred thousand dollars and I would
4 have to pull out the Schedule K.

5 "Q I don't -- I know you don't have the W-2, K-1 for
6 2020. What would be the salary?

7 "A Hundred thousand dollars a year.

8 "Q So does CCI pay for anything other than management
9 fees since you've been in control?

10 "A Yeah, there's a financing agreement.

11 "Q What does CCI pay for under that?

12 "A Basically it's a loan to pay. I don't know where it
13 appears in there, but it's about four hundred fifty
14 thousand dollars. I don't know where it is. I don't know.
15 I would have to check with my accountant which line they
16 put that in.

17 "Q So the payments from CCI to Decide4Action come in the
18 form of management fees, loan payments and then dividends;
19 is that right?

20 "A It comes in the form of -- there was a financing
21 agreement in-between the company to repay the loan. There
22 is -- the rest is all dividends.

23 "Q Or management fees because management fees are
24 deductible, right?

25 "A Yeah. Income from one -- from one company but income

1 to the other company.

2 "Q Now, have you hired any new employees since you took
3 over the company in October 2017?

4 "A Yes.

5 "Q Who's that?

6 "A I have my son.

7 "Q How much do you pay him?

8 "A Now or then?

9 "Q Then and now?

10 "A I think he was hired at sixty-five to seventy. I
11 think he's making eighty-five now.

12 "Q My question was how many new employees have you hired
13 in addition to your son?

14 "A That are still working in the company or total?

15 "Q Total.

16 "A Maybe a total of fifteen to twenty.

17 "Q Did you hire anybody specific to replace Mr. Herrmann?

18 "A You hire to do a job you have -- you hire to do a job
19 you have to do code. You don't hire to replace a person.

20 "Q Was Mr. Herrmann able to do the coding like you
21 wanted?

22 "A Mr. Herrmann was a very, very junior programmer. I
23 don't think he was capable of writing any code whatsoever.
24 I don't think he wrote code when he was at CC+I. I was
25 told that he did not work any code.

1 "Q What about Mr. Joseph Taylor?

2 "A Joseph Taylor is a programmer. He was able to write
3 code but it was not very good.

4 "Q Did you hire anybody specific to replace Mr. Taylor?

5 "A We don't replace -- coding is not.

6 "Q And then we know Mr. Pavette is no longer there. Was
7 he a programmer?

8 "A Yes, sir, he was.

9 "Q Was he able to program what you wanted him to?

10 "A The short answer is no.

11 "Q Did you hire anybody specific to replace Mr. Pavatte?

12 "A Same answer.

13 "Q What efforts have you made to improve the value of
14 CCI?

15 "A I replaced all those people with people that could
16 actually code."

17 MR. ENGLISH: I'm on page 119.

18 "Q Let me make sure I understand your position in this
19 case on behalf of Decide4Action. Decide4Action's position
20 is that if the selling shareholders had paid out all the
21 cash to themselves instead of paying some of that cash as
22 bonuses to the other employees, Decide4Action would have no
23 claim?

24 "A Absolutely.

25 "Q That's correct?

1 "A Yes.

2 "Q As of June 2017 you had no obligation to purchase CCI,
3 did you?

4 "A No.

5 "Q Mr. English showed you Plaintiff's Exhibit 7 which is
6 the 2016 tax return for CC+I?

7 "A Yes.

8 "Q When did you say you received this document? I think
9 you testified earlier that it may have been one or two days
10 before?"

11 MR. ENGLISH: Page 130, line 1.

12 "A It might be a week, but it was not a long time before.

13 "Q Mr. English asked you about Plaintiff's Exhibit 6
14 which is a Profit & Loss statement dated June of 2017. On
15 the Profit & Loss statement under expenses, it shows
16 salaries, wages and bonuses of two point four million
17 dollars. I believe Mr. English represented that it was
18 executed by Mr. Tim Clark and Mr. Sibley. Do you recall
19 being asked about Plaintiff's Exhibit 6?

20 "A Yes, I do recall.

21 "Q Did it appear to be out of the ordinary in any way?

22 "A Of course, it's a large sum being paid. We know -- we
23 know there was a lot of cash left, and it was the last
24 month to take it out. So they took it out in bonuses that
25 last month. So that amount makes a lot of sense to take it

1 out just before -- what was there -- what was there
2 supposed to do, take all the cash out?

3 "Q Mr. Puriefoy asked you about the employees who left
4 after the Stock Purchase Agreement, and you named
5 Mr. Pavatte, Mr. Herrmann and Mr. Taylor. As I understood
6 your earlier testimony it was a good thing they left
7 because they weren't able to do the job?

8 "A It's not a good thing they left, but because when I
9 bought the company I was hoping -- my son was really young.
10 I was hoping to have a team of programmers that would help
11 him learn the trade. But of course when they realized that
12 they were not capable of writing that, I guess -- that --
13 after that I guess it was a good thing. After that I guess
14 was it a good thing? It would have been better if they
15 would have agreed to stay at the salary that they were
16 supposed to be paid and they would have start learning the
17 programming. I would have been very willing to entertain
18 that.

19 "Q So if the selling shareholders of CC+I had paid that
20 three hundred and sixty thousand to themselves instead of
21 -- instead of taking on other employees, then Decide4Action
22 wouldn't have a claim?

23 "A That's correct."

24 MR. ENGLISH: Your Honor, that's all from the
25 deposition of Decide4Action.

1 At this point I would like to publish to the jury
2 Plaintiff's Exhibit 19, the defendant's request for
3 admission, through Mr. Robertson.

4 Let me hand up Plaintiff's Exhibit 19 to you. If
5 you'll go to page 2.

6 PUBLICATION OF PLAINTIFF'S EXHIBIT NUMBER 19

7 MR. ENGLISH: "Admit that plaintiff's exhibit to the
8 deposition of Decide4Action taken on September 29, 2020,
9 Plaintiff's Exhibit Number 1 attached hereto, is an
10 authentic and genuine copy of the letter of intent dated
11 March 10, 2017, signed by Decide4Action and the selling
12 shareholders of Computer Control + Integration, or CC+I."

13 MR. ROBERTSON: "Admit."

14 MR. ENGLISH: "Admit that Plaintiff's Exhibit Number 2
15 attached hereto is an authentic and genuine copy of a
16 summary of CC+I employee salaries and bonuses as of
17 April 28, 2017, given to Decide4Action by one or more of
18 the selling shareholders before Decide4Action purchased the
19 stock of CC+I."

20 MR. ROBERTSON: "Admit."

21 MR. ENGLISH: "Admit that Plaintiff's Exhibit Number 5
22 attached hereto is an authentic and genuine copy of CC+I
23 profit and loss statement for July 2017 given to
24 Decide4Action by one or more of the selling shareholders
25 before Decide4Action purchased the stock of CC+I."

1 MR. ROBERTSON: "Admit."

2 MR. ENGLISH: "Admit Plaintiff's Exhibit Number 6
3 attached hereto is an authentic and genuine copy of CC+I
4 profit and loss statement for July 2017 given to
5 Decide4Action by one or more of the selling shareholders
6 before Decide4Action purchased the stock of CC+I."

7 MR. ROBERTSON: "Admit."

8 MR. ENGLISH: "Admit Plaintiff's Exhibit Number 7
9 attached hereto is an authentic and genuine copy of page 1
10 of the CC+I tax return for the tax year ending June 30,
11 2017, given to Decide4Action by one or more of the selling
12 shareholders before Decide4Action purchased the stock of
13 CC+I."

14 MR. ROBERTSON: "Admit."

15 THE COURT: Is he ready to step down?

16 MR. ENGLISH: Yes, Your Honor.

17 THE COURT: You can step down.

18 MR. ENGLISH: Your Honor, my next witness is supposed
19 to be out in the hall.

20 THE COURT: Okay.

21 MR. ENGLISH: Your Honor, at this time, plaintiff
22 calls Ms. Sharon Whitney.

23 THE COURT: All right. Ms. Whitney, if you would come
24 forward and be sworn.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand.

2 WHEREUPON,

3 SHARON WHITNEY,

4 After having been duly sworn, testified as follows:

5 THE CLERK: State your name, please.

6 THE WITNESS: Sharon Whitney.

7 THE CLERK: Thank you. You may be seated.

8 DIRECT EXAMINATION

9 BY MR. ENGLISH:

10 Q Ms. Whitney, could you state your full name for the
11 jury?

12 A Sharon Whitney.

13 Q And you may take your mask off when you testify.

14 A Okay. Wonderful.

15 Q Let me hand up some exhibits. I'm going to ask you
16 about a couple of them. But first, tell the jury where you
17 work.

18 A United Community Bank.

19 Q And where do you live?

20 A In Simpsonville, South Carolina.

21 Q For how long?

22 A 19 years.

23 Q And how long have you worked at United Community Bank?

24 A Eight years.

25 Q Let's talk about an escrow fund from the sale of

1 Computer Control + Integration stock to Decide4Action. Do
2 you understand that the shareholders of CC+I, as we're
3 calling it, sold their stock to Decide4Action?

4 A Yes.

5 Q And 10 percent of that purchase price of 4.4 million
6 or 440,000, was that placed into an escrow with UCB?

7 A Yes.

8 Q Look at what we've marked as Plaintiff's Exhibit
9 Number 9 in that stack of exhibits, please. And they're in
10 order, so you'll have to get down to Number 9.

11 A Okay.

12 Q Now, is that an indemnity escrow agreement that you
13 signed for United Community Bank?

14 A Yes, it is.

15 Q And was this the agreement pursuant to which the
16 \$440,000 escrow was placed with UCB?

17 A Yes.

18 Q Now let me refer you to the next exhibit, what we
19 marked as Plaintiff's Exhibit Number 10. Is this a claim
20 against the escrow that you received from the Law Offices
21 of Truluck and Thomason on behalf of Decide4Action on or
22 about September 19 of 2018?

23 A Yes.

24 Q And if you'll look at the last page of Exhibit 10, the
25 very bottom line, what's the total amount of the claim made

1 by Decide4Action?

2 A \$1,314,034.

3 Q And what was UCB's response to this notice?

4 A Just to let them know the -- about the approximate
5 figure that we were holding.

6 Q And what was UCB's reaction to receiving a claim of
7 this magnitude with regard to the escrow?

8 A I don't really have a comment on that.

9 Q Based on the making of the claim, would UCB release
10 the escrow at that point?

11 A With proper -- with the proper approvals.

12 Q And what approvals would UCB need to release the
13 escrow?

14 A Well, I believe that would be something that would be
15 from the Court in showing that there's been a decision
16 made.

17 Q And other than a court decision, the parties would
18 have to agree?

19 A Yes.

20 Q Look on what we've marked as Plaintiff's Exhibit 11.
21 Is this my response to Decide4Action's claim against the
22 escrow that I sent to you on October 30, 2018?

23 A Yes.

24 Q Did you receive this?

25 A Yes.

1 Q And on the last sentence, do you see that I requested
2 Decide4Action's attorney Kimberly Thomason to confirm to
3 you that the escrow should be released immediately to the
4 selling shareholders?

5 A Yes.

6 Q Did she do that?

7 A I do not recall that.

8 Q Does UCB still -- well, let me show you what we've
9 marked as Plaintiff's Exhibit 12. Is that a letter from
10 Ms. Thomason refusing to release any of the escrow?

11 A Yes.

12 Q And did she copy you on this letter?

13 A Yes.

14 Q So does UCB currently still have the money in escrow?

15 A Yes, we do.

16 Q Do you have documents showing how much that is?

17 A Yes.

18 Q Let me -- may I mark those documents as an exhibit for
19 the jury?

20 MS. THOMASON: Your Honor, we haven't seen this yet.

21 THE COURT: Let her look at it.

22 MR. ENGLISH: I will, Your Honor.

23 BY MR. ENGLISH:

24 Q All of these?

25 A Yes. There's the most current statement and then the

1 most current balance.

2 MR. ENGLISH: Your Honor, I'm going to try to use
3 this.

4 THE COURT: I think I have to do something up here.

5 (WHEREUPON, Plaintiff's Exhibit Number 21 was marked for
6 identification.)

7 MR. ENGLISH: Your Honor, we would move Plaintiff's
8 Exhibit 21 to be admitted in evidence.

9 THE COURT: Any objection?

10 MS. THOMASON: No, Your Honor. I was just
11 double-checking to make sure it doesn't have a social or
12 anything on it. No objection.

13 THE COURT: All right.

14 (WHEREUPON, Plaintiff's Exhibit Number 21 was admitted into
15 evidence.)

16 BY MR. ENGLISH:

17 Q Can you see this, Ms. Whitney?

18 THE COURT: I think you have a screen right here next
19 -- right here. It might be a little bit easier.

20 THE WITNESS: Yes.

21 BY MR. ENGLISH:

22 Q So what is the total amount in the escrow account
23 today?

24 A \$443,831.73.

25 Q Okay. Well, that looks like what it was June 15.

1 What is it as of July 16, 2021? Right here.

2 A \$443,869.43.

3 Q And so what does UCB need in order to release this
4 escrow?

5 A We would need agreeance of the parties ---

6 Q Or an order ---

7 A -- or the Court approval.

8 MR. ENGLISH: Thank you, Ms. Whitney. Please answer
9 any questions Decide4Action's attorneys have for you.

10 CROSS EXAMINATION

11 BY MS. THOMASON:

12 Q I just have a couple of questions, Ms. Whitney.

13 Now, you weren't a part of the negotiation between the
14 parties; is that correct?

15 A No. Correct.

16 Q And is it your understanding that the escrow account
17 was set up in case there were disagreements between the
18 parties?

19 A Yes. I would have assumed that.

20 Q Okay. And as a matter of fact, no moneys have been
21 released to anybody ---

22 A No.

23 Q --- pending resolution of the dispute that we're here
24 about; is that right?

25 A Correct.

1 MS. THOMASON: Thank you.

2 THE COURT: Any redirect?

3 MR. ENGLISH: No, Your Honor.

4 THE COURT: All right. You may step down.

5 All right. Ladies and gentlemen, we're going to take
6 a break now. How about that?

7 Don't discuss the case and we'll bring you back out in
8 just a few minutes.

9 (WHEREUPON, the jury exits the courtroom at 10:24 a.m.)

10 THE COURT: We'll take a ten-minute break.

11 (WHEREUPON, a recess is taken at 10:24 a.m.)

12 THE COURT: We had another witness inquiry from the
13 jury. Number 44, Kieonna Peake, indicated she knew the
14 last witness, Ms. Whitney. I talked to her out in the
15 hall with the clerk and the bailiff and asked her if she
16 could still be fair and impartial. I didn't kind of go to
17 the extent we did before because she basically was a
18 records custodian. I mean, any further inquiry from the
19 plaintiff?

20 MR. ENGLISH: No, Your Honor.

21 THE COURT: Or the defendant?

22 MS. THOMASON: (Shakes head negatively.)

23 THE COURT: And she said she can be fair and
24 impartial.

25 They're just looking for a way to get out of this

1 case.

2 MS. THOMASON: We really are boring them to death.

3 THE COURT: But anyway, okay. Just wanted to bring
4 that to your attention. So that's kind of what I thought.

5 MR. PURIEFOY: Your Honor, just logistically, we're
6 probably going to be done. I think Mr. English has one
7 more witness and then we're going to read in our case in
8 chief some deposition designations before we call
9 Mr. Bergeron. We are going to have somebody sit and read.
10 Is that going to be before or after lunch, were you
11 thinking?

12 THE COURT: How long is your next witness?

13 MR. ENGLISH: Very brief. Maybe ten minutes.

14 THE COURT: All right. So probably before lunch. I
15 hate to do the kindergarten lunch.

16 MR. ENGLISH: No doubt. We do have, I think, three
17 motions before they begin their case. So I don't know how
18 long motions will take after we rest.

19 THE COURT: Can you have him over here just in case?

20 MR. PURIEFOY: Yes.

21 THE COURT: I can't promise we'll get to him before
22 lunch.

23 MR. PURIEFOY: He's in our office. That's okay.

24 THE COURT: All right. It's not some expert just
25 getting out of surgery or something.

1 Are you all ready for the jury?

2 MR. ENGLISH: Yes, Your Honor.

3 (WHEREUPON, the jury entered the courtroom at 10:37 a.m.)

4 THE COURT: You know, that jury box was pretty small
5 even before they added these little dividers there, so I do
6 apologize. On the break I was upstairs in the other
7 courtroom, and it's got a much bigger jury room, so we
8 probably should have put them up there. I know that's kind
9 of tight. It looked all cramped in there. But I apologize
10 for that. It's one of those things about COVID, so -- but
11 I appreciate your patience with us.

12 All right. Mr. English, I believe you can call your
13 next witness.

14 MR. ENGLISH: Your Honor, at this time the plaintiff
15 calls Ms. Joyce Featherstone.

16 THE COURT: All right. Ms. Featherstone, if you will
17 come forward to be sworn.

18 THE CLERK: Place your left hand on the Bible and
19 raise your right hand.

20 WHEREUPON,

21 JOYCE FEATHERSTONE,

22 After having been duly sworn, testified as follows:

23 THE CLERK: State your name please. State your name.

24 THE WITNESS: Joyce Featherstone.

25 THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q Ms. Featherstone, can you hear me?

A Yes.

Q Okay. If you'll make sure to speak into the microphone. I know you speak softly.

A Okay.

Q All right. Tell the jury your full name.

A Joyce L. Featherstone.

Q And where do you live?

A In Mauldin.

Q How long have you lived there?

A 36 years.

Q Are you married or widowed?

A Widowed.

Q Who was your husband?

A Ernest H. Featherstone.

Q How long were y'all married?

A 59 years.

Q Where did you grow up?

A In Belmont, North Carolina.

Q Did you go to high school there?

A Yes.

Q Do you have any college?

A No.

1 Q And did your husband, Ernest Featherstone, start CC+I
2 with Bill Sibley?

3 A Yes.

4 Q When was that?

5 A In 2088 -- no. 1988.

6 Q 1988. Okay.

7 Now, did your husband, Ernie Featherstone, own stock
8 in CC+I?

9 A Yes.

10 Q When he passed away, what happened to the stock?

11 A It was sent to me.

12 Q And how much or what percentage of CC+I do you now
13 own?

14 A 17.66.

15 Q And did you sell your stock in CC+I?

16 A Yes.

17 Q To whom?

18 A To Decide4Action.

19 Q All right. Ms. Featherstone, I've placed up beside
20 you what we've marked as Plaintiff's Exhibit Number 8.

21 A I'm sorry?

22 Q Plaintiff's Exhibit 8 is there beside you. Just grab
23 both of those. Yes. And the large document.

24 A Okay. All right.

25 Q Is this the stock purchase agreement that you signed?

1 A Yes.

2 Q And what's the date of this? Look at the top two
3 lines.

4 A What page am I supposed to be on?

5 Q The first page, the very top, what's the date?

6 A October 13, 2017.

7 Q Right. Now, you've heard testimony about employee
8 bonuses that were paid in June of 2017.

9 A I have heard testimony.

10 Q And so do you believe -- did you have any involvement
11 in the decision of whether those bonuses were to be paid?

12 A No, I did not.

13 Q Do you think CC+I was within its rights to pay those
14 bonuses?

15 A Yes.

16 Q Do you think that payment of those bonuses in any way
17 -- in June of 2017 in any way violated this stock purchase
18 agreement you signed in October of 2017?

19 A Repeat that.

20 Q Do you think that the payment of those bonuses in June
21 of 2017 in any way violated the agreement you signed in
22 October of 2017?

23 A No. I don't think so.

24 Q Now look at the last page of Plaintiff's Exhibit 8.

25 A Okay.

1 Q Do you see Item Number 3 that says "Target paid a
2 fiscal year-end bonus"?

3 A Yes.

4 Q Was the target CC+I that paid the fiscal year-end
5 bonus?

6 A Yes.

7 Q So did this document that you signed show to
8 Decide4Action that a fiscal year-end bonus had been paid?

9 A I think so.

10 Q All right. Now look at what we've marked as
11 Plaintiff's Exhibit 17. Sorry I didn't pull that.

12 Now, Ms. Featherstone, is this a contribution and
13 indemnification agreement that you signed?

14 A Yes.

15 Q And look on page 3.

16 A Yes.

17 Q And look in Item C.

18 A Uh-huh. Okay.

19 Q Who did you appoint as your representative in any
20 dispute concerning the escrow in this matter?

21 A I represented my husband.

22 Q Okay. But in this dispute, look at Item C. What does
23 it say?

24 A "William A.L. Sibley, Jr. is hereby designated by the
25 parties hereto as the selling party's representative."

1 Q So did you sign this document appointing Mr. Sibley as
2 your representative concerning the escrow?

3 A Yes.

4 Q Now, after Mr. Sibley passed away, did you enter what
5 we marked as Plaintiff's Exhibit Number 20, which is --
6 should be up in front of you?

7 A I'm sorry. I didn't catch that.

8 Q Plaintiff's Exhibit Number 20, do you see that up
9 there? It's a different document. Do you see it?

10 A Yes. Appointment of the selling party's
11 representative.

12 Q Did you sign that?

13 A Yes.

14 Q Okay. And by this document, were you appointing Julia
15 Sibley-Jones as your representative?

16 A Yes.

17 Q Do you feel like you've done anything wrong to
18 Decide4Action?

19 A No. I don't feel I've done anything wrong.

20 Q So what are you asking Julia Sibley-Jones to do?

21 A To give us our dues, and Julie will distribute.

22 Q What are you asking this jury to do?

23 A To give us our escrow monies.

24 MR. ENGLISH: Ms. Featherstone, that's all I have for
25 you. Please answer any questions the defendant's attorneys

1 have for you.

2 THE COURT: Cross-examination.

3 CROSS EXAMINATION

4 BY MS. THOMASON:

5 Q I just have a few questions. Were you a part of
6 negotiations surrounding the stock purchase agreement?

7 A No.

8 Q Were you a part of the due diligence process?

9 A No.

10 Q In fact, you had no interaction with Mr. Bergeron at
11 the time of the execution of the LOI?

12 A I had no what?

13 Q You had no part, no interaction with Mr. Bergeron
14 during the course of due diligence or the ---

15 A No.

16 Q --- execution of the stock purchase agreement?

17 A No.

18 Q I think you said your husband started the company with
19 Mr. Sibley.

20 A Yes.

21 Q And they worked side-by-side for all those years?

22 A Yes.

23 Q Building the company?

24 A Until my husband retired.

25 Q And he retired in what year?

1 A Ma'am?

2 Q What year did your husband retire?

3 A He retired in 2013.

4 Q Okay. Now, I think you said that you owned
5 17.6 percent of the company.

6 A Uh-huh.

7 Q I apologize. I keep stepping away.

8 And so for the proceeds from the \$4.4 million sale
9 price, you would receive about a little over \$700,000; is
10 that correct?

11 A Yes.

12 Q And so are you aware of how much is being held in
13 escrow, how much of your funds are currently being held?
14 Is it about \$71,000 in the escrow funds?

15 A 77.

16 Q Okay. All right. Now, is there a reason --
17 Mr. English actually referred you to Exhibit 8 which was
18 the stock purchase agreement. Now, you expressly were
19 excluded from making the reps and warranties in the stock
20 purchase agreement; isn't that right?

21 A I had no part of the business. I inherited the stock.

22 Q And so when they were making the representations and
23 warranties in the stock purchase agreement, they expressly
24 excluded you as one of the shareholders warranting and ---

25 A No. They did not exclude me.

1 Q No. I'm not saying from receiving under the stock
2 purchase. I'm saying you weren't making the reps and
3 warranties, representations as to what the company had done
4 since May 17th or any of the other representations.

5 A I'm not sure I understand what you're asking.

6 Q I was just asking you -- let me see if I can do that
7 again so it's clear. I'm just asking in the stock purchase
8 agreement that was signed, it has a provision that says
9 these are the warranties and representations of the
10 shareholders with the exception of Ms. Featherstone, who is
11 not expressly warranting and repping.

12 A I only signed a few documents.

13 Q Okay. But it would make sense that they left you out
14 of the reps and warranties because you did not have
15 knowledge to make representations and warranties; is that
16 right?

17 A I had nothing to do with the business part of it.

18 Q Okay. Now -- and just a couple more questions. So
19 you received your 17.6 percent from the 4.4 million with
20 the exception of the disputed amount; is that right?

21 A Right.

22 Q Now, I think you testified that you had no knowledge
23 about the bonuses, that you weren't consulted prior to
24 paying them out?

25 A At the time I didn't know.

1 Q Okay. Now, I think you were in the courtroom when the
2 tax returns were put up for the jury, and it's been
3 represented that \$2.5 million in bonuses were paid to the
4 shareholders. Did you receive any part of that?

5 A No.

6 Q And so if those funds had come out as distributions or
7 dividends to the shareholders, you would have gotten
8 17.6 percent of that cash; isn't that correct?

9 A If it had been given to us, yes.

10 Q And you weren't consulted prior to them deciding to
11 give the cash to others.

12 A I had nothing to do with the business part of the
13 company.

14 Q Okay. Are you aware that a 5 percent owner received
15 an additional \$861,000 from the bonuses?

16 A Repeat that.

17 Q An owner who owned 5 percent, are you aware that he
18 received \$861,000 from the bonuses?

19 A No, I do not.

20 Q Because you didn't receive any from the cash in the
21 business; is that right?

22 A I didn't receive any bonuses.

23 Q Okay. Now, we referenced, I think it's been marked as
24 Plaintiff's Exhibit 17, the contribution and
25 indemnification agreement. Is Mr. Sibley and the seller,

1 are they indemnifying you for any loss that results from
2 this?

3 A I have no idea.

4 Q So they've not discussed, nobody's talked to you about
5 the fact that they're covering any losses you have?

6 A I have had no losses.

7 Q Okay. If the 71,000, if this jury were to decide that
8 there were representations that were breached and they
9 awarded damages, are you aware that those damages, any
10 damages attributed to you would be covered by sellers?

11 A No.

12 Q Okay. So the contribution agreement that's been
13 presented to the jury allowing that, you've not reviewed
14 that?

15 MS. THOMASON: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MS. THOMASON:

18 Q That's Exhibit 17. And so in that agreement is what
19 I'm referencing. Have you seen that before?

20 A Yes. I've seen it before. Yes. I've seen it before.

21 Q But you're not aware that it basically says that the
22 other shareholders have to cover any losses you have
23 because you weren't a part of the decision-making?

24 A I was not a part of this decision-making.

25 Q Okay. When did you learn that bonuses were paid out

1 to owners and nonowners?

2 A When I received all this info concerning court.

3 Q Okay. That's the first you learned that ---

4 A Yes. I have nothing to do with the business.

5 Q I understand that. I'm not trying to accuse you of
6 it. I just wanted to make sure that I had the timeline
7 down, because you weren't aware of any bonuses to
8 shareholders.

9 A No. I had nothing to do with the business ---

10 Q Okay.

11 A --- except for being a spouse.

12 Q Do you know how much you would have received of that
13 bonus if it had come out in dividends to the owners?

14 A I have no answer for that.

15 Q Well, you would have gotten 17.6 percent of
16 2.5 million.

17 A What about it?

18 Q I just was asking if you're aware if it had come out
19 in dividends, that's how much ---

20 A I'm aware.

21 Q But the other shareholders didn't share that with you,
22 correct?

23 A I don't understand what you're asking.

24 Q I'm just asking no other shareholder let you know
25 that.

1 MR. ENGLISH: Objection. Irrelevant.

2 THE COURT: All right. I'm going to let her answer
3 it, if she knows.

4 BY MS. THOMASON:

5 Q No other shareholder told you that you could have
6 received a portion of that cash?

7 A No other shareholder asked me what?

8 Q No other shareholder informed you that you would have
9 been entitled to 17.6 percent of that cash?

10 A No. I knew how much stock my husband had in the
11 company.

12 Q But you didn't know how much cash they were paying out
13 to all the shareholders prior to the closing.

14 A To the shareholders. They were paying out to the
15 people who ran the business.

16 MS. THOMASON: Okay. All right. Thank you. Nothing
17 further.

18 THE COURT: Redirect?

19 MR. ENGLISH: No redirect.

20 THE COURT: All right. You may step down.

21 MR. ENGLISH: Your Honor, the plaintiff rests.

22 THE COURT: All right. Ladies and gentlemen, the
23 plaintiff has rested which means he has put forth his
24 evidence in his case in chief. There's some things that I
25 have to go over with the attorneys right now before the

1 defendant starts their case. So if you go back in your
2 jury room, this may take 20, 30 minutes, so just relax.
3 And do not discuss the case, and we'll bring you back out
4 just as soon as we're ready.

5 (WHEREUPON, the jury exits the courtroom at 10:55 a.m.)

6 THE COURT: All right. First we'll start off with
7 defendant's motions.

8 MS. THOMASON: Your Honor, at this time defendant
9 moves for a directed verdict on plaintiff's claims: on
10 Count 1 for breach of contract, and Count 2 for breach of
11 contract accompanied by a fraudulent act. There has been
12 testimony that they paid out nonemployee -- or nonowner
13 bonuses. As an admission, that was a breach of the
14 contract, and so there's no evidence otherwise. They did,
15 by their own admission, breach the contract in paying
16 nonowner employee bonuses prior to the closing after
17 May 17th.

18 The other -- and then with regard to the second claim,
19 breach of contract with -- accompanied by a fraudulent act,
20 they've alleged that the claim -- filing the claim, which
21 was allowed under the escrow agreement, expressly is the
22 fraud. That's basically the claim. There's no separate
23 action. They're saying that filing the claim in and of
24 itself -- they -- their breach of contract claim, though,
25 was tied to the escrow agreement only. And so under the

1 breach of contract claim, we had a valid pending claim.
2 They claimed that by filing it was the breach. It was the
3 remedy under the stock purchase agreement. If there was a
4 breach, there was only one way that it could be resolved,
5 and that was by noticing the claim and then going forward
6 on the action.

7 THE COURT: I believe there's sufficient evidence to
8 go forward on the breach of contract.

9 Mr. English, I want to hear on your second cause of
10 action there.

11 MR. ENGLISH: Yes, Your Honor. On the second cause of
12 action, the claim that there was no separate act is wrong,
13 or the jury, certainly, under the evidence -- and, of
14 course, you know, you've got to assume the jury could take
15 any inference it wanted from the evidence and review this
16 broadly in favor of the nonmovant. And here the jury could
17 find that the breach of contract was the making of the
18 claim against the selling shareholders and that the -- but
19 the sending it to the escrow agent as Plaintiff's
20 Exhibit 10 was a separate and fraudulent act. So involving
21 the escrow agent would be one thing the jury could find.

22 A second thing the jury could find is a fraudulent act
23 is even if the filing of the claim with the escrow agent
24 the jury finds was the breach of contract, then after --
25 and that's Plaintiff's Exhibit 10. After we sent

1 Plaintiff's Exhibit 11 outlining that the claims were
2 unfounded, the employee affidavits contradicted what was
3 stated in the claim, and then the defendant sent
4 Plaintiff's Exhibit Number 12 and maintained that claim in
5 the face of that evidence, the jury could find that is a
6 separate and fraudulent act.

7 So I think there are multiple ways a jury could
8 conclude that there was not only a breach of contract, but
9 that it was accompanied by a fraudulent act, especially in
10 light of the fact that the stock purchase agreement in this
11 Section 8(b) expressly prohibited the type of claim that
12 was made. So I think the evidence is sufficient to uphold
13 a verdict on that.

14 MS. THOMASON: Your Honor, again, he's just
15 articulated what he is alleging is the breach, making the
16 claim. And then it allows specific provisions for how to
17 make the claim. You had to send written notice. That
18 can't be a separate act. And where's the fraud in
19 maintaining what we believe is a legitimate claim and, in
20 fact, have counterclaims?

21 THE COURT: I'm going to think about that one. I'm
22 not going to rule. But I have ruled that the breach of
23 contract, I deny your motion on that. But I'm going to
24 consider the second cause of action.

25 All right. Any additional motions?

1 MR. PURIEFOY: Nothing from the defendant, Your Honor.

2 THE COURT: All right. I believe you had some
3 motions.

4 MR. ENGLISH: Yes, Your Honor. I've got some motions
5 in limine that pertain to the defendant's case. First is a
6 motion in limine to exclude any evidence regarding any
7 damages claimed by the defendant. And basically, there are
8 three reasons for this, and we've laid this out in this
9 memorandum with the attachments.

10 First, the first reason set forth on page 2 is that
11 the counterclaims in the answer are not pled with
12 sufficient specificity in terms of special damages. And
13 we're actually not even sure what sort of damages the
14 defendant is claiming in this case. Rule 9(g) requires
15 things like lost profits to be spelled out with
16 specificity, but the counterclaims just refer to lost
17 profits with no specificity. So first of all, we think
18 they shouldn't be allowed to claim damages under Rule 9(g)
19 of the South Carolina Rules of Civil Procedure.

20 Second reason is on the third page of our memo is we
21 specifically asked, because the counterclaims were not
22 clear, we served Decide4Action with interrogatories asking
23 them to spell out what damages they claimed to have
24 suffered and the methods of computation in detail. And
25 that's our Exhibit A shows their response. And their only

1 response was that they will rely on the valuations that had
2 been produced in response to plaintiff's first and/or
3 second request for production. It was a very vague
4 response. And so we pressed them on that. We said we need
5 to know exactly what you're talking about and what damages
6 you're claiming. And so they didn't respond, so we filed a
7 motion to compel on Plaintiff's Interrogatory Number 25.
8 And Your Honor signed an order in response to that motion
9 to compel. They admitted that their answer was not
10 sufficient, and they consented to an order compelling
11 discovery that I've attached as Exhibit B. And the first
12 thing Your Honor ordered is that they needed to fully
13 answer our Interrogatory 25 and set forth that itemized
14 statement of all damages.

15 And then after that, despite that, they didn't do it.
16 And I wrote them on multiple occasions, and I've attached
17 as Plaintiff's Exhibit C all of my efforts both before and
18 after the motion to compel to get them to answer that
19 interrogatory fully, and they failed to do that. And under
20 the Reed vs. Clark case and the Morgan vs. Carolina Door
21 case that we cite on page 3, a party is appropriately
22 limited to the amounts they set forth in their
23 interrogatory answer for damages, and here it's zero.

24 And finally, the third reason to grant this motion in
25 limine is because the contract prohibits the kind of claims

1 that they're making. Mr. Bergeron submitted these
2 calculations to the escrow agent claiming a diminution of
3 value of the company based on multiples of EBITDA, and
4 Section -- page 21, Subsection 8(b) of the contract, which
5 is Plaintiff's Exhibit 8, expressly prohibits that type of
6 claim. So for those reasons, we think Decide4Action should
7 not be allowed to submit evidence or argue for damages in
8 this case.

9 THE COURT: Mr. Puriefoy?

10 MR. PURIEFOY: Your Honor, working backwards, the
11 reference that's being made is the stock purchase agreement
12 where the damage figure was calculated on some multiple of
13 a EBITDA. However, that was an attachment to what I
14 believe was plaintiff's Exhibit 11 or 12 that was sent to
15 the United Community Bank. That was not incorporated or
16 made a part of our pleadings in this case. That was a
17 rough damage calculation that was provided by Mr. Bergeron
18 to set forth the legitimacy of the claims that we are
19 making and the harm that he thought that he may have
20 suffered at the initial stages of this what ultimately
21 became litigation. Since the filing of this suit, however,
22 we have not set forth any damage calculation based on a
23 multiple that would be in violation of the stock purchase
24 agreement. We've set forth damages based on the
25 misrepresentations that we've alleged in our counterclaims,

1 and Mr. Bergeron is the sole party that's going to be
2 determining what he valued the business at.

3 What the testimony is going to be when Mr. Bergeron
4 gets on the stand is that he is who performed the
5 valuation. In not having the full picture on the payment
6 of the nonowner bonuses, he will be able to explain to the
7 jury how he calculates his damage figure. So there has
8 been no representation to this court through any formal
9 pleading that they're using some impermissible valuation
10 metric for determining the damages, i.e., the use of some
11 EBITDA multiple for purposes of that calculation. So we
12 believe that that motion in limine should certainly be
13 denied.

14 THE COURT: I mean, it sounds like you agree with that
15 because you're not going to be producing it. All right.

16 MR. PURIEFOY: We have no -- we have no intent on
17 presenting that, Your Honor.

18 THE COURT: Okay.

19 MR. PURIEFOY: As it relates to the -- and I don't
20 know if we need -- if Mr. English wants to respond to that.

21 THE COURT: I mean, it sounds like you're not
22 producing damages on that, so I don't think they're ---

23 MR. PURIEFOY: We aren't, Your Honor.

24 MR. ENGLISH: So there are no damages. There's been
25 nothing disclosed in discovery or in their counterclaims.

1 THE COURT: All right.

2 MR. PURIEFOY: Well, Your Honor, that's incorrect.
3 When the motion to compel was filed, it was filed by
4 Mr. English saying that it was an incomplete response, not
5 that no response had been provided. What we had alleged in
6 our response to interrogatories was that we were going to
7 be relying on all valuations that were used in determining
8 the value of the business, both Mr. Bergeron's calculation
9 as well as there were a Patent and Associates valuation
10 that had been conducted as well. Although we do not intend
11 on introducing that into evidence, that is what we relied
12 upon. To the extent that Mr. English then asked for some
13 further clarification, he certainly had the tools available
14 to him to either file a rule to show cause to demonstrate
15 why we have not satisfied the obligations of this court's
16 order. But to take it ---

17 THE COURT: Let me ask you this. Since January the
18 8th of 2021, have you fully set forth an itemized statement
19 of all damages, describe in detail all damages, claims and
20 methods of computation including the amounts and period for
21 which the loss is claimed?

22 MR. PURIEFOY: I believe we have, Your Honor, in so
23 much that it would be Mr. Bergeron's testimony that's going
24 to establish those damages. We have not -- we have not
25 done a calculation based on this EBITDA.

1 THE COURT: Have you done an answer to
2 interrogatories?

3 MR. PURIEFOY: We have, Your Honor, yes.

4 THE COURT: Okay. They covered that. All right.

5 MR. PURIEFOY: We did.

6 MR. ENGLISH: They haven't, Your Honor. That's just
7 not true. The answer to the interrogatory is set forth in
8 our Exhibit A. That was submitted on November 3, 2020. We
9 filed the motion to compel. They agreed in the order
10 entered January 2021, and since then they have not
11 answered.

12 THE COURT: I mean, you agreed to an order that said
13 after January 18th -- well, this was entered January the
14 8th, that in ten days you would provide an answer to
15 interrogatory adding this stuff. Do you have a copy of
16 that?

17 MR. PURIEFOY: Your Honor, there was no supplemental
18 response that was provided to Mr. English. There was an
19 original response that the Court found did not completely
20 satisfy ---

21 THE COURT: The Court didn't find that. Y'all agreed.

22 MR. PURIEFOY: That's correct, Your Honor.

23 THE COURT: Yeah. This is a consent order.

24 MR. PURIEFOY: That's correct, Your Honor.

25 THE COURT: So you didn't answer -- you did not

1 provide a -- even though you agree and the Court ordered
2 that you would fully answer Interrogatory 25, you've not
3 done that.

4 MR. PURIEFOY: Nothing in addition to what was already
5 provided, Your Honor. That's correct.

6 Your Honor, could we have a moment to check our file
7 to make sure that there's not been anything submitted?

8 THE COURT: Yeah. Y'all just take a few minutes then.

9 MR. PURIEFOY: Yes, Your Honor.

10 THE COURT: Let's go off the record.

11 (WHEREUPON, a recess is taken at 11:09 a.m.)

12 THE COURT: All right. I guess when -- we left off
13 with determining what the response was to the January 8,
14 2021, order.

15 MR. PURIEFOY: Yes, Your Honor. So there was
16 supplemental discovery that was sent, and we agreed through
17 that order to produce certain documents and then
18 interrogatory response, I believe, which is the response
19 that Mr. English is referring to, Interrogatory 25. The
20 defendants produced all documents including valuations that
21 were used to calculate our damages at that time.

22 I see -- admittedly, Your Honor, I see an email
23 correspondence from Mr. English back in February, where he
24 is requesting the Interrogatory 25. I'm looking at a draft
25 email where I was emailing a response to that that was

1 never sent, and that was last on February 8th of 2021.

2 Your Honor, beyond the original interrogatory
3 responses and the request for production that set forth the
4 damage calculation very specifically, there were two
5 independent reports that very clearly and concisely laid
6 out the damages that we had been seeking since the
7 beginning of this trial. Beyond that, Your Honor, in the
8 original interrogatory response, the unfortunate reality is
9 I do not see an additional interrogatory response to
10 Number 25.

11 THE COURT: So -- but did you receive some kind of
12 summary that sets forth their damages?

13 MR. ENGLISH: No, Your Honor.

14 THE COURT: What's this -- I mean report?

15 MR. PURIEFOY: That's not true, Your Honor. There
16 were two Patton reports that I can pull for the Court if it
17 would like. There were two individual reports. There was
18 a report that was created by a valuation expert firm in
19 Utah that detailed the damages that Mr. Bergeron had
20 suffered as a result of -- let me back up. There was an
21 original valuation that was created that Mr. Bergeron had
22 that valued the company. There was a subsequent valuation
23 that was conducted by Mr. Bergeron at his request after he
24 determined that the bonuses had been paid to nonowner
25 employees. The Patton & Associates report then calculated

1 a damage amount based on the payment of those damages.
2 That -- those were the damages that we were originally
3 relying upon in this case. And that was submitted to
4 Mr. English. Both of those reports were submitted to
5 Mr. English through the discovery process.

6 THE COURT: When was Mr. Bergeron's deposition taken?

7 MR. PURIEFOY: It was after ---

8 MR. ENGLISH: I've got a copy. It was September 29,
9 2020.

10 THE COURT: Does it have those reports in here?

11 MR. ENGLISH: Yes, Your Honor. But I disagree with
12 the characterization of those reports. Specifically, there
13 were two reports. There was one. I can't remember the
14 date of it. And then there was a second one. But those
15 reports did not calculate damages. They set forth two
16 different values of the company. And the purpose of
17 Interrogatory 25 was for the defendants to tell us what
18 damages are you claiming from those two reports, because
19 the reports themselves don't set forth damages.

20 MR. PURIEFOY: Well, they do, Your Honor. This entire
21 case has been made about inferences. There was a valuation
22 that was conducted at the time that Mr. Bergeron was
23 purchasing CC+I. There was a subsequent valuation that was
24 done after he learned about the payment of the nonowner
25 bonuses. In fact, the sole purpose of the creation of that

1 second report was to show the value or the decrease in
2 value of CC+I had Mr. Bergeron known about the payment of
3 those wages -- or those bonuses. Excuse me. And it's
4 spelled out. It could not be spelled out any more clearly.
5 Mr. English has had that in his possession since the
6 discovery process has been going on. There's no denying
7 that those documents were certainly produced to
8 Mr. English.

9 THE COURT: What damages does he testify to in his
10 deposition?

11 MR. ENGLISH: He says he doesn't know. And this
12 actually relates to my second motion which I won't move
13 into but I would like to hand up because I've got his
14 statements about that in my second motion.

15 If you'll look on page 2 at the bottom, I've
16 summarized what Mr. Bergeron's testimony was in his
17 deposition about the value of the company. Basically, he
18 said he couldn't do it. He was not qualified. So he
19 really gave me no useful information or no final damage
20 claim in his deposition. And basically, that testimony is
21 on pages 80 to 88.

22 THE COURT: All right.

23 MS. THOMASON: I'm pulling the deposition, Your Honor.
24 We -- but we're going -- depending on what the Court
25 determines to do, we're going to request leave to formulate

1 formal responses to the motion. But as it relates to
2 inadmissible expert opinions, Mr. Bergeron will be able to
3 testify. It won't be ---

4 THE COURT: I don't think -- we haven't quite gotten
5 into the motion. He just -- it's my understanding he just
6 wanted -- in response to my question about what he said in
7 his deposition.

8 MS. THOMASON: Oh, I apologize.

9 THE COURT: That's fine.

10 Well, let's just go into the second motion. I'm going
11 to have to look at all this, think about it.

12 MR. ENGLISH: Thank you, Your Honor.

13 The second motion is a motion in limine to exclude
14 Decide4Action from admitting any expert opinions in this
15 case. And this motion is made for two reasons. And the
16 first one is set forth on page 2 of the memo, and that is
17 in answer to discovery, Decide4Action never identified an
18 expert. And I've attached Exhibit A to the motion which is
19 their interrogatory answers. And it's Interrogatory Answer
20 Number 4 that basically says they've not retained any
21 expert witness for the purpose of trial but reserve the
22 right to do so. But they never -- they never identify
23 anybody. And, again, under the Reed vs. Clark case and
24 also Bensch vs. Davidson, parties should not be able to
25 call somebody as an expert they haven't identified as a

1 witness in the case.

2 And second, we would ask the Court to prevent
3 Mr. Bergeron from offering any expert opinions because he
4 testified in his deposition that he is not qualified to do
5 so. He said the only way to value a company is with a
6 valuation expert. He's hired Patton & Associates, the ones
7 to do that because he doesn't understand the process. He
8 does not have an opinion on what the right valuation number
9 is. There's a reason why these valuation experts would not
10 take his word for evaluation. And it would be experts'
11 opinions, not his, about the valuation that counts. So we
12 would object and ask the Court to exclude any expert
13 opinions from being offered in Decide4Action's case for its
14 counterclaims.

15 THE COURT: All right.

16 MR. PURIEFOY: Your Honor, to the extent Mr. Bergeron,
17 it's been a position throughout the course of this trial
18 that Mr. Bergeron himself is who valued the business, there
19 were two Patton & Associates reports that certainly would
20 be considered expert opinion. However, the first expert --
21 the first report was created for one purpose. It was for
22 purposes of closing the SBA loan that was a requirement of
23 that loan.

24 The second report that was created was Mr. Bergeron's
25 request to see the difference in value between the business

1 had he known about those damages and had he not.

2 However, again, the questions that will be asked of
3 Mr. Bergeron is not what are Patton & Associates damages --
4 of course, that was a valuation that was done and you could
5 deduce damages based on that -- but to ask Mr. Bergeron had
6 he known about the existence of the payment of the bonuses,
7 how would that have impacted his determination in his
8 valuing of the company. He's who did the valuation at the
9 beginning. It was not Patton & Associates or any other
10 party that determined the value that he was willing to pay
11 for CC+I of \$4.4 million. That was his valuation. In
12 fact, the testimony of Mr. Sibley makes clear that
13 Mr. Bergeron, the buyer, set the purchase price based on
14 whatever his valuation metrics were.

15 So we have no intention on offering any evidence of
16 Mr. Bergeron relying on an expert in setting the valuation,
17 simply that evaluation was done, but ultimately, the
18 valuation and the value that he placed on the business was
19 of his own creation.

20 THE COURT: Well, he says in his deposition he does
21 not have an opinion of what the right valuation number is.

22 MR. PURIEFOY: Well, Your Honor, and so I believe that
23 was being asked in a -- against the backdrop of the Patton
24 & Associates report. He cannot speak to the same facts and
25 the inferences and assumptions that were made within that

1 report. So I believe that's being taken out of context.

2 THE COURT: Here's another. The only way to value a
3 company is with a valuation expert.

4 MR. PURIEFOY: I apologize, Your Honor.

5 THE COURT: I said, then he has another -- the only
6 way to value a company is with a valuation expert.

7 MR. PURIEFOY: Again, Your Honor, that's against the
8 backdrop of the introduction of this Patton & Associates
9 report. What his deposition also indicated was that he is
10 who set the purchase price.

11 THE COURT: Well, okay. Let me go by this. That's
12 why he goes back. He has a consent order that says how do
13 you come up with your valuation. We want -- okay. But
14 he's not saying this and he's going to come up with a
15 valuation. We have a consent order that says how'd you
16 come up with it if you're not relying on this.

17 MR. PURIEFOY: Your Honor, and I'm not going to back
18 track on the interrogatory. I certainly understand that
19 the interrogatory itself was not provided. However, I
20 believe that the more appropriate course of action would
21 have been the filing of a rule to show cause in violation.

22 THE COURT: Let me back up here. In response to that
23 you said, well, he had the valuation because we sent him
24 these two reports. But now you're saying we're not using
25 those reports. We're going to rely on his testimony. He

1 cannot have it both ways, Mr. Puriefoy.

2 MR. PURIEFOY: Your Honor, and so if I may clarify.
3 The only valuation that we've ever used in this case, the
4 only -- the only calculation and metric that has ever been
5 used in this case was the Patton & Associates. That is not
6 -- that did not speak to how the company was originally
7 valued. Mr. Bergeron originally valued the business at
8 \$4.4 million, which ended up being the purchase price.

9 There was discovery that was conducted that sought to
10 discover if there had ever been any other valuations and
11 how those valuations panned out. Mr. Bergeron produced
12 those reports to Mr. English, and, of course, indicated
13 that this was how Patton & Associates broke down the value
14 of the business. But I believe they're two separate
15 issues.

16 And I certainly agree that if Patton & Associates
17 report is not going to be the valuation that we use, then
18 Mr. Bergeron would have had to have articulated the method
19 that he would have used, although there would have been no
20 method. It would have been based on his years of
21 experience in the industry, how he would have personally
22 valued that business going forward had he known about the
23 payment of those bonuses. I don't believe that there is
24 any mathematical equation, nor is Mr. Bergeron an expert in
25 that regard. He could simply testify to what it is he

1 would have done had he known about the existence of those
2 bonuses.

3 THE COURT: All right. Mr. English.

4 MR. ENGLISH: Your Honor, it's all stated in terms of
5 value of the company. The company he thought was one
6 value, now his opinion is it's worth less. But he's
7 acknowledged he's not an expert to give such opinions to
8 value a company.

9 And I'll say that, under South Carolina law, the
10 Santee Oil Case, the Supreme Court has very specific rules
11 about valuation requiring experts to consider adjusted net
12 asset approach, earnings approach, market approach. That
13 has not been done by Mr. Bergeron. And when I probed that
14 area in the deposition in September, he told me, you know,
15 he couldn't answer those questions because he wasn't an
16 expert, which made sense, which is why I pressed for
17 multiple times. And probably five or six different times
18 by email before and after the motion to compel in the
19 order, I asked them tell me what your damages are so we can
20 prepare to defend them, and I never got an answer.

21 MR. PURIEFOY: Well, Your Honor, then to that extent,
22 I mean, the Patton report obviously was submitted to
23 Mr. English. And if the question here is whether or not
24 there's not been any calculation or formulation submitted
25 to Mr. English for making the determination of the value or

1 the damage that was suffered by Mr. Bergeron, we can
2 certainly have Mr. Bergeron speak to the document that was
3 produced.

4 I'm confused as to how there's an argument that
5 Mr. Bergeron did not give Mr. English -- or our office,
6 excuse me, did not give Mr. English any -- any scope of
7 value.

8 THE COURT: Well, you've got two issues here. There's
9 that issue too, and then what damages are you going to be
10 allowed to put on the stand. I mean, you can't put the --
11 you're saying, well, we gave him our damages. He had these
12 two reports. But you don't have those people here.
13 They've not been identified as an expert. Oh, but we're
14 not going to use those anyway. We're going to let
15 Mr. Bergeron testify even though in his deposition he said
16 he couldn't.

17 MR. PURIEFOY: Correct, Your Honor. Then I guess the
18 question becomes to Mr. Bergeron, in reliance on those
19 Patton reports, speak to what he believes the valuation to
20 be based on those reports.

21 THE COURT: Well, I can definitely say that would be
22 hearsay, and I don't see how -- I mean, I'm sure that's his
23 -- I mean, I don't see how he can do that.

24 All right. Any other motions? I'm going to take a
25 look at this. We're going to take a break for lunch. I'm

1 going to have to look at all this.

2 MR. ENGLISH: Yes, sir. One other, and this is a
3 motion in limine concerning evidence of restraining orders.
4 The defendants have indicated they intend to call
5 Mr. Justin Pavatte, who was one of the former employees who
6 received a bonus, and then a year later, after
7 Decide4Action, left. And in his deposition testimony, he
8 testified that he had been the subject of a couple of
9 restraining orders, and as a result of those, had spent
10 some -- violating those had spent some time in jail. We
11 want that evidence excluded under Rule 608(b) as well as
12 Rule 609 because the violating a restraining order doesn't
13 rise to the level -- first of all, he was never convicted
14 of a crime so there's no conviction. Second of all, it's
15 not probative of truthfulness. It's not like a crime of
16 moral turpitude or anything. And third, you know, it's not
17 a crime for which he could receive imprisonment in excess
18 of a year.

19 THE COURT: And these restraining orders have nothing
20 to do with this case.

21 MR. ENGLISH: Correct.

22 THE COURT: Okay.

23 MR. PURIEFOY: Nor do we intend on bringing them in,
24 Your Honor.

25 THE COURT: All right. I was going to say, golly, I

1 had an easy one. You took it from me.

2 All right. Anything else then?

3 MR. ENGLISH: None from plaintiff.

4 THE COURT: Anything else from the defendant?

5 I mean, I need to look at this, and it's 20 till
6 12:00. We'll start back at 1:00. I'm going to bring the
7 jury back out.

8 Have the jury come in.

9 We are getting the kindergarten lunch.

10 (WHEREUPON, the jury entered the courtroom at 11:39 a.m.)

11 THE COURT: All right. Ladies and gentlemen, as I
12 said, we had some issues we had to go over. I thought we
13 were going to be able to get through these before lunch,
14 but it doesn't look like we are going to be able to. It's
15 going to take us a few more minutes, and I realize it's
16 getting close to lunchtime anyway. So for your purposes,
17 I'm going to go ahead and let y'all go to lunch. And be
18 ready to come back at 1:00.

19 And, again, my four rules: don't discuss the case
20 among yourself or with anybody; don't do any type of
21 independent research; do not pay any attention to any media
22 coverage, social media or other type; and if anybody
23 contacts you other than anybody from the clerk's office,
24 please let the bailiffs know. Otherwise, y'all have a good
25 lunch.

1 (WHEREUPON, the jury exits the courtroom at 11:40 a.m.)

2 THE COURT: All right. Counsel will be back in here
3 at 12:45 and we can ---

4 MR. ENGLISH: One housekeeping matter, Your Honor.

5 THE COURT: Yes.

6 MR. ENGLISH: I've got a rebuttal -- a potential
7 witness for my rebuttal case, and I wonder if we think that
8 we'll get to that today.

9 THE COURT: I don't know how long they're -- yeah. I
10 don't know.

11 All right. See y'all back in a little bit.

12 (WHEREUPON, a recess is taken at 11:41 a.m.)

13 THE COURT: All right. Anything else I need to
14 consider on the various motions that we had before lunch?
15 Anything else you want me to consider?

16 MR. PURIEFOY: Yes, Your Honor.

17 THE COURT: Come up with any grand ideas, either side?

18 MR. PURIEFOY: So, Your Honor, I do want to just
19 clarify a couple of things because I obviously was a bit
20 caught off guard by the position that damages cannot be
21 introduced at this trial.

22 And so just to give a little bit of background as to
23 how this kind of played out, the plaintiffs in this case
24 filed a motion to compel. I responded to that motion to
25 compel based on, I believe, a number of documents that were

1 outstanding and then the Interrogatory Number 25. I
2 responded to Mr. English that we were comfortable using the
3 difference in the evaluations of the Patton report as the
4 damage amount, but not the methodology of calculation,
5 simply that the damage of 1.3 -- the difference of
6 \$1.3 million that was contained in the Patton report we
7 were sufficient -- or we were satisfied with using that
8 number. Mr. English then followed up one day later and
9 said, "Thank you for your reply. I need all of these
10 documents, and then, if you could, provide me a formal
11 calculation of those damages."

12 Your Honor, from that day, the very next day our
13 office hand delivered every document that Mr. English had
14 requested. And how Interrogatory 25 was not produced as a
15 part of that production is beyond me.

16 THE COURT: But wasn't all that done really before the
17 consent order?

18 MR. PURIEFOY: Well, no, Your Honor. There were still
19 additional documents -- a significant amount of additional
20 documents that were requested by Mr. English based on my
21 representation that the difference in the values between
22 the Patton & Associates reports was going to form the basis
23 of our damage number, and it was as a result of that
24 information being provided to Mr. English that he then
25 said, "Well, then I'm entitled to a plethora of other

1 documents." And so over the course of the next day or two,
2 we provided all of those documents to Mr. English.

3 And then, Your Honor, additionally, what we know in
4 this case is that Mr. English has presented to the jury, as
5 part of his exhibit to the United Community Bank notice, a
6 calculation of damages that was created by Mr. Bergeron
7 that has been admitted throughout the course of this trial
8 where he did a very comprehensive breakdown of that damage
9 calculation. Essentially, Your Honor, what he did, which
10 is very clear based on the document that was attached to
11 that letter, was he took the amount of bonuses that were
12 paid, and he used a multiple. To the extent that we are
13 precluded for some reason from using a multiple under the
14 stock purchase agreement, we know certainly of \$350,000 of
15 damages, which has been spelled out and presented to the
16 jury on a number of occasions.

17 And the only -- our courts have held repeatedly that
18 the purpose of providing a damage calculation is to inform
19 opposing party and the jury as to some reasonable
20 estimation of the damages. They have already considered,
21 through three separate witnesses, the spreadsheet that was
22 created that broke down with scientific particularity the
23 damage calculation itself. And so to the extent that the
24 Court finds that -- or the jury finds that the utilization
25 of this multiple was prohibited under the stock purchase

1 agreement, we have certainly provided Mr. English and the
2 jury with a very basic breakdown of the damages, \$350,000,
3 which constitutes the amount of bonuses paid to nonowners
4 which has been admitted throughout this case.

5 Additionally, because we have a fraud claim, Your
6 Honor, if the jury were to find that there was fraud in the
7 inducement related to the stock purchase agreement and they
8 determined that we were fraudulently induced in executing
9 that document, our position would be the multiple
10 preclusion would not be permitted to be submitted -- or,
11 excuse me -- that the use of the multiple would be
12 permitted, and if that is the case, then the 1.3 million
13 that was included in that spreadsheet that was attached to
14 the United Community Bank letter can certainly be
15 considered by the jury.

16 I don't think that there is any argument that can be
17 made that Mr. English did not have any idea, nor could
18 there be any idea of damages presented to the jury in this
19 case. To the extent that the Court feels inclined to
20 prevent the defendants from presenting any evidence of
21 damages in this case, we certainly would ask that we be
22 permitted an opportunity to submit a post-trial brief as it
23 relates to Mr. English's motion in limine.

24 THE COURT: Anything further, Mr. English?

25 MR. ENGLISH: Yes, Your Honor. First of all, in

1 regard to Mr. Puriefoy's statement about his January 5th
2 email to me, I immediately replied the same day. And I
3 said, "We do need the formal damages calculation and answer
4 to Interrogatory 25 to make sure we're preparing to defend
5 the correct number at trial. Also, because it sounds like
6 you'll be relying upon some difference in the Patton
7 valuations of CC+I, which are based on projections from
8 2018 to 2027, we need these additional documents." And so
9 -- and then I said, "Please let me know if you will agree
10 to provide the balance of discovery or if we need to go
11 forward with the contested hearing on Thursday."

12 And so based on that, they agreed to the consent order
13 to specifically and formally answer Interrogatory 25 which
14 required them to spell out exactly how they were claiming
15 damages. I, to this day, don't know what their damage
16 claim is, the amount or how they arrived at it. And so I
17 think the correspondence makes clear that they did not
18 comply with the consent order.

19 Second, he said that Mr. Bergeron did do this
20 calculation that was submitted to UCB, but he testified in
21 his deposition and it was read to the jury that that's not
22 his damages calculation. That's not what he claims. And
23 then he went on to say that he's not qualified to give an
24 opinion on the value of the company. But then Mr. Puriefoy
25 argues that -- and notes that these calculations are based

1 on a multiple of earnings, are based on a valuation of the
2 company, both of which are prohibited by Section 8(b) of
3 the stock purchase agreement. And they never disclosed to
4 us that they were going to use the UCB claim as their
5 damage calculation. In fact, they disclaimed that both
6 during deposition and even in this argument they said they
7 weren't going to use that.

8 And then finally, he says the fraud claim isn't
9 limited by the contract. But it is because they're not
10 seeking rescission of the contract. When you allege fraud
11 in a contract, you've got a choice. You've either got to
12 elect to disclaim the contract, seek termination and
13 rescind it, and they have not pled that. The alternative
14 is then you're seeking damages under the contract of the
15 difference between what was allowed or what you thought you
16 were going to get under the contract and what you did. In
17 that case, they've got to take the whole contract. They
18 can't just ignore the limitation on damages in
19 Section 8(b).

20 So no matter how you cut it, whether it's on
21 disclosure, or whether it's on lack of qualification, or
22 whether it's on what the parties admit was the stock
23 purchase agreement between two sophisticated parties,
24 they've got no basis for seeking damages on their
25 counterclaims.

1 MR. PURIEFOY: Your Honor, so I believe that there's
2 an improper conflation of the Patton & Associates report
3 and the United Community Bank spreadsheet that was created.
4 The Patton & Associates report went through a comprehensive
5 valuation approach. They did not use just some multiple.
6 Essentially, what Mr. Bergeron did and what was provided to
7 Mr. English, which he has presented to this jury on
8 numerous occasions, was Mr. Bergeron took the amount of
9 bonuses that were paid, including the taxes that would be
10 associated with that, and then he did it based on a
11 multiple. There's no question about that. But that is an
12 ancillary issue.

13 The question before the Court, I believe, is whether
14 or not in accordance with the rules of this state and what
15 our case law has expounded upon on numerous occasions,
16 which is what is the purpose of providing a damage figure
17 to opposing counsel. And our courts have repeatedly said
18 it serves one useful purpose in providing opposing counsel
19 with at least a general idea of the damages as well as
20 being able to present some generalized damage figure to the
21 jury. In fact, our courts have taken it a step further to
22 state that you do not have to plead your damages with any
23 scientific specificity. You certainly do not.

24 The exhibit that Mr. English has made reference to
25 throughout the course of this trial demonstrates that at

1 the very least he was aware back in September of 2018 that
2 Mr. Bergeron created that spreadsheet, that it had nothing
3 to do with the valuation that was created by Patton &
4 Associates, and at the very least, \$350,000 of damages was
5 being alleged based on the failure to pay -- or based on
6 the payment of the bonus. Whether or not some multiple of
7 that number is used at some later date to me seems
8 inconsequential. The \$350,000 is highlighted in bright red
9 as the damage amount that is tied directly to the payment
10 of those bonuses.

11 I don't think it's a good-faith argument to argue that
12 the plaintiff in this case has absolutely no idea what the
13 damage amount is. And I think that that's something that
14 could be very easily presented to a jury. In fact, they
15 would only have to make reference to a document that
16 they've seen now probably three or four different times.

17 THE COURT: Here's my evaluation of this. I'm looking
18 at the deposition of Mr. Bergeron taken on September 29th,
19 and it's a very clear question: What damages is
20 Decide4Action claiming in this case? And he goes on to say
21 that he doesn't know, he's not an expert, he needs an
22 expert. But then it's clarified, and this is on page 80.
23 "So you're saying that Decide4Action's damages is the value
24 determined by Patton?"

25 And he goes, "The loss of value."

1 And he goes, "The loss of value based on Patton &
2 Associates different calculations?"

3 And his answer was, "Yes."

4 All right. And in your reference to one of his emails
5 was we're going to rely on the Patton & Associates
6 valuation for our damage calculation.

7 Then -- that was on January 5th. And I know that the
8 Court gives certain leeway, but in an order that I didn't
9 come up with, that you came up with, that you consented to
10 is that you would fully answer -- because, in my mind,
11 there's still very major issues of exactly what your
12 damages are here, that on January the 8th, you agreed
13 within ten days to set forth an itemized statement of all
14 damages claimed describing in detail the damages claimed
15 and method of computation including the amounts and period
16 for which the loss is claimed, how the amounts and subject
17 valuation will be used at trial, and what the total damages
18 claim is. You said you've given a bunch of documents,
19 you've given this Patton & Associates, and on top of that,
20 I don't believe that this individual is qualified to
21 testify about the value of a company. And based on -- and
22 he says in his deposition it was based on this Patton &
23 Associates. Well, Patton & Associates aren't here. You
24 don't have an expert to testify for any of this.

25 I don't believe -- I mean, and I think under not only

1 the Rule 37, but I think on -- based on his motion in
2 limine, I don't believe there's a basis for you presenting
3 your damages, and therefore, I grant his motion in limine
4 in that regard.

5 MR. ENGLISH: Your Honor, in light of that, the
6 plaintiffs would move for a directed verdict on their
7 breach of contract claim. And we know that UCB has the
8 \$440,000 in escrow. It wouldn't be right for that money to
9 just sit there with UCB forever, so it's got to go
10 somewhere. Because the defendants can't prove damages,
11 they've got no right to that money at UCB, so the only
12 consequence is that under our plaintiff's breach of
13 contract claim, that \$440,000 escrow amount should come to
14 the plaintiff.

15 MR. PURIEFOY: Your Honor, to the extent that
16 Mr. English is moving for a directed verdict, obviously,
17 there are multiple claims that have been alleged: the
18 breach of contract, the fraud, the misrepresentation.
19 However, there is no good-faith argument that we made if
20 the Court has ruled that we are not allowed to present any
21 testimony whatsoever related to damages and therefore could
22 never satisfy any damage calculation ---

23 THE COURT: You want to take a minute?

24 MS. THOMASON: Yes, Your Honor. Just one second.

25 MR. PURIEFOY: Yes, Your Honor.

1 (Pause in proceedings.)

2 MR. PURIEFOY: Your Honor, to the extent that
3 Mr. English is moving for a directed verdict as it relates
4 to each and every claim, we just ask that the Court specify
5 that the Court is alleging -- or it's ordering that we not
6 be able to present any testimony related to actual damages
7 beyond the special damages as I believe the motion in
8 limine was related to special damages under the case law
9 that was cited, and I need to -- I believe that was the
10 case. And forgive me if that's a misrepresentation, but
11 that's how I understand it. But I ---

12 THE COURT: My ruling was all damages.

13 MR. PURIEFOY: It was on all.

14 THE COURT: Yeah. All damages.

15 MR. PURIEFOY: Okay. And, Your Honor, that's going to
16 be ruled on all causes of action, not only the breach of
17 contract, but the ---

18 THE COURT: Amount and -- and I haven't specifically
19 looked through, but, I mean, what were your damages or
20 difference in -- I mean, when he answered what are your
21 damages in this case, he said the difference in the value
22 in the company based on the Patton & Associates. I mean,
23 was there some other -- and I guess that's why
24 Interrogatory 25 was, you know, so crucial.

25 MR. PURIEFOY: I certainly understand that, Your

1 Honor. The problem with the deposition that's being
2 referenced is that it was against the backdrop of
3 Mr. English speaking to Mr. Bergeron about the Patton &
4 Associates valuation itself. And so I don't think it's a
5 fair characterization that as Mr. Bergeron is looking at
6 this Patton & Associates document and being asked specific
7 questions about it in terms of how he would value the
8 company, I don't think that there's a -- Mr. Bergeron
9 certainly is not well equipped enough to value the
10 business. The response that I sent him by email is we're
11 okay using that number as a damage figure. And it just so
12 happened that in using the multiple of 3.5, I believe, as
13 it related to the payment of the nonowner bonuses, it
14 almost matched the Patton & Associates number. Although
15 the method to get to that was completely different, they
16 were nowhere near the same method to arrive at a number
17 that was very close to one another, we indicated that we
18 were okay using that as our damage figure.

19 THE COURT: And I hadn't really considered the
20 multiple. I'm just looking at -- I mean, a very clear
21 question: What damages is Decide4Action claiming in this
22 case? Very clear question. And that's when he goes, well,
23 I'm not an expert, difference in value. I mean, at what
24 point does he get to say -- what you're saying is then he
25 finally gets his opportunity really to tell what his

1 damages are from the stand.

2 MR. PURIEFOY: Well, no, Your Honor. Because I
3 believe -- Mr. Bergeron is not an attorney. I don't think
4 that he could ever tell with any degree of specificity what
5 his actual damages are from a legal standpoint.

6 THE COURT: Then who is?

7 MR. PURIEFOY: Well, Your Honor, I indicated that,
8 based on documents that were already in Mr. English's
9 possession, that the \$1.3 million number, which is almost
10 identical to the number that was used in support of the
11 United Community Bank notice, would be the damage
12 calculation. And that spreadsheet, Your Honor, goes
13 through line by line exactly how that number was arrived
14 at. It speaks to the payment of the nonowner bonuses, it
15 speaks to the taxes, it speaks to the multiple, it speaks
16 to every facet of how that damage figure was arrived at.

17 THE COURT: And who created that?

18 MR. PURIEFOY: Mr. Bergeron.

19 THE COURT: Based on what?

20 MR. PURIEFOY: Based on the very number that he used
21 in offering to purchase CC+I.

22 When Mr. Bergeron set the \$4.4 million purchase price,
23 there's an offering memorandum that we were intending at
24 offering into court that set that EBITDA of 1.173 million.
25 Mr. Bergeron decided on a multiple of 3.75 that Mr. Sibley

1 ultimately agreed to. That is the multiple that they used
2 to determine the purchase price of 4.4 million. It was
3 only through utilization of that multiple as it related to
4 the payment of nonowner bonuses that he landed at 1.3
5 million, and that's exactly what's spelled out in that
6 spreadsheet that's attached to the letter to United
7 Community Bank. That was his methodology. That answers
8 every single question that was presented in Interrogatory
9 25, which was tell me what your damage calculation is, the
10 methodology used to arrive at that calculation. And every
11 other aspect of that interrogatory was answered in that
12 very document which has been presented to the Court and to
13 the jury on at least three separate occasions.

14 THE COURT: Why did you consent to something that said
15 that then, that required that specific?

16 I've ruled on the damages, so let's go forward. Are
17 y'all ready to proceed?

18 MR. PURIEFOY: We are.

19 THE COURT: You need to talk to your client in light
20 of my ruling, though?

21 MS. THOMASON: Your Honor, that would be helpful.

22 THE COURT: Yeah. And I'm going to take your -- under
23 advisement. I'm going to deny it for now.

24 MR. ENGLISH: Okay.

25 MR. PURIEFOY: Deny?

1 THE COURT: Deny his -- he made a motion for --
2 actually, what we were arguing at the time is he made a
3 motion for a directed verdict on the breach of contract,
4 and I denied that.

5 (Pause in proceedings.)

6 THE COURT: All right. Ready?

7 MR. ENGLISH: One other thing, Your Honor. We had two
8 motions in limine pending. One was on damages, which you
9 ruled on. The second, we also moved in limine to exclude
10 any opinion testimony from Mr. Bergeron, and particularly,
11 any opinions about the value of CC+I.

12 THE COURT: I kind of cut you off with the damages.

13 MR. PURIEFOY: Well, Mr. Bergeron never intended on
14 talking about the value of the company. But I would just
15 like clarification, Your Honor, and I apologize.

16 THE COURT: No. That's fine.

17 MR. PURIEFOY: I've not been practicing long, but this
18 is certainly a new one to me.

19 THE COURT: Well, it's new to me too.

20 MR. PURIEFOY: The ruling, as I understand it to make
21 sure that I'm presenting my case in chief appropriately, is
22 that we are not allowed to present any evidence of damages.

23 THE COURT: Correct.

24 MR. PURIEFOY: Okay. And Mr. English followed up with
25 a directed verdict motion, and I'm unsure if it was a

1 directed verdict as to his breach of contract claim or our
2 claims. And I was unsure what the denial of that directed
3 verdict motion ---

4 THE COURT: I mean, I denied. Whichever it was, it
5 was denied.

6 MR. ENGLISH: I felt I was fully denied, so I didn't
7 think of making any ---

8 THE COURT: And, I guess, based on the discussion,
9 then he will not be discussing the value of the business.

10 MR. PURIEFOY: Correct.

11 THE COURT: Okay. All right. Bring the jury in.

12 (WHEREUPON, the jury entered the courtroom at 1:15 p.m.)

13 THE COURT: You feel like you have an obstacle course
14 there?

15 Thank you for your patience, ladies and gentlemen.
16 Sometimes it takes us longer to figure out stuff. And we
17 took a break for lunch, and so we are now -- again, my
18 apologies we didn't get back right at 1:00.

19 But at this time, as you will recall, the plaintiff
20 has rested, so now at this time, the defendant will present
21 their case.

22 Mr. Puriefoy?

23 MR. PURIEFOY: Your Honor, at this time we would like
24 to present certain deposition designations of Mr. William
25 Sibley.

1 THE COURT: All right.

2 And, again, ladies and gentlemen, as I told you, every
3 time a deposition has been presented, I just want to remind
4 you that this deposition is to be considered the same as if
5 Mr. Sibley were present in the courtroom, and give it the
6 weight that you feel is appropriate.

7 Yes.

8 MR. PURIEFOY: Can you confirm that the microphone is
9 on?

10 THE COURT: Yes.

11 DEPOSITION TESTIMONY OF MR. WILLIAM SIBLEY, JR.

12 "Q All right. I know you just did this, but Mr. Sibley,
13 could you give me your full name for the record?

14 "A Yes. William Augustus Longstreet Sibley, Jr.

15 "Q Kind of walk me through the formation of CCI. How did
16 that come to be?

17 "A One of the departments that reported to me and J.P.
18 Stevens was known as the electronic engineering department,
19 and that department consisted of the application of
20 computers to machinery on the manufacturing floor doing
21 process monitoring and control. West Point bought J.P.
22 Stevens. West Point Pepperell bought J.P. Stevens. They
23 got some of the plants that had the installation that the
24 electronic engineering department had put in place. They
25 wanted that group of technicians to stay together to

1 support the systems that had been installed, and so in
2 essence I suggested to West Point Pepperell, the new owner,
3 how about selling me the software, hardware, furniture and
4 let me keep that group together and form a company to
5 support those systems that had been put in place in the
6 plants that you just bought. And West Point agreed and
7 sold me, so to speak, that department. And so with several
8 of the members of that department I formed CC+I in July of
9 '88.

10 "Q So my original question was, your understanding is
11 that EBITDA in 2016 was 1.173 million?"

12 MR. ENGLISH: Objection, Your Honor. Hearsay, parole
13 evidence, and precluded by the stock purchase agreement.

14 THE COURT: Is this not something we -- is this one of
15 them that ---

16 MR. PURIEFOY: Your Honor, I believe this is one of
17 the objections that we made pretrial to the designations.

18 THE COURT: I'm going to allow it.

19 "A In that report, yes.

20 "Q In that report, correct?

21 "A Yes.

22 "Q And then the future purchase was going to be based on
23 a multiple of 3.75?

24 "A That was my understanding, that what -- that's what
25 Richard told us was that that was the formula he used.

1 "Q Now, was that the formula he used or Generational
2 Equity used?"

3 MR. ENGLISH: Objection, Your Honor. Same objection.
4 This is hearsay, again, parole evidence and precluded by
5 the stock purchase agreement.

6 THE COURT: All right. How much longer -- I mean, is
7 this the final set of that?

8 MR. PURIEFOY: Yeah.

9 THE COURT: I'm going to allow this one then.

10 "A No. Generational Equity said they would not provide
11 that type of evaluation. They left that to the potential
12 buyer to do their own multiples."

13 MR. PURIEFOY: Page 32, line 1.

14 "A No. I never challenged it.

15 "Q I'm going to show you what we've marked as
16 Defendant's 1. I'll just give you a second to look over
17 that. Have you had a chance to review it?

18 "A Yes.

19 "Q Do you recognize this document?

20 "A Yes.

21 "Q And what is it that's been marked as Defendant's 1?
22 What is this document?

23 "A What is it called?

24 "Q Yes.

25 "A A Letter of Intent."

1 MR. PURIEFOY: Your Honor, I believe you have to flip
2 the ---

3 THE COURT: Where is it? On your computer?

4 MR. PURIEFOY: And I'll restart at page 32, line 11.

5 "Q And what is it that's been marked as Defendant's 1?
6 What is this document?

7 "A What is it called?

8 "Q Yes.

9 "A A Letter of Intent.

10 "Q And if you'll just flip to the last page of the Letter
11 of Intent, it looks like Mr. Bergeron, yourself,
12 Mr. Dozier, Mr. Clark, Mr. Starrett, and Mr. Leviner all
13 signed this Letter of Intent?

14 "A That's what it looks like.

15 "Q If you go to the second paragraph under -- excuse me.
16 If you go to the second page under paragraph two, the
17 second bullet point, it looks like this says that due
18 diligence shall demonstrate the average EBITDA of 2015 and
19 '16, including the recast, to be no less than 98 percent of
20 the EBITDA from the financials of the offering memoranda.
21 That's the offering memoranda that was created by
22 Generational Equity. Is that correct?

23 "A Correct.

24 "Q And so as I understand this, and let me know if this
25 is your understanding, that the EBITDA number that

1 Mr. Bergeron landed on during or following his review of
2 financials had to be 98 percent of the EBITDA of the
3 offering memoranda?"

4 MR. PURIEFOY: Please note for the record that the
5 transcript notes that the witness nodded their head.

6 "Q What was your understanding if for some reason it
7 didn't hit that 98 percent threshold? What were the
8 repercussions behind that, if any?

9 "A I don't recall there being any repercussions.

10 "Q Did you understand that the transaction would still
11 move forward even if that 98 percent threshold wasn't hit?

12 "A Well, as I understood the Letter of Intent, it says
13 that was a condition of the offer.

14 "Q And so would it be fair to say that the offer could be
15 rescinded if you didn't hit that 98 percent?

16 "A That's an assumption.

17 "Q And I'm not asking for an assumption. I'm just asking
18 for what your understanding of this particular provision
19 is.

20 "A Well, that's my assumption.

21 "Q Okay. And if that was your assumption? I'm sorry.

22 "A That was a condition of the offer.

23 "Q And if that wasn't met, then Mr. Bergeron could elect
24 to not purchase CCI?

25 "A Presumably so.

1 "Q And you've said that a couple of times. What his
2 vision of the company -- was his vision of the company
3 important to you?

4 "A It was, but it was particularly important to a couple
5 of employees who wanted to work for him.

6 "Q What employees?

7 "A Scott Dozier and Tim Clark."

8 MR. ENGLISH: Objection. Your Honor excluded this
9 next section.

10 THE COURT: Okay.

11 MR. PURIEFOY: Your Honor, I believe that pretrial
12 what has been removed were the additional Sections 8 and 9
13 of this transcript.

14 THE COURT: And I've got it as 1 through 4, lines 1
15 through 4.

16 MR. PURIEFOY: Oh, I apologize if it was 1 through 4.
17 I thought it was 1 through 7, Your Honor.

18 THE COURT: Isn't it 5 through 9? Or stipulated 5
19 through 9 is what I've got.

20 MR. ENGLISH: Yes. That was out.

21 THE COURT: Okay. Oh, okay. I see that now. All
22 right. So 1 through 4. Sorry.

23 MR. PURIEFOY: Thank you, Your Honor.

24 Page 42.

25 "Q I'm going to show you what I've marked as

1 Defendant's 2. Have you had a chance to review that?

2 "A Yes.

3 "Q So this appears to be an e-mail thread between
4 Mr. Bergeron and Tim Clark, and I believe you're cc'd on
5 these communications as well?

6 "A Yes.

7 "Q I'm specifically looking at a May 2, 2017 e-mail from
8 Mr. Bergeron to Mr. Clark with you being cc'd where he is
9 requesting owner salaries for 2013 through 2017?

10 "A Yes.

11 "Q Do you recall that request being made by Mr. Bergeron?

12 "A I do, and he was corresponding with Tim Clark because
13 I was in rehab.

14 "Q Well, let me ask you, you said you had back surgery?

15 "A Yes.

16 "Q And this would have been in early to mid 2017?

17 "A Yes, in the spring, March, and extensive rehab on into
18 the summer. So I was not in the office all the time.

19 "Q And this may seem like a strange question. Were there
20 any prescription medications following that surgery?

21 "A No, I can't recall any. I did -- well, once I did
22 have some antibiotics.

23 "Q But nothing that would have impaired your ability to
24 understand --

25 "A No.

1 "Q -- anything associated with the transaction?

2 "A No.

3 "Q All right. I'm sorry. I know that's a weird
4 question. I just wanted to clarify. Okay. Do you know
5 why Mr. Bergeron was requesting the owner salaries from '13
6 to '17?

7 "A Not particularly.

8 "Q You never had any discussions with him about that?

9 "A I don't recall.

10 "Q I'm going to show you what we've marked as
11 Defendant's 3 and 4. This is going to be 3 and 4. Have
12 you had a chance to review?

13 "A Yes.

14 "Q So if we start with Defendant's 3, which looks like it
15 is a May 7 e-mail from yourself to Mr. Bergeron, do you see
16 that?

17 "A Yes.

18 "Q And do you understand that in writing 'I hope this
19 gives you the detailed data you need,' was this in response
20 to his request for owner salaries?

21 "A That's my understanding.

22 "Q And I believe that it was an Excel spreadsheet that
23 was attached to this e-mail?"

24 MR. PURIEFOY: Your Honor, note on the record that
25 there was an objection to the form of the question.

1 "Q Is that your understanding?

2 "A Yes.

3 "Q So if you look at Defendant's 4, this appears to be an
4 Excel spreadsheet for fiscal year 2013 through 2017,
5 specifically April 28, 2017. Do you see that?

6 "A Yes.

7 "Q And it looks like in 2016 Mr. Clark had an annual
8 salary of 150,000, Mr. Dozier 103,888, Mr. Leviner 60,141,
9 and yourself 150, 150,000, Mr. Starrett 92,321, and
10 Ms. Featherstone 24,000?

11 "A Yes.

12 "Q Do you see that? It also looks like in 2015 and '16
13 there were also owner bonuses that were paid. Do you see
14 that?

15 "A I do.

16 "Q So in the Excel spreadsheet that's Defendant's 4, it
17 also looks like in 2016 there were non-owner bonuses paid
18 that totaled \$35,000, I believe. Do you see that? They
19 were bonuses that were paid to Joseph Taylor, Nathan
20 Hermann, and Carlos Viveros?

21 "A And what about it?

22 "Q Do you see a \$15,000 bonus paid to Joseph Taylor?

23 "A Yes.

24 "Q And that was in 2016?

25 "A Yes.

1 "Q Do you see a \$15,000 bonus paid to Nathan Hermann?

2 "A Yes.

3 "Q And do you see a \$5000 bonus paid to Carlos Viveros?

4 "A Yes.

5 "Q Would it be fair to say that between 2013 and '17
6 there were only one instance, I guess, technically three
7 instances of non-owner bonuses that were paid?

8 "A Repeat your question.

9 "Q I'm sorry. Between 2013 and 2017, it appears to me
10 based on a review of Plaintiff's 4 that there were only
11 three instances of non-owner bonuses being paid?

12 "A Three instances being what?

13 "Q The 15,000 to Mr. Taylor, 15,000 to Mr. Hermann, and
14 5000 to Mr. Viveros.

15 "A Okay. So an instance for you is a person, not a
16 year?

17 "Q We can look at it any way. We can say one in the
18 sense that only one year were bonuses paid to non-owner
19 employees. Is that fair? Is that fair?

20 "A Yes."

21 MR. PURIEFOY: And, Your Honor, please note before
22 that previous question there was an objection to form on
23 the record.

24 "Q But at least on Defendant's 4, no non-owner bonuses
25 were paid in '15, '14, or '13. Correct?

1 "A Because we weren't profitable. I think we hired
2 Kimberly in maybe -- I say we hired her. We got her
3 through a temp back in February or March. I can't remember
4 exactly when. But ---

5 "Q Of '17?

6 "So, again, this leads into my next question. It
7 looks like Defendant's 6 indicates that she received a
8 \$10,000 bonus?

9 "A Yeah.

10 "Q And that she was going to receive that on June 30 of
11 2017?

12 "A That's right.

13 "Q And she had been paid as a permanent employee since
14 May 15, 2017?

15 "A But we gave her the equivalent credit all the way back
16 because she had done such a good job as a temp. It was
17 almost as if she was on the payroll anyway. She did an
18 excellent job.

19 "Q Sure. In the 29 years or so that CCI operated, do you
20 recall any other instances where bonuses were paid at
21 100 percent?

22 "A 1999 in the textile business. Same reason.

23 "Q CCI paid 100 percent of --

24 "A Yes.

25 "Q -- non-employee?

1 "A Yes.

2 "Q So the last time that that happened was in 1999?

3 "A Yes. After that time textiles went offshore. Yes.

4 We had made sure that our employees knew that -- once we
5 had seen that Letter of Intent, that they were aware of the
6 fact that we were considering the sale.

7 "Q How did you inform them that the sale was going to
8 happen or considering it?

9 "A Verbally.

10 "Q You told each one of them individually?

11 "A We did for some of the new ones that were coming on
12 board, because they had not been with us before. Some of
13 the old ones knew. We again did it verbally, but not
14 individually -- but individually.

15 "Q In reading schedule 4 -- in reading schedule 4, which
16 is the disclosure to the Stock Purchase Agreement,
17 paragraph three, can you determine based on this language
18 how those bonuses were paid and who they were paid to?

19 "A No.

20 "Q So again, in reading schedule 4, which is a disclosure
21 attached to the Stock Purchase Agreement, paragraph three,
22 can you determine based on this language how those bonuses
23 were paid and who they were paid to?

24 "A No.

25 "Q Do you recall if bonus letters that were sent to each

1 of the employees was ever forwarded to Mr. Bergeron? Did
2 he receive a copy of that?

3 "A Before closing?

4 "Q Before closing.

5 "A No, not to my knowledge.

6 "Q When was the first -- when was he first made aware
7 that those bonuses were paid out? Do you know."

8 MR. PURIEFOY: Your Honor, note that there was an
9 objection to the form.

10 "A He was first made aware in August when he had
11 requested in July, late July a P&L statement that was from
12 July 1, '16 through June 30 of '17, our most recent fiscal
13 year. He had requested a P&L statement.

14 "Q And in that P&L statement --

15 "A Salaries and --

16 "Q -- it specifically stated salaries and bonuses?

17 "A Yes.

18 "Q Did it break out who those bonuses were paid to?

19 "A No.

20 "Q Simply that bonuses were issued?

21 "A Correct.

22 "Q All right, Mr. Sibley, we're back on the record. I
23 think before we went off the record I was asking you
24 about how Mr. Bergeron would have been made aware that
25 these bonuses had been paid out. I know you originally

1 stated that the P&L statement contained salaries and
2 bonuses?

3 "A Yes.

4 "Q And, again, did that P&L break out those salaries and
5 bonuses?

6 "A No.

7 "Q And then I know you suggested that in 2017 September
8 there was a tax return provided to Mr. Bergeron that could
9 have also detailed payment of this bonus.

10 "A And divided it between officers and non-officers.

11 "Q Okay. I'm going to show you what's been marked as
12 Defendant's 14. So if you flip to the fourth page, this
13 looks like a cover letter dated September 21, 2017, to
14 Computer Control Plus Integration, Inc. from Cherry
15 Bekaert?

16 "A Correct.

17 "Q And this appears to be a 2016 income tax return?"

18 MR. PURIEFOY: Your Honor, note for the record there
19 was an objection to the form.

20 "A It is that dated on the tax return, but if you'll
21 look, it's as of the ending of the fiscal year, June 30,
22 2017.

23 "Q So this tax return is for year ending June 30, 2017?

24 "A Correct.

25 "Q And I believe you previously indicated that looking at

1 I believe it's lines 12 --

2 "A 12 and 13.

3 "Q -- to 13 --

4 "A Yes.

5 "Q -- of this tax return?

6 "A Correct.

7 "Q Can you tell me where this breaks out bonuses that
8 would have been paid to the employees of CCI?

9 "A It's in line 13.

10 "Q And what does line 13 ---

11 "A The employees' salaries and wages.

12 "Q \$687,405?

13 "A Correct.

14 "Q When you add up -- when you add up all of the
15 employees' wages, does it come to this number, or is this
16 number inclusive of bonuses as well?

17 "A Inclusive.

18 "Q So how would Mr. Bergeron -- so would have
19 Mr. Bergeron have had to add up salaries for each employee
20 and deduct it from the number to be determined -- deduct it
21 from this number to determine the bonuses were paid?

22 "A In total, yes.

23 "Q But this tax return does not specifically state how
24 much each employee received as a bonus?

25 "A Correct.

1 "Q So of the three documents that we've referred to, the
2 disclosure schedule, the P&L statement, and the year-end
3 June 30, 2017 tax return, none of them specifically
4 detailed who bonuses were paid to?

5 "A Not individually, but in total.

6 "Q Do you recall a conversation with Mr. Bergeron taking
7 place in November of 2017 in your office or your former
8 office regarding the payment of these bonuses?

9 "A Yes. I gave him a document that outlined each one
10 specifically.

11 "Q And what document was that?

12 "A It was just a typed piece of paper that showed each
13 employee and the bonus they got and the letter. It was
14 basically a copy of the letter that each employee got.
15 You've shown me those letters.

16 "Q So it was in November -- it was in that November
17 meeting that he would have gotten this outline as well as
18 the letters that went out?

19 "A What's the outline?

20 "Q Or, excuse me, the document that outlined?

21 "A Well, it was a copy of each one. That's what it was,
22 a stack of papers, each letter. I gave him a copy of each
23 letter that they --

24 "Q So when you said --

25 "A -- that they were handed.

1 "Q Okay. So when you said the document that outlined how
2 each employee was paid a bonus, you're referring to the
3 actual letter that they received?

4 "A Correct.

5 "Q And this was the first time, in November of '17 was
6 the first time that you gave him those letters or the first
7 time he had seen those letters?

8 "A To my knowledge, and I don't recall the date that I
9 did it. It might have been late October or early November.
10 I'm not sure.

11 "Q But it was post closing?

12 "A Yes.

13 "Q So would it be fair to say that this was the first
14 time that Mr. Bergeron had seen a specific list of
15 employees and the amounts of bonuses they received?

16 "A Correct, to my knowledge.

17 "Q Do you recall Mr. Bergeron's reaction to receiving
18 those letters?

19 "A I do.

20 "Q And what was that?

21 "A He was horrified."

22 MR. ENGLISH: Your Honor, I'd ask that the next
23 question and answer be -- this was just added last night,
24 so I'd ask the next question and answer be read.

25 THE COURT: What page are you on? Do you have a

1 problem with that?

2 MR. PURIEFOY: I don't, Your Honor.

3 THE COURT: Okay.

4 "Q Why?

5 "A He thought they were too generous.

6 "Q Is it your position today that you were required to
7 disclose to Mr. Bergeron the payment of those non-owner
8 bonuses?"

9 MR. PURIEFOY: Note for the record, Your Honor, there
10 was an objection.

11 "A No.

12 "Q No, you had no obligation to tell him?

13 "A I don't think so really.

14 "Q And why do you think that?

15 "A Because it was a normal form of business.

16 "Q Do you believe that -- do you believe that you did
17 disclose the bonuses to Mr. Bergeron?

18 "A We gave him that opportunity to decide whether or not
19 he thought it should be.

20 "Q I'm confused by your answer. You gave him the
21 opportunity to decide --

22 "A Yeah.

23 "Q -- what should be?

24 "A Well, from the standpoint of things that had changed
25 since May 17th, we felt it would be the right thing to do

1 to perhaps put the fact that we had given bonuses to let
2 him know that.

3 "Q And when did you let him know that?

4 "A When did we let him know? We let him know it when we
5 sent him a P&L report in August.

6 "Q That show that bonuses were paid.

7 "A Yeah.

8 "Q My question is, when did you let him know that bonuses
9 were paid to non-owners?

10 "A We let him know it then. If he had asked for it
11 individually, he could have gotten it.

12 "Q How would he have known to ask for it?

13 "A Because of the amount of payroll, and he knew what the
14 payroll was.

15 "Q The P&L, as I understand it, had wages and bonuses.
16 Is that correct?

17 "A Yeah, lumped together.

18 "Q Lumped together?

19 "A Yeah.

20 "Q My question is, based on a review only of that, how
21 would Mr. Bergeron have known that bonuses went to
22 non-owners?

23 "A Because he could have subtracted the payroll from it.

24 "Q So the onus would have been on him to subtract out the
25 numbers to determine that bonuses were paid?

1 "A If he wanted to know that.

2 "Q Did the P&L statement distinguish owner compensation
3 and bonuses from non-owner compensation and bonuses?

4 "A No, but the federal tax did.

5 "Q Is it your position that had he done the math on the
6 taxes, then he could have ascertained the amount of bonuses
7 paid to each individual?

8 "A Absolutely."

9 MR. PURIEFOY: No further designations, Your Honor.

10 THE COURT: All right. Step down.

11 Everybody on the jury good?

12 MR. PURIEFOY: Your Honor, at this time we call
13 Richard Bergeron.

14 THE COURT: Mr. Bergeron, come around and be sworn.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand.

17 WHEREUPON,

18 RICHARD BERGERON,

19 After having been duly sworn, testified as follows:

20 THE CLERK: State your name, please.

21 THE WITNESS: Richard Bergeron.

22 THE CLERK: Thank you. Please be seated.

23 MR. PURIEFOY: Your Honor, is it okay if the witness
24 has water?

25 THE COURT: Yeah.

DIRECT EXAMINATION

BY MR. PURIEFOY:

Q All right. Mr. Bergeron, please state your full name, again, for the record.

A Richard Bergeron.

Q And where do you currently reside?

A I'm sorry?

Q Where do you currently reside?

A In Greenville, South Carolina.

Q And are you married?

A Yes.

Q What's your wife's name?

A Sambo Bergeron.

Q Any children?

A Three children.

Q What are their names?

A Philippe, Catherine and Patricia.

Q Are they all adults?

A Yes.

Q And where does your son Philippe work?

A He works at Decide4Action with me.

Q And I think you already alluded to it, but what do you do for a living?

A I'm an engineer, and I am the CEO of Decide4Action.

Q And before holding that title of CEO of Decide4Action,

1 what did you do?

2 A I was CEO of American division of a French company
3 called Exxelia.

4 Q And what did Exxelia do?

5 A Exxelia was making electrical components for
6 aerospace.

7 Q Now, Mr. Bergeron, you're aware that you're here today
8 as a named defendant -- Decide4Action is here today as a
9 named defendant in a lawsuit that's been brought by
10 Mr. Sibley. Are you aware of that fact?

11 A Yes.

12 Q Who is the late Mr. Sibley?

13 A Mr. Sibley was the founder of CC+I, Computer Control
14 Plus Integration. And he found it in '88 and sold his
15 share to Decide4Action.

16 Q And we'll get to the sale of those shares here in just
17 a moment. But walk me through those initial conversations
18 that you had with Mr. Sibley. How did you first get in
19 contact with him?

20 A Okay. In about 2014 I retired from Exxelia, and I was
21 looking, took a few months off, and with my son we were
22 looking to start a software company. And so we kind of
23 went online and registered to all the site like not through
24 the state but a site that sells company. And at that time
25 we received an email from Generational Equity, which was a

1 broker that the seller has hired to sell the company.

2 So we look at multiple orders. And so we look at
3 that, we sign some nondisclosure document. Then we got an
4 offering memorandum from Generational Equity. And there
5 was a few discussion. Then I came here to visit the seller
6 in the company. Then we discussed, we went to lunch. It
7 was just like one day. Then came back home. A few months
8 later I had some other discussion with the broker, and I
9 decided that to make an offer based on what was offered.

10 Q Okay. And so we're going to get into a lot of that,
11 so let's just back up just a little bit. So was CC+I,
12 which is Computer Control Plus Integration -- is it okay if
13 I refer to them as CC+I?

14 A Yes.

15 Q Okay. What services did CC+I provide?

16 A CC+I was making computer software. They had started
17 in textile. And when textile kind of moved away to Asia,
18 they moved to beverage. And they were making a little bit
19 of hardware, but mostly software to people like Coca-Cola,
20 mostly.

21 Q And when you registered for this site, did you first
22 contact CC+I or were they already posted on this site as
23 being the company that was interested in being bought?

24 A Yeah. They were already posted. It's Generational
25 Equity. It's a broker like a real estate agent. You just

1 type what type of company you're looking for. And then
2 you'll get an online offer for nondisclosure document, and
3 then you fill that in, and then you'll receive the offering
4 memorandum. Nobody -- nobody contacts you before you
5 receive that.

6 Q Okay.

7 A Then after that, you cannot truly contact them. You
8 have to go through the agent.

9 Q Can you explain how you thought CC+I could be a
10 beneficial acquisition for Decide4Action?

11 A Decide4Action was really just starting. There was --
12 at the time my son was not even employed by the
13 corporation. It was just me trying to -- to move that idea
14 of doing software. And so we thought it was maybe a good
15 fit because Mr. Sibley and a lot of the people were older,
16 they wanted to retire, and we thought maybe we could bring
17 some new idea to the mix so to make this -- make this
18 better for all of us.

19 Q So I know you noted a moment ago that there was a
20 nondisclosure that was executed as a result of your
21 application to this website. Did you eventually have
22 negotiations and discussions with Mr. Sibley after the
23 execution of that nondisclosure?

24 A Well, it only started when we scheduled a visit here,
25 and that's the first time I met the sellers. So I believe

1 it was in February of 2016. Don't quote me on the date.

2 Q Okay. And during that visit, did you have discussions
3 with Mr. Sibley about potentially buying CC+I?

4 A Yes, we did. They were interested to sell. So we --
5 we start talking about what they wanted to do. There was
6 four owner employee with -- owner employee beside
7 Mr. Sibley, and those people wanted to stay. So we had
8 discussion with Mr. Sibley, with Mr. Clark, Mr. Dozier,
9 Mr. Starrett and Mr. -- I forgot the name of the last one.
10 But we had discussion with them, yes.

11 Q And did those discussions ultimately result in the
12 execution of a letter of intent?

13 A Not the same day. So the same day we just -- we
14 barely discuss about how much they wanted. So we went to
15 lunch, came back home. I think we spent a few weeks. Then
16 I had a call with the broker, and he say just made an
17 offer, they didn't want to make a price. So I just made an
18 offer verbally first, then they discuss it among
19 themselves. Then Mr. Don Sawyer called me back. He say
20 verbally ---

21 MR. ENGLISH: Objection. Hearsay.

22 THE COURT: Sustained. Re-ask the question.

23 BY MR. PURIEFOY:

24 Q And, Mr. Bergeron, you don't have to get into anything
25 that anyone may have relayed to you.

1 A Okay.

2 Q Tell me the information that you currently have
3 personal knowledge of.

4 A It was a conversation with him. So he told me ---
5 MR. ENGLISH: Objection.

6 BY MR. PURIEFOY:

7 Q You don't have to talk about what he said to you.

8 A Okay.

9 Q So if you could just ---

10 A Okay. Anyway, the conversation is irrelevant.
11 So after the conversation, I knew that they were happy
12 with the number, so I just wrote a letter and send it to
13 them unsigned. And then there was a few comments, which we
14 ended up having a signed copy at the end of that.

15 Q So just to unpack that a little bit, you did make an
16 offer, a number offer to Mr. Sibley and his partners at
17 some time?

18 A Yeah. It was not directly to Mr. Sibley. It was to
19 the broker.

20 Q Okay. So you sent an offer to the broker who then
21 passed along that information to Mr. Sibley? Is that ---

22 A To the seller.

23 Q Okay. All right. And how many sellers were there?

24 A There was -- well, technically six, but five were
25 active because one was deceased.

1 Q All right. And I believe you stated that you sent a
2 letter to the sellers. Is that the letter of intent?

3 A Yes. It is the letter of intent.

4 Q And originally did you state that that was unsigned?

5 A Well, yes. Initially it was unsigned.

6 Q And did the sellers have an opportunity to review the
7 letter of intent?

8 A They did.

9 Q And was that letter of intent ultimately executed?

10 A Yes, it was.

11 Q I'm going to show you what has been marked as
12 Plaintiff's Exhibit 1.

13 A Yes. I see it.

14 Q Okay. So under Section 1, the first bullet point
15 indicates a purchase price of 4.4 million?

16 A Yes.

17 Q And was this a figure that you ultimately chose to
18 offer to purchase CC+I?

19 A Yes, I did.

20 Q This was not an offer that CC+I made to you?

21 A No.

22 Q Okay. And, Mr. Bergeron, I'm assuming, and would it
23 be fair to say that this was a figure that you were
24 comfortable paying for CC+I?

25 A Yes, I was.

1 Q And at the time that you made the offer, did you think
2 that this was a fair price?

3 A I thought so.

4 Q Okay. Did you have complete control over the offer
5 that you made for this business?

6 A Yes, I did.

7 Q And we're going to refer back to this letter of intent
8 on a number of occasions. But I'm going to show you what
9 we are going to mark as Defendant's Exhibit 2, which is the
10 offering memoranda.

11 MR. ENGLISH: Your Honor, before we put this up, we
12 object to this on the grounds of hearsay and parole
13 evidence.

14 THE COURT: All right. Do I have a copy of this?

15 MR. PURIEFOY: I have an extra copy, Your Honor.

16 THE COURT: Let's just go -- I'm going to look at
17 this, and let's talk about this outside the presence of the
18 jury.

19 Ladies and gentlemen, I'm going to ask that you go
20 back to your jury room. I just want to see how y'all
21 manage those cylinders one more time. So don't discuss the
22 case, and we'll bring you right back out as soon as we can.

23 (WHEREUPON, the jury exits the courtroom at 1:50 p.m.)

24 THE COURT: All right. Exactly tell me what this is
25 and what you're using it -- what's the purpose of this?

1 MR. PURIEFOY: So, Your Honor, it's certainly not
2 going to be used for -- nor is it going to elicit any
3 hearsay testimony. In fact, we don't plan on getting into
4 any of the substance of the document itself. We referred
5 to the existence of this offering memorandum that was
6 created by Generational Equity, and really the whole point
7 of introducing this is, one, to show the effect it had on
8 Mr. Bergeron in terms of CC+I was, in fact, being marketed
9 for sale. I believe it's important for the jury to have
10 clarification that a broker was representing CC+I and had
11 CC+I on the market, and it's not as though Mr. Bergeron was
12 actively going after this entity. We simply want to
13 demonstrate the existence of the document itself. We'll
14 show the first page of the document which has absolutely no
15 substantive information contained in it and move on
16 immediately.

17 THE COURT: But once you introduce it into evidence,
18 then it's into evidence.

19 MR. PURIEFOY: It is in evidence, Your Honor, but only
20 for the purpose of demonstrating the effect on the
21 listener. We have no intention on offering anything
22 contained in the offering memoranda for proof of the matter
23 asserted, simply that Mr. Bergeron relied on the offering
24 memoranda in moving forward to the letter of intent.

25 THE COURT: Can't you do that by just doing the first

1 page?

2 MR. PURIEFOY: Yes. We have no problem doing the
3 first page.

4 THE COURT: I mean, I have some problem with it. You
5 say you're not going to use it for that, but then that --
6 it's just kind of fair game whatever's in here at that
7 point, whether it's your intent or not. You may change
8 your mind.

9 MR. PURIEFOY: We have no problem using the first
10 page.

11 THE COURT: Yeah. I mean, I see where you're going
12 with it. If you just offer it for that, then you could say
13 the first page or -- and then this is what you've got. I
14 mean, as long as you don't reference to what the
15 information -- I mean ---

16 MR. PURIEFOY: Yes, sir. That's fine.

17 THE COURT: Okay. Are they ready? They probably took
18 a bathroom break.

19 So that's going to be Exhibit 2, the first page. And
20 you can reference it was more than one page, too. I don't
21 have a problem with that.

22 MR. PURIEFOY: The first page is fine, Your Honor.

23 THE COURT: While we're waiting, too, she's got to go
24 call, try and figure out what the next case is going to be
25 like.

1 Have y'all got any proposed charges?

2 MR. ENGLISH: Yes, sir.

3 MR. PURIEFOY: We can have something in ten minutes.

4 MS. THOMASON: It will take longer than ten minutes.

5 THE COURT: All right. I mean, I don't need them
6 right now. And verdict form because I don't have a law
7 clerk.

8 MR. ENGLISH: Yes. We've got a verdict form too,
9 although I think maybe ---

10 THE COURT: Maybe you can send it to me after ---

11 MR. ENGLISH: Yeah. I think after the defendant's
12 case and the motions, that could alter how we do this.

13 THE COURT: How many more witnesses do you have after
14 this?

15 MR. PURIEFOY: Well, Your Honor, the problem is we
16 have subpoenaed an additional witness that has not shown up
17 for two days. We have the proof of delivery and the
18 subpoena to appear at court today, and he's simply just not
19 shown up. I don't know necessarily if we're going to call
20 him, but I would certainly like an opportunity to call him
21 if I . . .

22 THE COURT: So you have one more then, this potential
23 witness after this?

24 MR. PURIEFOY: Yes, sir.

25 THE COURT: Okay.

1 MR. ENGLISH: And then I might have a rebuttal
2 witness.

3 THE COURT: Okay.

4 MR. ENGLISH: And I wonder if I should get him here at
5 a particular time.

6 THE COURT: I mean, it's -- we've still got plenty of
7 time for the day.

8 MR. ENGLISH: Right. I think we'll have some motions
9 after the defendant's case, but I can have him here
10 whenever.

11 MR. PURIEFOY: I suspect that this is going to take at
12 least another hour and a half or two hours maybe.

13 THE COURT: That's still 3:30, 30 minutes for motions
14 or -- is your other witness not going to be long?

15 MR. ENGLISH: He won't be long.

16 THE COURT: I mean, if possible I'd like to get all
17 testimony in today, that way we can argue and charge in the
18 morning.

19 MS. THOMASON: So we've got cross.

20 MR. PURIEFOY: I'm not sure how we handle the trial
21 subpoena that's obviously being ignored. It's a -- it's a
22 non -- it's no one associated with us.

23 THE COURT: I mean, I guess we send a deputy out
24 somewhere. Is he local?

25 MS. THOMASON: Three miles from here.

1 MR. PURIEFOY: It's in Greenville.

2 THE COURT: I've never had to send a deputy out.

3 MR. PURIEFOY: We may have a better feel for whether
4 his testimony will be needed at the conclusion of this.

5 THE COURT: I'd just hold off on that.

6 (WHEREUPON, the jury entered the courtroom at 1:58 p.m.)

7 THE COURT: All right. Are you ready to proceed,
8 Mr. Puriefoy?

9 BY MR. PURIEFOY:

10 Q All right. Mr. Bergeron, I'm showing you what we've
11 marked as Defendant's Exhibit 2 which is titled Offering
12 Memoranda. Do you see that?

13 A Yes.

14 Q Okay. And this says, "Offering Memoranda, Computer
15 Control + Integration, Inc." This looks like it was a
16 document created by Generational Equity. Do you see that?

17 A Yes.

18 Q And I believe you testified a moment ago that, after
19 the execution of the nondisclosure, that an offering
20 memoranda was presented to you?

21 A Yes, it was.

22 Q Is this the offering memoranda you received?

23 A Yes, it is.

24 Q Okay. And did you have an opportunity to review that
25 offering memoranda?

1 A Yes, I did.

2 Q And did you rely on that offering memoranda in advance
3 of making an offer to purchase CC+I?

4 A Yes.

5 Q Okay. All right. And I'd like to go back to
6 Plaintiff's Exhibit 1, which was the letter of intent. And
7 specifically, under Paragraph 1 ---

8 A I don't see it here, so I have to turn around to see
9 it.

10 THE COURT: Yeah. You may have to -- for some reason
11 it's not picking up on his monitor there. Let me see if I
12 can try one more time. No, it didn't ---

13 THE WITNESS: I can turn around.

14 MR. PURIEFOY: I can provide him with a hard copy,
15 Your Honor.

16 THE WITNESS: I can still turn around. It's okay.

17 BY MR. PURIEFOY:

18 Q All right. So under Bullet 4 under Section 1 of the
19 letter of intent, it states that 90 percent of the purchase
20 price was going to be held back. Do you see that?

21 A Yes, I do.

22 Q If you can just read that provision.

23 A "90 percent of the purchase price will be paid in cash
24 at closing with the remaining 10 percent to be put in
25 escrow for 12 months with interest for the sellers."

1 Q Okay. And can you explain what the purpose of that
2 holdback provision was?

3 A The purpose of that holdback is that when you buy a
4 company, you want to make sure that the seller obeyed by
5 the contract, and you want to make sure that if they made
6 something that was not allowed by the contract, they can't
7 just run along with the money. You have something, at
8 least 10 percent, that they're risking to make sure that
9 they will obey the contract.

10 Q So did that just serve to ensure that the sellers did
11 what they were supposed to do?

12 A Yes.

13 Q Okay. Now, Section 2 of the -- actually, if you look
14 at the final bullet point, my apologies, under Section 1,
15 can you read that?

16 A "The offer excludes the cash at closing for both the
17 checking and savings account and includes the balance of
18 A/R, accounts receivable and accounts payable at closing."

19 Q So we're going to come back to that provision here in
20 just a second. But if we can go to Section 2 of the letter
21 of intent which refers to the due diligence process, what
22 does due diligence mean, Mr. Bergeron?

23 A Due diligence is for companies like an inspection for
24 a house. So in the offering memorandum or order document
25 or during discussion, the seller told you -- told me this

1 is it, they give us documents and things like that. And we
2 have to base the price we're going to pay -- I have to base
3 the price I'm going to pay based on what they say. At one
4 point you have to verify that what they say is actually
5 true. So the due diligence is that you bring a CPA, that
6 they look through the document and through all the details
7 to make sure that what they say in the initial document is
8 reality.

9 Q And I think you already said a moment ago that the
10 purchase price was 4.4 million. Did you have \$4.4 million
11 to pay for CC+I?

12 A No, I did not.

13 Q How did you go about getting the money to purchase
14 that entity?

15 A I apply for a Small Business Administration loan, SBA
16 loan. So I took what I had saved during my years at
17 Exxelia and before, and I applied for a loan of 3.5 million
18 at -- with the SBA. So it took a long time. So I had to
19 put my house as collateral.

20 And there was specific rule. SBA is a government
21 entity that actually has a program to buy existing company
22 to make sure that they remain in the US and that the owner
23 remain in the US so they can stay alive. So I applied for
24 that. At that time -- at the time of the LOI, I had just
25 applied. I wouldn't know if I would have -- be granted

1 that loan or not.

2 Q Okay. So you applied for a loan of more than
3 \$3 million. So how important was this due diligence or
4 inspection for you?

5 A Well, it was really important because, yes, I put --
6 you know, I was like 53 at the time. I had put some money
7 aside. But I had to risk it all to -- all the money I
8 made, my house, and basically it was a move that could not
9 fail.

10 Q And I think you mentioned a moment ago that you used a
11 CPA to help you through this process?

12 A Yeah. I used a CPA. I was -- you can see on the
13 letter of intent my address was in Lake Mary, Florida. I
14 use the CPA that was a single firm, Dan Carlton, that was
15 real close to my house. So I just -- yeah, I just use
16 them.

17 Q And so walk me through the process that you and your
18 CPA engaged in during this due diligence process. Were you
19 able to review financial information of CC+I?

20 A Yes. The way that it is, because you had to hire a
21 broker, Generational Equity, G, they made like an
22 electronic room where they can put all the documents that
23 they wanted in there. So the CPA gives them a list of
24 financial document and legal documents. So they put all
25 the documents in there that we asked for. Some were not

1 there. Some were missing. So that was the first part of
2 the process. Then the CPA and I get to review those
3 documents. Then there was one single visit that I came
4 here with the CPA to look at documents that were too big or
5 that was not electronic that we would go on site, and the
6 CPA will go through all of those documents while we were on
7 site.

8 Q Okay. So let's just back up. So there was originally
9 a virtual room that was created where documents can be
10 uploaded for your review and your CPA's review?

11 A Yes.

12 Q And you mentioned that you were able to actually go on
13 site and inspect CC+I at some point. Do you recall when
14 that was?

15 A I would have to look at the document to remember the
16 dates.

17 Q Okay. Mr. Bergeron, would it help you if I said that
18 the inspection may have been sometime around May 2017?
19 Does that sound about right?

20 A No. It was before that. May of '17 was when the due
21 diligence was completed. But the -- I think the meeting
22 was something in March or April.

23 Q And that was the meeting where you and your CPA went
24 and walked CC+I?

25 A Yeah. But they didn't finish the due diligence.

1 After that the CPA had questions, and then there was
2 additional documents sent. So the May '17 date that you
3 state is when the due diligence was officially accepted.

4 Q Okay. So let's back up to the inspection where you
5 were onsite at CC+I. Do you recall what you and your CPA
6 -- what was your CPA's name?

7 A Dan Carlton.

8 Q Do you recall what you and Dan Carlton reviewed during
9 that inspection?

10 A We reviewed financial statement, we reviewed
11 contracts, we reviewed invoice, sales order. We were not
12 at that time provided that much payroll information, but we
13 review all the rest.

14 Q During that inspection, did you have an opportunity to
15 meet all of the sellers?

16 A Yes. Well, not Mr. Featherstone because he was
17 deceased. But all the others, yes.

18 Q The surviving sellers, you were able to meet with
19 them?

20 A Yeah.

21 Q Did you have discussions with them about particulars
22 of CC+I?

23 A Yes, I did.

24 Q Did you have an opportunity to meet any of the
25 employees of CC+I?

1 A I met some employee. Not all of them, but I met some
2 employee.

3 Q Okay. Do you recall about how many employees you met?

4 A I met Kimberly French, which was the -- like the
5 accounts receivable, accounts payable lady; I met Justin
6 Pavatte; I met Scott Dozier; I met Tim Clark; and I met
7 Terry and Robert. I think that's all the one I met.

8 Q And did you have an opportunity to speak with them
9 about the services they provided and what the job duties
10 were?

11 A Yes, I did.

12 Q Okay. And then through those conversations, did you
13 still feel as though, given their skill sets, that CC+I
14 would still be a good potential target for Decide4Action?

15 A I have to say that at that time I felt that way, but I
16 knew that it was not possible with just a few hours
17 conversation. I had to rely on the information that was
18 provided in paper from the past to make that judgment.

19 Q During the due diligence phase, this inspection
20 period, were you ever informed at any time that any of the
21 employees were unhappy with the salaries that they were
22 receiving?

23 A No, I was not.

24 Q Did you have any reason to believe that any employee
25 was dissatisfied with their salaries?

1 A No, I did not.

2 Q During the original inspection that you had at CC+I,
3 did you discuss the salaries of any employees?

4 A No, I did not.

5 Q Okay. So at that time, you had not -- you had not
6 discussed the salaries of any of the employees that worked
7 at CC+I?

8 A I knew the salary of the owners because it was
9 disclosed in the offering memorandum, but I did not know
10 the salary of any other employee at that time.

11 Q All right. I'm going to show you what we've marked as
12 Defendant's Exhibit 3, I believe. Excuse me. Oh, excuse
13 me. This is Defendant's Exhibit 1. Defendant's Exhibit 1.

14 All right. If we can look at Defendant's Exhibit 1,
15 let's go through the first email that we have here which is
16 a May 2nd email that appears to be sent from you to Tim
17 Clark. Do you see that?

18 A Yes, I do.

19 Q And do you recall this email?

20 A Yes.

21 Q Okay. And it appears that you're asking for the
22 owners' salaries from 2017 going back to 2013.

23 A Yes.

24 Q And can you explain why you were asking for that
25 information?

1 A Well, it's important to know that for five years in
2 the past to the moment to know how much money the owners
3 are making because the owners all plan to retire. So I had
4 to put in my head a plan to replace them eventually except
5 two. Tim Clark and Scott Dozier plan to stay for the
6 company long-term. All the other ones had to be replaced.

7 Q Okay. And when you were thinking through this, were
8 you trying to ascertain or determine what the potential
9 expenses of running this business could be?

10 A Yes.

11 Q And then Defendant's Exhibit 2 -- excuse me --
12 Defendant's Exhibit 1 also has a May 3rd correspondence
13 from Mr. Sibley that I believe is in response to your
14 May 2nd. Do you see that?

15 A Yes, I do.

16 Q Okay. And what does Mr. Sibley indicate to you in
17 that?

18 A He said that he will begin to work on it right away.

19 Q And you may have already done this, but can you
20 explain to the jury how, once you got the information about
21 these owners' salaries, how it factored into the due
22 diligence process?

23 A Well, what was important is to make a clear difference
24 between the owners and the nonowners, because the nonowners
25 were supposed to stay and be productive. So what's

1 important at that time for anybody that buy your company is
2 to know what is the salary of the people so you know what
3 you're buying. So you want to make sure you have full
4 information. If somebody is making \$75,000 and is happy
5 with that, you know that you're going to have to provide
6 raise and things like that for cost of living if they get
7 better. But it's really important to know that you have a
8 company that you can continue to operate after the sellers
9 have all left.

10 Q So did you understand that the salaries that were
11 existing at the time of the due diligence, that if
12 Decide4Action purchased CC+I, that you would become
13 responsible for the payment of salaries?

14 A Yes.

15 Q And if we can go back to what's been marked as
16 Plaintiff's Exhibit 1, which is the letter of intent,
17 specifically we can look under Section 3 which is titled
18 Representations and Warranties Required by Seller. Do you
19 see that?

20 A Yes, I do.

21 Q Okay. So before we get into the bullet points under
22 Section 3, can you explain to me what that section caption
23 means, Representations and Warranties Required by Seller?

24 A Like I said before, the letter of intent, you make it
25 assuming that all the information that they have provided

1 to you is true. But there is some portion of the
2 information which you feel is really, really important, so
3 you make sure that they reconfirm -- even though it was in
4 their document, you reconfirm, you say, "I read that. Is
5 it really what it is?" Because you want to make sure that
6 you really buy what they say they're selling. So it's
7 really what they guarantee to you to be true.

8 Q And so how important to you are these representations
9 and warranties that were required by the seller?

10 A When I was involved with Exxelia, they were saying
11 that it was more important than the purchase price. The
12 representation and warranty is everything because that's
13 the definition of what you're buying.

14 Q So we can go down to Bullet Point Number 9 under
15 Section 3.

16 A The one about cash at closing?

17 Q Yes.

18 And can you read that?

19 A "The cash -- the cash at the time of closing would be
20 distributed to the current shareholders prior to closing.
21 Any cash not distributed prior to closing will be forfeited
22 by the seller."

23 Q And what does that provision under Section 3 mean to
24 you?

25 A This is -- this is a very important thing to make sure

1 that you're not lied about the salary of the people. And
2 I've seen in my experience one more case like that is that
3 I want to know what is the salary of each people with their
4 bonus so the -- I know that if I was told that they make
5 \$75,000 a year with a bonus of \$5,000, that's their true
6 salary. You want to make sure that nobody is -- after that
7 you did the inspection, that they just turn around and give
8 some extra money that you don't know about to the employee
9 that are not owners, because then you don't really know the
10 true salary of the employee. That's why it's really,
11 really important that the cash is -- I understand it's for
12 the seller to keep, but if they want to give bonus to
13 employee, they have to say before closing that those people
14 have bonuses. It's good to give employee bonus, but you
15 cannot just use the cash just before closing, give to
16 employee, because after that, you end up wanting that, and
17 they end up leaving, which is actually what end up leaving
18 a year after they waited for June. And they all left at
19 the same time because they didn't have the 100 percent
20 bonus, the double salary that they had the year before.

21 Q So let's back up just a little bit. I think what you
22 just testified to a second ago was that one of your
23 concerns in paying cash to nonowners is that it would show
24 a lower bonus and salary.

25 A It is -- it is not one of the concern. It is the only

1 concern. You want to make sure that there is no hidden
2 bonus to employee, nonowners, because if they're hidden,
3 you don't know the true salary that they were really
4 making. That's why that clause is there.

5 Q Mr. Bergeron, how long have you been in this business?

6 A You mean software or you mean ---

7 Q Buying and selling companies in general.

8 A When I was working for Exxelia, I was part of a team
9 that was -- Exxelia was a French company. I was part of a
10 team much bigger than just me that was doing that. And I
11 saw -- the reason I was able to write an LOI is because I
12 saw many people doing that, so I was able to do the same.

13 Q So Bullet Point Number 9 under Section 3, was that a
14 term that you specifically requested be contained in this
15 letter of intent?

16 A Yes, I did.

17 Q And prior to the letter of intent's execution, did you
18 present that term to Mr. Sibley and the other sellers?

19 A Yes, I did. Both verbally and in the letter of
20 intent.

21 Q And did they have an opportunity to review this
22 particular term?

23 A Yes. Multiple time.

24 Q And was the letter of intent ultimately executed by
25 Mr. Sibley and all the sellers?

1 A Yes, it was.

2 Q And was it your understanding that, in executing the
3 letter of intent, they were agreeing to Bullet Point
4 Number 9 under Section 3?

5 A Yes, it was.

6 Q And would you have moved forward with the purchase of
7 CC+I had they not agreed to that provision?

8 A Well, we would have had to change the price, because
9 then the employee would -- would cost -- would cost more.
10 It's possible that an employee that is making \$75,000
11 deserve a \$25,000 bonus, but that means that this employee
12 cost 100,000, not 75-. And it's totally acceptable to give
13 a bonus to an employee. You just have to declare what it
14 is.

15 Q Okay. And so you weren't necessarily opposed to the
16 payment of bonuses?

17 A Not at all. And there were payment of bonuses to the
18 nonowners that was declared to me in the amount of -- I
19 believe like \$35,000. I pay bonus to employee now. We
20 always do. However, I wanted them told to me at the time
21 before we finish the inspection. That is the entire idea
22 here. We need to know about it.

23 Q And so I think you've already stated that the sellers
24 of CC+I had an opportunity to review this provision.

25 A Yes, they did.

1 Q And they all executed the letter of intent.

2 A Yes, they did.

3 Q And did you rely on this provision and their
4 representation that all cash was going to be distributed to
5 current shareholders?

6 A Yes, I did.

7 Q Would you have considered the cash of CC+I to be an
8 asset of that company?

9 A Yes.

10 Q Okay. And if we can look at Bullet Point 10 which is
11 directly below Bullet Point 9, and could you read that for
12 me?

13 A "From the time of the LOI is submitted, the seller
14 shall not dispose of any asset either by selling, giving,
15 scrapping unless submitted and approved in writing by the
16 buyer."

17 Q Okay. And I think you just previously testified that
18 you thought that the cash of the business would have been
19 considered an asset. So what did this provision mean to
20 you?

21 A Well, you make an LOI, and we've already gone through
22 some representation and warranty. So they say we're going
23 to sell you this, you say, okay, that's -- I want to buy
24 this. Now you want to make sure that after you agree on a
25 price, they're not starting to selling piece by piece.

1 This would be like selling the fridge out of a house that
2 you already sold. You need to make sure that whatever they
3 have when you look at it, it's still there when you take
4 it.

5 Q And so I think you've already said that you saw cash
6 as an asset. Under this provision, was CC+I allowed to
7 just give away cash?

8 A No. They were just allowed -- the cash was to be
9 distributed to the seller. Nobody else. They had to --
10 that was the only way to distribute cash.

11 Q And so under this particular provision of the letter
12 of intent, if CC+I and the sellers wanted to give away
13 cash, would they have had to get your permission to do
14 that?

15 A You mean to nonowners?

16 Q Correct.

17 A Yes. They would have to submit a letter signed to say
18 we want to give bonus to such-and-such, and do you have --
19 approve that.

20 Q And you raise a great point. So under this provision,
21 had the owners elected to just pay themselves cash, would
22 you have had any problem with that?

23 A No.

24 Q And would they have had to seek your permission to pay
25 themselves cash from the company?

1 A No. Because the letter of intent specifically say
2 they were supposed to give the cash to themselves. So in the
3 sense, the permission was already in the LOI that they can
4 give it to themselves.

5 Q And we're going to get into this in a lot more detail
6 momentarily. But did you eventually become aware that the
7 sellers of CC+I did, in fact, give away cash that went to
8 nonowners?

9 A Yes. I was made aware postclosing.

10 Q Okay. And did you ever receive any notification about
11 the payment of those bonuses asking for your permission in
12 writing to give those away?

13 A I never did.

14 Q And if we could go down to the bottom of the letter of
15 intent under Section 5, and if we look at the -- I believe
16 it's the first bullet point that sets the timeline for this
17 due diligence process. Do you see that?

18 A Yes, I do.

19 Q Okay. And this states that the buyer shall have
20 45 days after the signature of the LOI to complete the due
21 diligence process. Do you see that?

22 A Yes. I see that.

23 Q Okay. Explain that provision.

24 A Well, when you sign the LOI, you don't know how long
25 it's going to take. So you -- normally, the seller and

1 buyer agree on a time, so normally, the -- anyway, we ended
2 up say 45 days after that we signed this LOI, I would have
3 looked at the document, come with my CPA and say, yes, it's
4 okay. The ---

5 Q And if we look at Bullet Point 2.

6 A Yeah. But if I just want to say about the first --
7 sorry.

8 Q Sure.

9 A So initially we say 45 days. I've heard yesterday
10 that the LOI was expired. It was not because there was --
11 I was really surprised to hear that because we extended
12 that clause twice with all the consent of the seller and
13 myself. The first time we extended by 30 days, and the
14 second time by 15 days. And it took me a little bit to
15 hear that, you know, we just let it expire while they know
16 that it was extended twice. So the letter of intent was
17 never expired. It never did expire.

18 Q So as you sit here today, you recall the extension of
19 this 45-day period on at least two occasions?

20 A Yes. There was two occasion. And I know that they
21 were signed, and they were returned to me by Scott Dozier,
22 which was one of the seller.

23 Q And now if we look under Bullet Point 2 under
24 Section 5, this states that the buyer shall have 90 days
25 from the completion of due diligence to complete the

1 acquisition.

2 A Yes. So when you complete the due diligence, now you
3 have 90 days to complete the -- to make an agreement on the
4 SPA. Now, it is my understanding that you have 90 days to
5 make an agreement on the SPA, but then normally you make an
6 agreement as to when you're going to sign it, because you
7 agree on it, then it depend on a lot of what it contain,
8 then you sign it. But that's what it says.

9 Q And do you recall when you and the sellers first began
10 having discussions about the actual substance of the stock
11 purchase agreement itself?

12 A I would say that it would be around July or August of
13 2017.

14 Q Well, let me ask you this, Mr. Bergeron. I believe
15 you stated that CC+I was already on the market for sale
16 through a broker when you were introduced to them; is that
17 fair?

18 A Yes, it was.

19 Q Okay. Why would CC+I agree to an extension on the
20 letter of intent if they were looking to be sold?

21 A Well, they were actually pushing to push -- to extend
22 it, because here, CCE, Coca-Cola Enterprise, was sold to
23 Coke Consolidated, and there was a very large amount of
24 contract. And they were making a lot of money from those
25 contract, and they wanted to make sure they finish those

1 contract before they sold the company.

2 Q So if we could go back to Bullet Point 9 under
3 Section 3, so this was the bullet point that required that
4 all cash be distributed to the current shareholders?

5 A Yes.

6 Q And so to make sure I understand what you're saying
7 correctly, in extending the letter of intent, did that give
8 an opportunity to sellers to increase the amount of cash
9 they were going to get?

10 A Yes. Because they were getting all the cash from all
11 those contract, and that's why there was such a big owners'
12 bonus at the end because they had all of those sales and
13 they could take the cash out.

14 Q Well, let me ask this. Had the stock purchase
15 agreement and the transaction closed in accordance with the
16 original letter of intent, would the sellers have gotten
17 all the cash from Coca-Cola Consolidated?

18 A Of course not.

19 Q So did it benefit CC+I to extend this letter of
20 intent?

21 A I think it did.

22 Q All right. And we've made reference to it a number of
23 times, but I'm going to show you what's been marked as
24 Plaintiff's Exhibit 8, which is the stock purchase
25 agreement. And specifically, we can go to page 6 of that

1 stock purchase agreement. And on page 6, do you see where
2 it says "Events subsequent to May 17, 2017"?

3 A Yes, I do.

4 Q Can you read the first part of that for me?

5 A "Events subsequent to May 17, 2017. Except as set
6 forth in 4(i) of the disclosure schedule, since May 17,
7 2017, there has not been any material adverse change, and
8 target has conducted its business in the ordinary course of
9 business without limiting the generality of the foregoing
10 since May 17, 2017."

11 Q Okay. And what did you understand that particular
12 provision to mean?

13 A What that means is that May 17th is the date where we
14 finished the inspection. So after that, we don't get to
15 see the day-to-day. So we finished the inspection, we want
16 to make sure that after that date, everything remain the
17 same as we saw, and then after -- continued to operate the
18 business like normal without making any change that would
19 adversely change -- affect the value of what I was buying.

20 Q And how important was that provision in you electing
21 to move forward with the purchase of CC+I?

22 A Well, it's -- it's critical. Because if they changed
23 something after we inspected it, then the value changed.
24 That's why we forbid them. It's in conjunction with also
25 things that we specifically forbid to do to make sure the

1 value does not change. There was a process to approve any
2 change they wanted to do in case there was something. But
3 that's really important.

4 Q So if CC+I was to engage in conduct that would be
5 considered outside the ordinary course, what would be the
6 method of getting approval to engage in that type of
7 conduct?

8 A They would have to send a letter to me to describe
9 what it is and get some approval in writing from me to do
10 that change.

11 Q And as you sit here today, did you ever recall
12 receiving any letters seeking your approval to engage in
13 conduct that would be considered outside the ordinary
14 course?

15 A I did once.

16 Q Okay.

17 A They -- they wanted to terminate a copier contract for
18 like \$3,000, and they sent me an email about that and they
19 approved it.

20 And I say not once, but twice. There was another case
21 where they felt that they needed to move. They were on
22 1200 Woodruff, they was in Suite 59, and they wanted my
23 approval to start the process to move in
24 Suite C-6. And I approve both of them.

25 Q So there was a process that CC+I could have engaged in

1 to get your permission to do anything outside the ordinary
2 course?

3 A Yes, there was.

4 Q Okay. And if we can look at page 7 of the stock
5 purchase agreement, specifically under Roman Numeral I, and
6 can you read that provision?

7 A "So target has not sold, leased, transferred, assigned
8 or otherwise dispose of any of its assets, tangible or
9 intangible, other than in the ordinary course of business."

10 Q And I believe you've already testified that you
11 considered the cash is to be an asset?

12 A Yes, I do.

13 Q Okay. And this was a provision that was contained in
14 the stock purchase agreement?

15 A Yes, it was.

16 Q And was that stock purchase agreement signed by you?

17 A Yes.

18 Q On behalf of Decide4Action?

19 A Yes.

20 Q And was it signed by Mr. Sibley and all the other
21 sellers on behalf of CC+I?

22 A Yes, it was.

23 Q And so did you understand that in executing the stock
24 purchase agreement, they were confirming that the target
25 had not sold, leased, transferred assigned or otherwise

1 disposed of any of its assets?

2 A Yes, it was. But we were more specific with some
3 other clause to make sure that they did not do some of the
4 -- of the behavior.

5 Q And so if we can look down on page 8, I believe, under
6 Section 17, Roman Numeral XVII, if you could read that for
7 the jury.

8 A "Target has not adopted, amended, modified or
9 terminated any bonus, profit sharing, incentive, severance,
10 or other plan, contract, or commitment for the benefit of
11 any of its director, officer or employee or taken any such
12 action with respect of any other employee benefit plan."

13 Q And so this is one of the other provisions that you
14 said you took special steps to ensure that other conduct
15 did not occur?

16 A Yeah. This is the main one in opposed to correspond
17 to the one in the -- in the LOI to make sure that all bonus
18 were disclosed. And so they state in there that they have
19 not done that additional bonus.

20 Q So when you review Section 17 of the stock purchase
21 agreement, do you believe that this section is affirming
22 what the letter of intent indicated, that bonuses were not
23 going to be paid unless they were disclosed?

24 A Yes. But to add more detail, and it was written by a
25 lawyer as opposed to just being written by me.

1 Q Would you agree that they both stood for the same
2 general proposition?

3 A Yes. Exactly the same thing.

4 Q And so the requirement that cash be paid to
5 shareholders not only existed in the letter of intent, but
6 also made its way into the stock purchase agreement?

7 A Yes.

8 Q And did you rely on this provision in electing to
9 execute the stock purchase agreement?

10 A Yes. But like I say, given below there's more clause
11 to make absolutely sure that I did -- could rely on it.

12 Q And we're going to get to some of those clauses in
13 just a minute. But if we can go down to page 17,
14 Subsection C, and this is the stock purchase agreement on
15 page 17 -- excuse me -- Subsection C titled "cash." Do you
16 see that?

17 A Yes.

18 Q And could you read the first part of the first
19 sentence for me?

20 A "Cash. Sellers shall ensure that all target cash is
21 distributed or otherwise paid out to sellers no later than
22 closing."

23 Q So, again, is this another provision that is contained
24 in the stock purchase agreement requiring cash to be paid
25 to sellers?

1 A Yes.

2 Q And during the course of your testimony today, on how
3 many different occasions did this provision make it into
4 either the letter of intent or the stock purchase
5 agreement?

6 A Could you restate the question?

7 Q Sure. Do you recall that the letter of intent also
8 required that cash be paid to shareholders?

9 A Yes, I do.

10 Q Okay. And then a provision that we just looked at a
11 moment ago that adopted a requirement that there be no
12 change in bonus commitment, do you recall that?

13 A Yes, I do.

14 Q And then, again, under Subsection 3, it requires that
15 all cash be paid to the sellers?

16 A Yes.

17 Q So that's on three separate occasions. Would you
18 agree that the documents executed by the sellers disallowed
19 the payment of cash to the sellers -- or to nonowners?

20 A To nonowners, yes. There's multiple times. There's a
21 lot more than three, but at least three.

22 Q And, again, can you explain to the jury why that is a
23 concept that is repeated throughout all of the documents?

24 A Well, for the cash, there is two concept. The first
25 concept is the one that I've already explained for the --

1 to make sure that we know how much money each employee is
2 making so there's not just a new bonus that arrived the day
3 before closing or the month before closing, so to make sure
4 that we know the salary of the employee.

5 Also, for the cash, we always want the cash to be
6 distributed before closing to make sure that there is no
7 conflict as the cash two days after closing. So if we wait
8 after closing, then there's that long dispute. Was it
9 there? Was it not there? So the clause is that all the
10 cash before closing, you take it out. So it is easy to
11 manage, but you take it out for yourself. You don't pay
12 undeclared bonus with it.

13 Q So if we look, again, at page 6 under Section 17, did
14 you take -- excuse me. Page 7. Or 8. Under Section 17,
15 did you take this provision as a representation by the
16 sellers that they had not adopted any bonus plan?

17 A Of course. That's what it says.

18 Q And did you rely on that provision?

19 A Yes, I did.

20 Q And then, again, on page 17 under Subsection C titled
21 "cash," did you also rely on this provision?

22 A Yes, I did.

23 Q And each of these provisions were confirmed by each of
24 the sellers?

25 A Yes.

1 Q And it was signed by Mr. Sibley specifically?

2 A Yes.

3 Q Okay. Did you ultimately execute the stock purchase
4 agreement?

5 A Yes, I did.

6 Q And when did you do that?

7 A Like I said before, I think it was signed on
8 October 16, 2017, but I think the official date is
9 October 17.

10 Q Did CC+I operate under that name for some period of
11 time before it was changed?

12 A After the closing?

13 Q Yes.

14 A Yes.

15 Q When did that name change from CC+I to Decide4Action?

16 A About two years ago.

17 Q And so that would have been in 2019?

18 A Maybe December. Yeah. Maybe 2019.

19 Q And how many employees of CC+I transitioned from CC+I
20 to Decide4Action?

21 A At the time of closing?

22 Q Yes.

23 A Including the owners?

24 Q Yes. If we could do the owners.

25 A So we had Tim Clark, we had Scott Dozier, Mr. Sibley

1 was technically an employee after that, we had Terry
2 Roberts, Kimberly, we had Ryan. I would say about eight.

3 Q About eight. So I'm going to ask you about some of
4 them specifically. Do you know who Joseph Taylor is?

5 A Yes, I do.

6 Q Who is Joseph Taylor?

7 A Joseph Taylor was a computer programmer at CC+I.

8 Q And do you recall how long he had been at CC+I before
9 you acquired it?

10 A I think 18 months.

11 Q Who was Nathan Herrmann?

12 A He was a computer programmer.

13 Q And do you recall how long he had been there?

14 A Like a year.

15 Q And you've already mentioned Justin Pavatte. Who was
16 that?

17 A He was a programmer, too.

18 Q And when you say "programmer," what do you mean by
19 programmer?

20 A Well, coder. They did write computer software.

21 Q And was this the software that you installed in these
22 facilities to automate these processes?

23 A Yes.

24 Mr. Pavatte was at CC+I for eight months.

25 Q Eight months.

1 And you mentioned Kimberly French. Who was that?

2 A She was the -- like the receptionist and the account
3 receivable, account payable. She was doing like the
4 accounting -- in-house accounting.

5 Q Are there any other nonowner employees that you can
6 recall other than those four individuals?

7 A There was Carlos, there was Ryan Clark, there was --
8 there was another one, the IT guy, Chris Jones.

9 Q Let's start with Carlos. And was his name Carlos
10 Viveros?

11 A Yeah. Carlos Viveros.

12 Q And what was his job title?

13 A He is senior computer programmer.

14 Q And what about Ryan Clark?

15 A Ryan Clark, his title, he was -- he had a title in
16 sales, technically.

17 Q And do you recall how long Ryan Clark was with CC+I
18 before you acquired it?

19 A Like a year.

20 Q What about Carlos Viveros? Do you recall how long he
21 was ---

22 A I think he was there like two years. It was the
23 oldest nonowner employee.

24 Q And I believe the last person you mentioned was a
25 Mr. Jones?

1 A Chris Jones.

2 Q And you said he was in IT?

3 A IT.

4 Q And how long had he been with CC+I?

5 A I think like a year and a half.

6 Q So all of the nonowner employees, the longest employed
7 was Carlos Viveros, about two years?

8 A Yes.

9 Q Would you have considered Joseph Taylor to be a
10 crucial employee at the time you acquired CC+I?

11 A Yes, I did.

12 Q Would you have considered Nathan Herrmann to be a
13 crucial employee at the time you acquired?

14 A Yes, I did.

15 Q What about Justin Pavatte?

16 A I did also.

17 Q And Kimberly French?

18 A Kimberly French, I think she was, yeah.

19 Q To you she was?

20 A She was. She was doing accounting, and that was --
21 she was the only one there.

22 Q And Carlos Viveros?

23 A Yes, he was.

24 Q And Ryan Clark?

25 A I didn't know.

1 Q Okay. And Mr. Jones?

2 A Mr. Jones, yes.

3 Q So if we can talk through the months after the
4 execution of the stock purchase agreement, how was -- how
5 was business once you acquired and took over the operations
6 of CC+I?

7 A Well, business is really slow because what I just said
8 about why the LOI was delayed, I didn't know then. I just
9 learned after that, basically, all the sales work is rushed
10 out. So business was really slow because Coke was not
11 buying anything because they bought everything they needed
12 like a year in advance.

13 Q So let me ask you this. How was the work atmosphere?
14 Did it appear as though that the employees were happy with
15 their employment after your acquisition?

16 A The first three month, yes.

17 Q And what changed after the first three months?

18 A What changed is that slowly I started to discover that
19 at least three of the employee were actually not
20 programmer. They had the title of computer programmer, but
21 they were not actually able to do that.

22 Q And so that kind of started the shift in the work
23 atmosphere when you made that realization?

24 A Yes. It was gradual. It was not like a lot.

25 Q Right. So it took a period of time for you to realize

1 that some of those employees couldn't actually do the
2 coding that you needed them to do?

3 A It took maybe six to eight months.

4 Q Well, let's talk specifically about November of 2017.
5 Do you recall being provided any information in November of
6 '17?

7 A I don't think I can ever forget that day.

8 Q Okay. Can you explain to the jury what happened in
9 November of 2017?

10 A I was still commuting from Florida on Allegiant trying
11 to get this company under control. And on Friday
12 afternoon, like an hour or two before I was leaving,
13 Mr. Sibley called me in his office, and he opened -- he had
14 an old file cabinet next to his office and he said, "I'm
15 just going to give you some HR document." Then he pulled
16 that file and he gives me those piece of paper. And I just
17 look at them, and I think that he was accurate. I turned
18 white.

19 Q And what did Mr. Sibley provide you at that time?

20 A It was the letter that he had given a full-year salary
21 to all the employee except one. All the nonowners -- after
22 due diligence, all the people that were -- if Tony was
23 making \$75,000 a year, he was given \$75,000 bonus. Like
24 Justin Pavatte was there for eight months. He had the
25 salary of \$75,000, and he was given an additional \$75,000

1 eight months after he was there.

2 Q And we're going to get into the specifics of each
3 person's bonus, but I think you said that all but one
4 person was paid 100 percent of their salary as a bonus?

5 A All the nonowners were double the salary except one.

6 Q And who was that?

7 A It was Kimberly French.

8 Q And when you learned about the payment of these
9 bonuses, did you feel as though that was somehow in
10 violation of either the letter of intent or the stock
11 purchase agreement?

12 A I knew then that it was a big violation.

13 Q And before November 2017, had you ever been provided
14 copies of those documents?

15 A I had no idea. That's why I turned white on that day.

16 Q And so you would agree, you were in the courtroom when
17 I was reading Mr. Sibley's testimony where he indicated
18 that that was never provided to you?

19 A I fully agree to this portion. I don't agree to what
20 I say because I was so taken, I was white, that I decided
21 to say nothing. I just took the document, thank you very
22 much, and just walked out the door before I say anything,
23 because I knew it was something big, and I didn't want to
24 just make a mistake. So I say nothing and did nothing.

25 Q Well, let me ask this. During the process of the due

1 diligence, had any mention ever been made of these bonuses
2 being paid to nonowners?

3 A Well, I saw it on other testimony there was the owner
4 salary spreadsheet. The bonus to nonowners was supposed to
5 be \$35,000 a year. So I was fully expecting three bonuses
6 totaling \$35,000 a year. I had never had any mention of a
7 full year salary, a double salary of each employee. Never
8 heard of that.

9 Q Now, you testified earlier that the CPA that
10 accompanied you to the site inspection was Dan Carlton?

11 A Yes.

12 Q Okay. And as you sit here today, are you aware of
13 whether Dan Carlton received copies of those bonus ---

14 A I'm aware that he never received it, because I did
15 ask.

16 Q And did Dan Carlton create a report following that
17 site inspection?

18 A Yes, he did.

19 Q Okay. And were the sellers of CC+I, including
20 Mr. Sibley, were they aware of the fact that this report
21 was being created?

22 A Yes, they were.

23 Q And then how do you know that they were aware that
24 this report was going to be created?

25 A Because there's always a report after due diligence.

1 It's like an inspection. There's always a report.

2 Q And as you sit here today, do you have personal
3 knowledge as to whether or not Mr. Sibley received that
4 report from Dan Carlton?

5 A I don't think he did, the report.

6 Q But he knew that one was going to be created?

7 A Yes.

8 Q Okay. And do you know what their understanding of
9 that report was and what its intended purpose was?

10 A I cannot say that. I don't know that.

11 Q Okay. I'm going to show you what we have marked as
12 Plaintiff's Exhibit 3. All right. Is this the report that
13 Mr. Carlton created?

14 A Yes.

15 Q And you recognize this document?

16 A Yes.

17 Q First, I'd like to look at the date. This document is
18 dated it looks like June 22nd of 2017?

19 A Yes, it is.

20 Q Okay.

21 A I didn't wait for the report to say that the due
22 diligence clause was agreed upon. I had some communication
23 with Mr. Carlton, and I agreed on May 17th that was okay.

24 Q Okay. And so if we could look at the first two
25 paragraphs of this report, so the first looks like this

1 document was being created as a result of due diligence
2 activities performed on May 16th and 17th. Do you see
3 that?

4 A Yes.

5 Q Okay. Is that the site inspection that you were
6 referring to?

7 A Yes.

8 Q And then if you go down under the section titled Scope
9 and Procedures, do you see where it states that during that
10 meeting, Mr. Carlton was going to review financial
11 information supplied by CC+I?

12 A Yes.

13 Q Okay. And was this report something that you relied
14 on in ultimately moving forward with the purchase of CC+I?

15 A Yes, I did. Not only did I do, but it was also a
16 legal requirement for the Small Business Administration.
17 You cannot buy a company if you don't have an inspection
18 report.

19 Q So this was dated June 22nd of 2017, correct?

20 A Yes.

21 Q Okay. And on the inspection, I believe, based on a
22 reading of this document, occurred on May 16th and 17th of
23 2017. Were there any additional inspections that were
24 conducted after May 17, 2017?

25 A Yes.

1 Q Okay. What were those inspections?

2 A There were some other document that were sent by
3 Cherry Bekaert, CC+I's accountant. So they sent some
4 additional document that we took into consideration.

5 Q And was the need for those additional documents a
6 result of this report that Mr. Carlton indicated that there
7 were still some additional documentation he needed to
8 review?

9 A Yes.

10 Q So then there were some additional documents that were
11 produced to you after this report was created?

12 A Yes.

13 Q And, again, this report was created on June 22nd of
14 2017?

15 A Yes.

16 Q And in the additional documents that were produced to
17 you after this report's creation, did you receive the bonus
18 letters then?

19 A No.

20 Q Okay. All right. Mr. Bergeron, I'm going to have you
21 look at what we have marked as Defendant's Exhibits 3
22 through 9. All right. Mr. Bergeron, do you see what's
23 marked as Defendant's 3 on the screen?

24 A Yes.

25 Q It's titled "Terms of Employment Amendment"?

1 A Yes.

2 Q Okay. And could you tell me the date on this
3 agreement?

4 A June 26, 2017.

5 Q And so would you agree with me that these bonus
6 letters were dated four days after Mr. Carlton's report?

7 A Yes.

8 Q And if you go to the first -- excuse me -- the second
9 paragraph, and could you read that for the jury?

10 A "In addition to this possible salary increase in
11 August, on June 30, 2017, Justin will receive a bonus this
12 year equal to his present salary, namely \$70,000. CC+I has
13 been dramatically blessed with profitable business during
14 our just completed fiscal year ending June 30, 2017. This
15 bonus is in response to the very profitable year and the
16 outstanding work put forth by our CC+I team of associates.
17 The company director, Bill, Tim and Scott, thank you for
18 the extra effort you have contributed to make our year so
19 successful. The amount of bonus varies from year to year,
20 depending on company profitability and the effort put forth
21 by each associate. We are happy to share the result of a
22 really good year with you, really good associate, while at
23 the same time we challenge each of us to actually work to
24 achieve us a repeat performance this coming fiscal year."

25 Q Okay. And so you learned about the payment of

1 Mr. Pavatte's salary of \$70,000 and then matching that
2 salary for the first time in November 2017?

3 A Yes.

4 Q Okay. And I believe you've already indicated and it's
5 clear that that bonus was 100 percent of Mr. Pavatte's
6 salary?

7 A Yeah. But that's what also the letter says.

8 Q And how long did you say Mr. Pavatte had been an
9 employee of CC+I before he received this bonus?

10 A I think it was eight months.

11 Q Okay. And if we could look at Defendant's Exhibit 4,
12 do you see that this is a CC+I bonus results for fiscal
13 2017?

14 A Yes.

15 Q And you see that this is also dated June 26, 2017?

16 A Yes.

17 Q Okay. And Ryan Clark, you see the annual salary that
18 he was receiving?

19 A Yes.

20 Q And if we can just look at the first sentence of this.

21 A It's annual salary of \$50,000.

22 Q And if you could read the sentence directly below.

23 A "It is with great pleasure that we announce that on
24 June 30, 2017, Ryan will receive a bonus this year equal to
25 his present annual salary, namely \$50,000."

1 Q And at the bottom of the second paragraph, do you also
2 see the same language where CC+I hopes for a, quote, repeat
3 performance?

4 A Yes.

5 Q Okay.

6 A And just for -- Ryan Clark was the son of Tim Clark,
7 one of the sellers.

8 Q All right. And he received a bonus in the amount of
9 100 percent of his salary?

10 A Yes.

11 Q If we could look at Defendant's Exhibit 5, same thing.
12 This is a -- CC+I bonus results for fiscal 2017 for
13 Christopher Jones?

14 A Yes.

15 Q And his annual salary was what?

16 A \$45,000.

17 Q Can you read the first portion?

18 A "It is with great pleasure that we announce that on
19 June 30, 2017, Chris will receive a bonus this year equal
20 to his present salary -- annual salary, namely \$45,000."

21 Q And at the bottom of the second paragraph, do you see
22 the same language where it says that we hope to repeat this
23 performance next year?

24 A Yes.

25 Q Okay. If we can look at Defendant's 6. Is

1 Defendant's 6 a CC+I bonus results for fiscal 2017 for
2 Carlos Viveros?

3 A Yes.

4 Q What was his annual salary?

5 A \$75,000.

6 Q And if you could read that first portion.

7 A "It was with great pleasure that we announce that on
8 June 30, 2017, Carlos will receive a bonus this year equal
9 to his present annual salary, namely \$75,000."

10 Q Okay. And would you agree that the last portion of
11 the second paragraph indicates that there's a hope of a
12 repeat performance for next year?

13 A Yes.

14 Q If we can look at Defendant's 7. This is the CC+I
15 bonus results for fiscal 2017 for Joseph Taylor. Do you
16 see that?

17 A Yeah.

18 Q And what was his annual salary?

19 A \$46,000.

20 Q Okay. Could you read that first part for me?

21 A "It is with great pleasure that we announce that on
22 June 30, 2017, Joseph will receive a bonus this year equal
23 to his present annual salary, namely \$46,000."

24 Q Okay. And do you see that the last part of this
25 paragraph also makes reference to CC+I, indicating that

1 they are looking forward to a repeat performance next year?

2 A Yes.

3 Q And final -- excuse me -- Defendant's Number 8, this
4 is a CC+I bonus results for fiscal 2017 for Nathan
5 Herrmann?

6 A Yes.

7 Q And what was his annual salary?

8 A 63,874.

9 Q And could you read that first part?

10 A "It is with great pleasure that we announce that on
11 June 30, 2017, Nathan will receive a bonus this year equal
12 to his present annual salary, namely 63,874."

13 Q Okay. And do you notice at the bottom of this
14 paragraph, it also repeats the sentiment that they are
15 hopeful for a repeat performance next year?

16 A Yes.

17 Q And if you look at final -- Defendant's Number 9, the
18 final bonus, do you see that this says "Terms of
19 Employment"?

20 A Yes.

21 Q Okay. And this is for Kimberly French?

22 A Yes.

23 Q It set her annual salary at what?

24 A 37,500.

25 Q And if you come down to what I believe is the second

1 sentence that starts "in addition to the salary increase"?

2 A "As of July 1, 2017, Kimberly will receive an increase
3 so that her annual salary will be \$40,000. In addition to
4 the salary increase, Kimberly will receive a \$10,000 bonus
5 on June 30, 2017."

6 Q So Ms. French didn't receive 100 percent of her
7 salary.

8 A No, she did not.

9 Q And what was her title again?

10 A She was account payable, accounts receivable.

11 Q And did you say she also worked as a receptionist?

12 A Yes, she did. She was not needed like the rest of
13 them to make those -- to code.

14 Q So she wasn't a programmer like the rest of them?

15 A No. She was just a normal office person, so she was
16 disposable.

17 Q Okay.

18 A For them.

19 Q And let me ask you, in the bottom part of each one of
20 these -- if we could go back to Defendant's Exhibit 8, in
21 the bottom part of the paragraph for each of these bonus
22 results of fiscal 2017, the second paragraph, the first
23 paragraph, that makes reference to repeat performance.

24 A Yes.

25 Q When you saw these letters that had been sent out to

1 each one of these employees, did you take issue with the
2 use of the words "achieving repeat performance"?

3 A Of course. It was part of what brought me white.
4 Because I knew at that time that that was a big problem,
5 that they would expect double the salary that that was
6 declared to, except Kimberly French that was expecting
7 \$10,000 more. But I knew that I just bought a company that
8 had double the amount of expense in employee that I was
9 counting on. So for me it was like I put everything, all
10 my life into this with my son, and now I just realized
11 that, oh, my God, they will expect this to be the same.
12 And the sales, I knew now the sales were down, so I knew I
13 was in big trouble.

14 Q And the very last part of this says "repeat
15 performance this coming fiscal year." So this was paid as
16 a year-end bonus ending July 2017 -- or June 2017; is that
17 right?

18 A Yes.

19 Q So in the next fiscal year, which would have ended
20 June 30th of 2018, if you would have acquired CC+I, who
21 would have been responsible for paying that repeat bonus?

22 A Of course I was.

23 Q So Mr. Sibley, if the transaction went through, would
24 not be responsible for paying those bonuses?

25 A Not at all.

1 Q And would he have to deal with any of the fallout that
2 resulted if those bonuses were not paid?

3 A No. Because Mr. Sibley's contract was three months.

4 Q And if we could look back at the stock purchase
5 agreement, which is Plaintiff's Exhibit 8, this was -- and
6 we've looked at this already. Did you believe that the
7 payment of the bonuses that we just looked at were a breach
8 of this stock purchase agreement?

9 MR. ENGLISH: Objection. Asked and answered.

10 THE COURT: Go ahead. I'll let him ask it again.

11 BY MR. PURIEFOY:

12 Q If we could go to page 8. And this was the provision
13 is Subsection 17 of the stock purchase agreement. Do you
14 recall reading this provision?

15 A Yes, I do.

16 Q And one of the things that provision indicates is
17 target has not adopted, amended, modified, terminated any
18 bonus, profit sharing, incentive, severance or other plan,
19 contract or commitment." Do you see that?

20 A Yes.

21 Q Did you view the language of repeat performance as a
22 commitment to pay a bonus in the future?

23 A What I view was irrelevant. I did, but what was more
24 important is the employee also did.

25 Q Well, as you sit here today, do you ---

1 A Yes, I do.

2 Q --- believe that the employees thought that that was a
3 commitment?

4 A They told me so.

5 Q Okay. Let me ask this. Do you believe that
6 Mr. Sibley had the opportunity to disclose the payment of
7 those bonuses to you at some time prior to closing?

8 A He had those letter at the end of June. What was the
9 problem of scanning them and sending them to me? It was
10 really, really easy.

11 Q Did you take issue with the fact that the bonuses were
12 paid or that they weren't disclosed?

13 A That they were not disclosed. If the employee aware
14 of that, that's okay. But they were not disclosed. That's
15 the problem.

16 Q And you heard the testimony I read into the record at
17 the beginning of our case in chief. Did you hear the
18 portion of Mr. Sibley's testimony where he indicated that
19 you could have known about the existence of these bonuses?

20 A Yes. I heard that.

21 Q Okay. And I'm going to have you look at what's been
22 marked as Plaintiff's 4, which are the tax returns. And
23 have you seen these tax returns before?

24 A Yes, I did.

25 Q When were these tax returns provided to you?

1 A Like a week before the closing.

2 Q Was that at your request?

3 A Actually, not. It was at the request of the SBA
4 administration.

5 Q But you did receive a copy of this?

6 A Yes, I did.

7 Q And do you recall hearing the testimony that was read
8 into the record of Mr. Sibley that, through this document,
9 you could have or should have known about the existence of
10 those nonemployee -- or nonowner bonuses?

11 A Yes, I recall.

12 Q And specifically in that testimony, we looked at
13 lines 12 and 13?

14 A Yes.

15 Q And so if we can look at lines 12 and 13, did you look
16 at these two lines -- okay. Did you look at these two
17 lines when you received this tax return a week before the
18 closing?

19 A Yes, I did.

20 Q And if we can look at line item 12, what is that
21 titled?

22 A It says "Salary and Wages."

23 Q Okay. Go up to 12. Excuse me.

24 A 12, Compensation of Officers.

25 Q Okay. And what is that number?

1 A 2,550,375 -- 379.

2 Q And then directly below that is salaries and wages.
3 Do you see that?

4 A Yes.

5 Q And what is that number?

6 A 687,405.

7 Q And are you aware that it was Mr. Sibley's position
8 that, through this document, you should have known about
9 the existence of the payment of nonowner bonuses?

10 A I'm aware.

11 Q Okay. Can you look at lines 12 and 13 and tell me
12 where it discloses the payment of nonowner bonuses?

13 A It does not. And it doesn't even come even close to
14 raising a suspicion for me, because if you look at -- now
15 you've highlighted line 12 and 13, but if you highlight the
16 line just above that says 4.4 million something, that was
17 sales of 50 percent more than in the last year because they
18 all deliver all of those contract. So of course if you
19 deliver more, you're going to spend more money with
20 employee. So they had temporary employee at one point,
21 they had overtime and all of this. So when you have like
22 40 percent more sales, I fully expected the employee to
23 cost more. And normally, the payroll should have been like
24 450- if you will take the eight employee. So you have a
25 couple of hundred thousand dollars, it doesn't raise any

1 question whatsoever.

2 Q Well, let me ask, in Line Item 13 which shows salaries
3 and wages in the amount of \$687,000, I believe ---

4 A Yes.

5 Q --- do you see that?

6 A Yes.

7 Q Does salaries and wages break out whether those
8 salaries and wages were paid to owner employees or nonowner
9 employees?

10 A I think in the tax return it does.

11 Q So under line 13, can you tell of the \$687,405 how
12 much of that went to the owners and how much of that went
13 to the nonowners?

14 A I don't think I can.

15 Q Okay. And you're aware that Mr. Sibley stated it was
16 this document that you should have known that the nonowner
17 bonuses were paid?

18 A I'm aware that he's saying that, but he is just make
19 it up. If he wanted to disclose it, he would have send me
20 the letter.

21 Q Well, as you sit here today, do you believe that this
22 tax return discloses that information?

23 A No, it does not.

24 Q All right. We talked about the fact that you had a
25 discussion with Mr. Sibley about the payment of these

1 bonuses back in November of 2017. Do you recall that?

2 A Yes, I do.

3 Q Okay. Did you ever have any discussions with any
4 other sellers regarding these bonuses?

5 A Before or after November?

6 Q At any time.

7 A Well, after November, yes.

8 Q Okay. And specifically let me ask, as you sit here
9 today, and I believe you already indicated the names of the
10 seller/owners, your testimony has been that Mr. Sibley knew
11 about the payment of the bonus?

12 A Yes.

13 Q Okay. And did Scott Dozier know about the payment of
14 the bonus?

15 A Yes, he did.

16 Q Did Tim Clark know about the payment of the bonus?

17 A Yes, he did.

18 Q Did Mr. Leviner know about the payment of the bonus?

19 A No, he did not.

20 Q Did Mr. Starrett know about the payment of the bonus?

21 A No, he did not.

22 Q Did Ms. Featherstone, based on her own testimony, know
23 about the payment of the bonus?

24 A I don't know, but she said she did not.

25 Q Okay. So as you sit here today, is it your

1 understanding that only three of the seller/owners actually
2 knew about those bonuses being paid?

3 A Yes.

4 Q And was the payment of those bonuses ever disclosed to
5 the other owners before the payments were made?

6 MR. ENGLISH: Objection. No basis.

7 THE COURT: Rephrase the question.

8 BY MR. PURIEFOY:

9 Q Mr. Bergeron, are you aware as you sit here today
10 whether or not the payment of those bonuses were disclosed
11 to Mr. Leviner, Mr. Starrett and Ms. Featherstone before
12 June 26th of 2017?

13 A I know they were not.

14 Q Okay. And in accordance with the letter of intent and
15 the stock purchase agreement, who was required to get all
16 of the cash?

17 A The sellers.

18 Q And so if bonuses were paid at 100 percent to
19 nonowners, would that have taken at least some of the cash
20 out of the pockets of Mr. Leviner, Mr. Starrett and
21 Ms. Featherstone?

22 A Of course it did.

23 Q And do you know who ultimately made the decision to
24 pay those bonuses?

25 A It was Bill Sibley, and I know that it was in a

1 meeting at Scott Dozier's house. And Mr. Dozier asked the
2 question specifically to Mr. Sibley.

3 MR. ENGLISH: Objection. Hearsay, no basis.

4 THE COURT: Sustained.

5 BY MR. PURIEFOY:

6 Q So we don't have to talk about anything that any one
7 of them said. So let me rephrase the question. Are you
8 aware of a meeting that took place at Mr. Sibley's house
9 regarding the payment of these bonuses?

10 A Yes, I am.

11 Q And do you recall when that meeting took place?

12 A Something like beginning of June, end of May 2017.

13 Q Okay. And the stock purchase agreement mentioned an
14 event subsequent to May 17, 2017?

15 A Yes.

16 Q And so the decision to pay the bonuses at this meeting
17 on June 8th would have been after May 17, 2017?

18 A Yes. Of course.

19 Q Okay. And as a result of that meeting at Mr. Sibley's
20 house, was the decision ultimately made to pay those
21 bonuses?

22 A Yes, it was.

23 Q And as you sit here today, was it Mr. Sibley,
24 Mr. Dozier and Mr. Clark that made that decision?

25 A Yes.

1 Q And did Mr. Leviner, Mr. Starrett or Ms. Featherstone
2 give their input in any way about their beliefs?

3 A No, they did not.

4 Q All right. I'm going to show you what we've marked as
5 Plaintiff's Exhibit 9. And this is the indemnity escrow
6 agreement. Do you see that?

7 A Yes.

8 Q And if you could look at page 2, Section 3 of the
9 indemnity escrow agreement, Section 3(d). All right. This
10 is a fairly long provision, but this is disbursement on the
11 indemnification escrow release date. If you can just read
12 that quickly unless you already know what it says, and then
13 I'm going to ask you a couple questions about it.

14 A I already know what it says.

15 Q So what did you understand this provision to mean?

16 A Well, it says that if there's no claim within
17 12 months, then they get the escrow money. If there is a
18 claim, then it is put aside until the claim is resolved.

19 Q And to clarify for the jury, is this the 10 percent
20 that was held back on the \$4.4 million?

21 A Yes, it is.

22 Q So \$440,000 was put into an escrow account?

23 A Yes.

24 Q And I believe we've already heard from the agent with
25 United Community Bank that was responsible for servicing

1 that account. Do you recall that testimony?

2 A Yes, I do.

3 Q So the funds were placed with United Community Bank.
4 And did you make a claim against these funds at some time?

5 A Yes, I did.

6 Q And can you explain to the jury the exact reason why
7 you made the claims on those funds?

8 A Because of undisclosed bonus.

9 Q Had those bonuses been disclosed, was there any other
10 independent reason why you would have sought to hold those
11 funds in escrow?

12 A No.

13 Q So since the closing of the transaction, the only
14 violation of the stock purchase agreement that you've
15 discovered is the payment of those bonuses?

16 A I've discovered some other one, but I decided to let
17 them go.

18 Q Was the payment of the nonowner bonuses what prompted
19 you to seek the holding of these escrow funds?

20 A Yes.

21 Q And do you believe that you have a good faith basis
22 for asking that the escrow funds be held?

23 A Of course. They were not supposed to be bonus or to
24 declare them, and he didn't. And as a result, I lost all
25 the employee. So it put everything in jeopardy.

1 Q So that brings me to my next point, I guess. You
2 mentioned a couple of times that you lost employees. Talk
3 to me about what you mean when you say lost employees.

4 A So when I learned about the bonus, it was November,
5 right? Well, it just so happened that it's almost halfway
6 through the fiscal year, and almost exactly halfway because
7 December is a very -- it's Christmas and everything. So
8 now we are midyear, so the people start thinking, okay, my
9 bonus, my bonus. So people start -- now they know that I
10 know. Before, they were not talking about it.

11 Q And when you say that they know that you know, are
12 they meaning that you know about the existence of the prior
13 year's bonus?

14 A Yes.

15 Q And that is the 100 percent bonus ---

16 A Yes. Before November they were not talking about it.

17 Q Okay. So in November or December of 2017, did the
18 employees have any reason to believe that they were not
19 going to be receiving bonuses in June of 2018?

20 A Yes.

21 Q And how did they know that?

22 A Because they knew that all the sales that they made
23 the year and half before kind of empty all the sales. So
24 we were not selling much. And they knew that because they
25 used to go and install all the time, and now they were not

1 going anywhere, just going in the office and not doing
2 anything. So they know that we're not having a good year,
3 and so they start asking question.

4 Q And so did you personally make those employees aware
5 of the fact that they were not going to be receiving
6 bonuses?

7 A Well, at first I was very -- I wasn't sure what to do.
8 So I didn't say, "No, you're not going to get bonus," and I
9 did pay some bonus. But we didn't have that much to pay
10 bonus. So it became obvious in May, maybe, that there
11 wouldn't be a lot of bonuses. We did pay the few bonuses,
12 but there was just no money to pay bonuses.

13 Q So even after discovery that Mr. Sibley had paid
14 100 percent of their salaries as bonus in the year
15 prior ---

16 A Yeah.

17 Q --- the fiscal year prior, you still agreed to pay
18 those employees bonuses for fiscal year ending June 30,
19 2018?

20 A We had to pay some. Like Kimberly French, she was a
21 single mother. She had only -- that was the only one that
22 I don't need \$10,000, and she was about to get a car
23 repossessed, so I gave her a bonus. But the other one at
24 double their salary last year, so it's not like they were
25 out of money already. But, yeah, we did agree to pay some

1 of it.

2 Q Did any of the employees believe that they were going
3 to be receiving 100 percent of their salary again as a
4 bonus by December of 2017?

5 A Not December. June.

6 MR. ENGLISH: Objection.

7 THE COURT: Yeah. Hold on.

8 MR. ENGLISH: No nonhearsay basis.

9 THE COURT: Right. I mean, I don't -- this is
10 strictly hearsay.

11 MR. PURIEFOY: Well, I can rephrase the question, Your
12 Honor.

13 BY MR. PURIEFOY:

14 Q Mr. Bergeron, do you have any personal knowledge as to
15 whether or not you disclosed to the employees that they
16 were going to be receiving bonuses at 100 percent of their
17 salaries?

18 A No. I didn't say that.

19 Q Okay. So you never informed them that they would be
20 receiving that type of bonus?

21 A No.

22 Q And so let me ask you about the employees,
23 specifically Mr. Taylor, Mr. Herrmann, Mr. Pavatte and
24 Carlos Viveros, those four. Each one of those were
25 programmers?

1 A Yes.

2 Q Okay. And did you consider, and I believe you already
3 testified to this, them to be crucial employees of CC+I and
4 Decide4Action?

5 A At the time, yes.

6 Q Okay. Can you tell us what happened, tell the jury
7 what happened in the coming months after it was obvious
8 they were not going to be receiving 100 percent of their
9 salary as a bonus?

10 A Three of them, Nathan, Pavatte and Joe, in April or
11 May, it was obvious they were looking for another job. And
12 they -- they waited to be sure that it wouldn't be the
13 bonus, and they left. And when I asked them why they left
14 at that time, one of them told me they left because there
15 was no bonus.

16 MR. ENGLISH: Objection. Hearsay.

17 THE COURT: Hold on. Any objection, you've got to
18 stop. And it can't be based on hearsay.

19 MR. PURIEFOY: No objections to the hearsay.

20 BY MR. PURIEFOY:

21 Q Mr. Bergeron, you don't have to tell me what any of
22 them said to you, but just explain to the jury whether or
23 not and who ultimately left.

24 A Ultimately that year or ultimately?

25 Q Ultimately.

1 A Ultimately, all of the employee except Carlos.

2 Q And when you say all the employees, you're referring

3 to Mr. Joseph Taylor?

4 A Joe Taylor, Nathan, Pavatte.

5 Q Nathan Herrmann?

6 A Yeah. Nathan Herrmann.

7 Q Justin Pavatte?

8 A Yes.

9 Q And Ryan Clark?

10 A Ryan Clark.

11 Q And Chris Jones?

12 A Chris Jones.

13 Q And the only one that stayed you said was Mr. Viveros?

14 A Kimberly French left and Mr. Viveros stayed.

15 Q Okay. So how many of those employees left prior to

16 the end of fiscal year 2018?

17 A On or about?

18 Q On or about.

19 A Three of them.

20 Q Okay. And I'm going to show you what we've marked as

21 Plaintiff's Exhibit 10. And this is the letter dated

22 September 19, 2018. Do you see that?

23 A Yes.

24 Q And what is this letter?

25 A This is a letter to United Community to hold the

1 escrow.

2 Q Okay. And momentarily you were testifying about
3 Section 3(d) of the indemnity escrow agreement. Do you
4 recall that?

5 A Yes.

6 Q And it was in that provision that set forth the manner
7 in which you were to notice United Community Bank of some
8 dispute?

9 A Yes.

10 Q And is this letter, does it serve that purpose?

11 A Yes.

12 Q Okay. And can you tell the jury the gist of what this
13 letter is indicating?

14 A You mean what it mean?

15 Q Yes.

16 A It mean that we have a dispute with the seller, and
17 until we resolve the dispute with the seller, the funds
18 should stay there with interest to the seller until the
19 claim is resolved.

20 Q Okay. And did you understand that through sending
21 this letter to Ms. Whitney at United Community Bank, that
22 that was the only way to ensure that those escrow funds
23 were not paid out?

24 A Yes.

25 Q And had this letter not been sent to Ms. Whitney

1 before the 12-month expiration under the escrow agreement,
2 what would have happened?

3 A The fund would have been disbursed to the seller.

4 Q And then assuming you are correct in your allegations,
5 how would you have collected those funds?

6 A I guess I would never.

7 Q So did you send this letter or have our office send
8 this letter as a precaution?

9 A Yes.

10 Q Did you believe that this letter was sent in bad
11 faith?

12 A No.

13 Q Do you believe this letter was making or filing an
14 illegitimate claim?

15 A No.

16 Q And, again, the basis of this letter was what?

17 A It was the SPA clause about the undisclosed bonuses.

18 MR. PURIEFOY: Can we take a break, Your Honor, just
19 momentarily?

20 THE COURT: Are we ready for a break, a short break?
21 All right. So let's take a short break. Don't discuss the
22 case. We'll bring you back out in just a few minutes.

23 (WHEREUPON, the jury exits the courtroom at 3:22 p.m.)

24 THE COURT: All right. Mr. Bergeron, you're in what I
25 call my witness bubble, means you can't talk with your

1 attorneys about your testimony during the break. But
2 you're free to take a break, go to the bathroom if you need
3 to.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Ten minutes.

6 (WHEREUPON, a recess is taken at 3:23 p.m.)

7 MR. PURIEFOY: Your Honor, so I was discussing with
8 Mr. English, I'm at the end of my testimony. There were
9 three shots of deposition designations that were already
10 submitted as part of our designation that we were going to
11 put on the screen -- literally, there's two of them, as a
12 matter of fact -- and ask them and conclude our testimony.
13 Before the jury comes back in and we have to send them out
14 for some argument over that, I just want to bring it to the
15 Court's attention.

16 MR. ENGLISH: I guess my understanding is these are
17 excerpts from Mr. Sibley's deposition that have already
18 been read once or twice, and I don't think it would be
19 appropriate to have this witness read those deposition
20 excerpts a second or third time.

21 THE COURT: Yeah. You can use them in closing. I
22 think we ---

23 MR. PURIEFOY: I can ask him about them, about he's
24 aware of the fact that he heard this testimony and whether
25 he agrees or disagrees with it, just not putting it up on

1 the screen.

2 THE COURT: I'm going to let him go ahead and do it.
3 You can do it.

4 MR. PURIEFOY: Put it up?

5 THE COURT: Yeah.

6 MR. PURIEFOY: Okay.

7 THE COURT: All right. Anything else before we bring
8 the jury? And then you're going -- doing
9 cross-examination.

10 MR. ENGLISH: (Nods head affirmatively.)

11 THE COURT: All right.

12 (WHEREUPON, the jury entered the courtroom at 3:37 p.m.)

13 THE COURT: All right. You may proceed.

14 BY MR. PURIEFOY:

15 Q All right. Mr. Bergeron, I'm almost done with you,
16 but I do want to ask you about two particular deposition
17 designations which have already been read to the jury,
18 specifically this statement by Mr. Sibley in his
19 deposition. Could you read that for the jury?

20 A "It is your position today that you were required to
21 disclose to Mr. Bergeron the payment of those non-owner
22 bonuses."

23 Q And then if we can look at lines 14 through 18, and if
24 you read those responses?

25 A Mr. Sibley said, "No."

1 Q And then the question was presented, "No, you had no
2 obligation to tell him?" And his answer was?

3 A "I don't think so really."

4 Q And the final question posed was, "Why do you think
5 that?"

6 A "Because it was a normal form of business."

7 Q Mr. Bergeron, the exchange that was taking place, are
8 you aware that that was relating to the payment of
9 100 percent of nonowners' salaries as a bonus?

10 A Yes, I was. I am.

11 Q And Mr. Sibley's testimony indicated that the reason
12 why he did not need to tell you about that was because it
13 was in the ordinary course?

14 A Yes.

15 Q Did you believe that the payment of the nonowner
16 bonuses was within the ordinary course of business?

17 A It was not. To be the ordinary course of business,
18 you must have done it before, and CC+I, over its existence,
19 never paid a 100 percent bonus to nonowners.

20 Q And if we could pull up -- this will be the last
21 designation I'll have you look at. The question that was
22 asked was, "Sure. In the 29 years or so that CCI operated,
23 do you recall any other instances where bonuses were paid
24 at 100 percent?" Do you see that?

25 A Yes, I do.

1 Q And Mr. Sibley's response was, "1999 in the textile
2 business. Same reason." Do you see that?

3 A Yes.

4 Q And then my question was, "CCI paid 100 percent --"
5 And he responded, "Yes."

6 And I concluded that question with, "--
7 non-employees?" His answer?

8 A Yes.

9 Q Okay. And so the question -- final question posed
10 was, "So the last time that that happened was in 1999?"

11 A That's what he said.

12 Q And you're aware that he indicated in his deposition
13 that he did, in fact, pay 100 percent bonus to nonowners in
14 1999?

15 A That's what he said.

16 Q And let's assume for a minute that that's true. Would
17 you believe that paying 100 percent of a nonowner bonus in
18 1999 would still be considered within the ordinary course
19 in 2017?

20 A Well, it would not. But I went and check because I
21 have access to the company record. And at that time in
22 1999, there was just one employee that was not an owner, it
23 was a secretary, and the program at that time was a bonus
24 -- bonus plan sharing for all employee. And it was like
25 5 percent of the -- it was shared with all employee. So

1 they did not pay a 100 percent bonus in 1999. That's just
2 not a true statement.

3 Q And so let me ask one final question -- or two final
4 questions. Excuse me. The total bonuses that were paid to
5 nonowners in 2017 was how much?

6 A Was about \$300,000.

7 Q And between 1999 and 2017, had you ever seen a bonus
8 paid in that amount to nonowners?

9 A No.

10 Q And in the history of CC+I ---

11 A Never.

12 Q --- had a bonus in that amount ever been paid?

13 A To nonowners?

14 Q Yes.

15 A No.

16 MR. PURIEFOY: No further questions, Mr. Bergeron.

17 THE COURT: Cross-examination.

18 CROSS EXAMINATION

19 BY MR. ENGLISH:

20 Q All right. Mr. Bergeron, I believe you were born in
21 Quebec, Canada, in 1964 and graduated from Laval University
22 in Quebec in 1988 with a degree in mechanical engineering;
23 is that right?

24 A Yes.

25 Q And that would be the equivalent of a master's degree

1 here, right?

2 A I think so.

3 Q So you're a smart and well-educated person, correct?

4 A I hope to think so.

5 Q Let's talk about Decide4Action's obligation to or to
6 not go forward with the purchase of CC+I. Now, you're the
7 sole shareholder, sole director and CEO of Decide4Action,
8 correct?

9 A Yes.

10 Q You finished your due diligence of CC+I on May 17,
11 2017, correct?

12 A It was finished a little bit later than that, but the
13 date in the contract that we accepted, the material change,
14 was May 17. But it was actually finished at the end of
15 May.

16 Q But CC+I didn't stop doing business in May 2017, did
17 it?

18 A No.

19 Q CC+I had to stay in business and keep incurring
20 expenses after your due diligence, right?

21 A Yeah.

22 Q And you fully expected that in June 2017, CC+I would
23 pay a large amount of bonuses, didn't you?

24 A Yes.

25 Q You fully expected that because the owners were

1 supposed to take out all of the cash from the business,
2 right?

3 A Hold on. Can I -- can I rephrase that? Because I
4 just thought about the question more. Because in a sense,
5 if I was to take out the cash, I would have taken it out as
6 dividend, not as bonuses. So I was expecting dividend, not
7 bonuses, actually.

8 Q Mr. Bergeron, do you recall giving a deposition to me
9 in September of 2020?

10 A Yeah.

11 Q And do you recall telling me in that deposition that
12 you fully expected that in June 2017, CC+I would pay a
13 large amount of bonuses?

14 A Yeah. I guess it's a technicality. Is it bonuses or
15 dividend, yes.

16 Q In the deposition you said "bonuses," right?

17 A Yeah. I guess.

18 Q And you fully expected that because the owners were
19 supposed to take out all of the cash of the business before
20 selling to Decide4Action, true?

21 A Yes.

22 Q And in June 2017 and thereafter, until you signed the
23 stock purchase agreement in October, you had no legal
24 obligation to purchase the stock of CC+I, did you?

25 A I am not sure because I had signed. I guess not.

1 Q You could have backed out at any time, right?

2 A For a valid reason, yes.

3 Q In fact, the stock purchase agreement was not signed
4 until October 13, 2017, right?

5 A Yeah. Or '16.

6 Q So before then you could have backed out at any time.

7 A For a valid reason, yes.

8 Q There wasn't a limitation, a valid reason. You could
9 have pulled the plug on your -- of your own discretion
10 anytime before October 2017, right?

11 A I'm not sure that I know the answer to that.

12 Q Well, in your deposition, didn't you tell me you could
13 have backed out at any time?

14 A Because I'm not sure if it's a legal question, what
15 would have happened if I would have backed out because --
16 without reason. I don't -- I'm not sure -- I'm not sure if
17 I'm qualified. I think I could have, but I'm not sure.

18 Q Mr. Bergeron, do you recall me asking you in your
19 deposition that you were not required to close, you had no
20 legal obligation to purchase the stock, did you, and you
21 said "no," correct?

22 A Yeah.

23 Q And do you recall me saying you could have backed out
24 anytime, and you said, "I could have"?

25 A I think I could have. I just said I'm not sure.

1 Q All right. Let's talk about the claim that you made
2 to UCB. You say that when Mr. Sibley gave you these
3 documents that specified the employee bonuses that were
4 paid in November of 2017, you knew it was a big deal,
5 right?

6 A Yeah.

7 Q Now, look at what we marked as Plaintiff's Exhibit
8 Number 10. That's the claim that you had your lawyers send
9 to Sharon Whitney at UCB against the escrow, right?

10 A You use the word "claim." I say -- I think I said all
11 along that's a letter that we sent to UCB. Is that the
12 claim or not? I -- I don't think I'm qualified to say if
13 it is or not.

14 Q Well, the purpose of having your lawyers send this
15 letter was to assert a claim against the \$440,000 escrow at
16 UCB, right?

17 A The purpose was to held the escrow money.

18 Q Was to what?

19 A To hold the escrow money until the dispute was
20 resolved.

21 Q Now, this letter was sent September of 2018. That
22 would have been ten months after Mr. Sibley gave you these
23 documents that you testified you knew was a big deal.

24 A Yeah. We had many discussion in those ten months.

25 Q Now, you claim in this document on page 2 that it was

1 a breach of the stock purchase agreement for Mr. Sibley not
2 to disclose nonowner bonuses, correct?

3 A Yes.

4 Q But those statements weren't true because the sellers
5 did disclose those bonuses to you, didn't they?

6 A No, they did not.

7 Q Well, look at Plaintiff's Exhibit 8, the last page.
8 Item 3, it says, "Target." That's CC+I, correct?

9 A Yes.

10 Q "Target paid a fiscal year-end bonus," correct?

11 A Yes.

12 Q And that was an exception to the representations and
13 warranties that the company had been operated in the
14 ordinary course of business, correct?

15 A Perhaps.

16 Q Not perhaps. It was. It said that -- that section
17 says, "Except for on Schedule 4(i), the company has
18 operated in the ordinary course of business," right?

19 A Can you come again?

20 Q We can just look at it if you can't acknowledge it.
21 Look on page 6 of the stock purchase agreement. And I'll
22 hand you up a paper copy. Here you go. Look at the
23 bottom, Subsection I. It says -- it begins, "Except as set
24 forth in Section 4(i) of the disclosure schedule, since
25 May 17, 2017, there has not been any material adverse

1 change." The next page, "Target has conducted its business
2 in the ordinary course of business."

3 A Yes.

4 Q That disclosure schedule was an exception to operating
5 in the ordinary course of business, right?

6 A It seems you're correct.

7 Q Yes. Look at the last page again, and -- the last
8 page of the stock purchase agreement.

9 A The last ---

10 Q Number 3.

11 A Yes.

12 Q So except as set forth here, it's operating in the
13 ordinary course of business, and the exception is that
14 target paid a fiscal year-end bonus, right?

15 A Yes.

16 Q And subsequently paid special bonuses to employees on
17 three occasions, right?

18 A Employee are owners and nonowners, employees.

19 Q And you say it's important to make the distinction
20 between owner employees and nonowner employees, but you
21 didn't request any further detail on this, did you?

22 A I thought I had the details because they send me the
23 spreadsheet that told me the details of the bonus. So I
24 didn't request any additional details over and above what
25 they already provided. I did request the detail, and I got

1 the spreadsheet that you presented. And to me that was
2 sufficient.

3 Q Now, you thought, based on the stock purchase
4 agreement, that the owners would only be paying bonuses to
5 themselves, right?

6 A I thought that there was three bonuses totaling
7 \$35,000 to nonowners and that they would take the cash out
8 either as bonus or dividends. I didn't specify how they
9 were to do that.

10 Q Right. And the requirement as you see it of the stock
11 purchase agreement not to pay bonuses to nonowner employees
12 was an obligation that came into existence in October of
13 2017, right?

14 A No. It came into existence when we got the LOI.

15 Q All right. Let's look at the LOI then. Mr. Puriefoy
16 -- and that's Plaintiff's Exhibit Number 1. Look at
17 page 4, Section 5.

18 MR. ENGLISH: Enlarge the first three bullets, please.

19 BY MR. ENGLISH:

20 Q Mr. Puriefoy asked you about the first two, but look
21 at the third bullet point. That says that the buyer and
22 seller have 90 days to agree on the SPA, and if within that
23 period the SPA is not essentially agreed, then this LOI
24 shall be null and void, right?

25 A Yeah.

1 Q And that 90-day period expired on June 8, 2017, didn't
2 it?

3 A Not true. There was two extension.

4 Q According to you.

5 A No. We have -- we have it signed by -- I have those
6 documents. I don't understand why you are trying to make
7 it null and void, because you have those document signed by
8 all the shareholders. You have all of this.

9 Q You're talking about extension of the due
10 diligence ---

11 A No, no, no. Extending of the LOI.

12 Q Let me finish. You're talking about the extension of
13 the due diligence period which continued on. You continued
14 to receive documents up until the time the stock purchase
15 agreement was signed, right?

16 A I'm not sure that I understand what you're -- you're
17 trying to make me say.

18 Q My point is, you continued to receive due diligence
19 documents up until October 2017 when the stock purchase
20 agreement was signed, correct?

21 A Yes.

22 Q Including you got tax returns for the year ended
23 June 30, 2017, before you closed on this sale, right?

24 A Yes.

25 Q Now, going back to your letter to UCB, and what you

1 just told the jury here is you claim that three critical
2 employees, Mr. Herrmann, Mr. Taylor, and Mr. Pavatte, left
3 because you didn't pay them bonuses in 2018, right?

4 A I think it was a big contributing factor. And I
5 cannot say what they told me because it would be hearsay.
6 But, yes, I believe it was a big portion of it.

7 Q And you didn't hire anybody specific to replace
8 Mr. Herrmann after he left, did you?

9 A I -- I hired the same amount of employee. We hired
10 three employee to replace those three.

11 Q Mr. Bergeron, do you recall telling me in your
12 deposition you did not hire anybody specific to replace
13 Mr. Herrmann after he left?

14 A What I recall saying is that in coding, we don't hire
15 people to do somebody else's job. We have a job to do, and
16 we hire the number of people to do that job. So it's not
17 like you're replacing one person by another. It's not like
18 a machine operator. That's what I said.

19 Q And you also said that Mr. Herrmann was a very junior
20 programmer and wasn't capable of writing code whatsoever.

21 A That's correct, yes.

22 Q So he wasn't capable of doing the job you needed him
23 to do.

24 A That's correct.

25 Q And yet you just told the jury he was crucial?

1 A I said he was crucial when I bought the company at the
2 time. And when -- if you look into what I said,
3 Mr. Puriefoy asked me at the time -- and I specifically
4 answered it, is it at the time that I bought the company.
5 Yes, at the time I bought the company, I didn't knew those
6 people. At that time, they were crucial. I only found
7 out, I say, six to eight months later what they were about,
8 that they were not able to do the job.

9 At the time that I bought the company, of course they
10 were crucial. But now you're trying to say that I knew
11 that all along. I didn't. I found out after I bought the
12 company that they were no good. It's not like I knew that
13 they -- the day that I bought the company that they were no
14 good. I knew that after.

15 Q So you're saying that they were crucial in the first
16 months after you bought the company. And they worked with
17 you for a year, right?

18 MR. PURIEFOY: Objection. Mischaracterization of the
19 evidence, Your Honor. That's not what he just testified
20 to.

21 THE COURT: Rephrase the question.

22 BY MR. ENGLISH:

23 Q All right. You're saying that you thought these
24 employees were crucial when you first bought the company?

25 A I was told they were.

1 Q Okay. And these employees worked with you for a whole
2 year, right?

3 A No. Well, Nathan worked, what, October of 2017 up to
4 June, so it was like eight months. That's what I just
5 said, six to eight months.

6 Q All right. So these employees continued to work with
7 you after you bought the company, and during the time they
8 worked for you, you learned they weren't really crucial,
9 correct?

10 A Yeah.

11 Q And, in fact, you don't know why the employees left,
12 do you?

13 A They told me many things. They said a lot of things
14 before and after. It's hearsay. I -- my opinion has never
15 changed. My opinion is that those people were supposed to
16 be customer code programmer, and they were not able to do
17 the job that they were supposed to do. And normally, when
18 you try to get somebody to do the job that they're not
19 capable to do, it end up that they will leave or you have
20 to fire them. In this case, I tried to work with them for
21 them to learn, but they ended up leaving, in my opinion,
22 because they were not able to do the job they were supposed
23 to do. I might be wrong.

24 Q All right. Look at Plaintiff's Exhibit Number 11.
25 This is my response to your letter -- or your attorney's

1 letter to UCB. Look at the fourth page. You understand
2 that these employees gave sworn affidavits saying they did
3 not leave because you failed to give them a bonus?

4 A I'm also aware that Mr. Pavatte was contacted by
5 Mr. Sibley and tricked into the -- my life and my son.

6 MR. PURIEFOY: Objection, Your Honor. I need to
7 confirm, was this affidavit part of one of the exhibits
8 that we agreed to? Because I ---

9 MR. ENGLISH: Yes, yes. This has been in.

10 THE COURT: This is number what?

11 MR. ENGLISH: 11. It's been an exhibit to the
12 depositions, it was sent to UCB, it was given to defense
13 counsel, and we've agreed to before trial.

14 MS. THOMASON: This affidavit was not.

15 MR. PURIEFOY: Your Honor, I beg the Court's
16 indulgence.

17 THE COURT: All right.

18 MR. PURIEFOY: We see it, Your Honor.

19 THE COURT: You may proceed.

20 BY MR. ENGLISH:

21 Q My question for you, Mr. Bergeron, is, isn't it true
22 that these employees gave sworn statements that were sent
23 to UCB saying they did not leave you because you failed to
24 pay them a bonus?

25 A They did -- they did an affidavit of that.

1 Q So Decide4Action's position is that if the selling
2 shareholders had paid out all the cash to themselves
3 instead of paying some of that cash, that three hundred
4 plus thousand dollars as bonuses to the nonowner employees,
5 Decide4Action would have no claim, correct?

6 A Correct.

7 Q And if the jury finds that the selling shareholders
8 disclosed those bonuses to you adequately in the stock
9 purchase agreement or before, Decide4Action would have no
10 complaint about the escrow going to the selling
11 shareholders, right?

12 A Are you asking me what the jury or the judge should
13 do?

14 Q I'm just trying to understand your position.

15 A My position is that the bonus should have been
16 disclosed, and because they were not, they should not have
17 been given.

18 Q But if they were disclosed, then you would have no
19 complaint.

20 A Yeah.

21 Q You also talked about that you considered this cash to
22 be an asset of the company, but it was an asset that was
23 supposed to be paid out before Decide4Action acquired the
24 stock, right?

25 A Yes.

1 Q Now, you also testified about the language in the
2 bonus letters that referred to the hope for a repeat
3 performance in the following year, correct?

4 A Yes. I actually read the document.

5 Q And that was not a commitment or an obligation on
6 Decide4Action's part to pay the same bonuses in 2018 that
7 were paid in 2017, was it?

8 A I believe it was an expectation.

9 Q Well, it wasn't a contract, was it?

10 MR. PURIEFOY: Objection, Your Honor.

11 THE WITNESS: I don't know.

12 THE COURT: Hold on. Let me hear the objection.

13 MR. PURIEFOY: Your Honor, this is beyond this
14 layperson's ability to testify to. He can testify what he
15 has personal knowledge, but to ask him the legal question
16 of what is a contract goes beyond what he can testify to as
17 a lay individual.

18 THE COURT: And he can answer if he knows.

19 THE WITNESS: Well, I believe that if you send
20 something to an employee as part of HR, it become part of
21 what you told them. So in HR we always pay attention to
22 not say or write anything that create that. I believe it
23 could be seen as a contract. Maybe I'm wrong, but I think
24 it is a contract.

25 BY MR. ENGLISH:

1 Q So let's look at the stock purchase agreement,
2 Plaintiff's Exhibit 8, page 8. Let's enlarge Number XVII
3 that you testified earlier, Mr. Bergeron. It says,
4 "Target, or CCI, has not adopted, amended, et cetera, any
5 bonus, profit sharing, incentive, severance or other plan,
6 contract or commitment." You've got no evidence that CC+I
7 gave these employees a contract, a plan, contract or
8 commitment to pay the bonus in the future, right?

9 A But that's not what this says. It doesn't say in the
10 future. It says between May 17, 2017, and October of '17.
11 Yes, they did just that. It didn't say about the future.
12 It says in the contract, they did exactly what they were
13 not supposed to do between those two days.

14 Q You think a one-time bonus is a plan, contract or
15 commitment?

16 A I never said that. I said that this clause tells CC+I
17 that they cannot modify the bonus between May 17 and
18 October 16. I just said that. I didn't say what you just
19 said. You're just adding to my word.

20 Q Mr. Bergeron, didn't you tell me in your deposition
21 that you had no way to know or prove that that bonus in
22 2017 was part of a plan, contract or commitment to pay
23 bonuses in the future?

24 A At what time?

25 Q We're talking about the bonuses that were paid in ---

1 A I know. But you asked me a question. I had no way to
2 know. Sometime you know something that you learn later.
3 You ask a question that I had no way to know if it was plan
4 of something for the long term. At what time that I didn't
5 possess that knowledge?

6 Q And you did not pay those same bonuses in 2018, did
7 you?

8 A No, I did not.

9 Q And none of these employees sued you, did they?

10 A They threatened to sue.

11 Q None of these employees sued you for not paying them
12 the same bonus they got in 2017.

13 A No.

14 Q And, in fact, in the sworn affidavits, they said they
15 weren't even expecting them, right?

16 A In the sworn affidavit, yes. In other communication,
17 they said they were.

18 Am I allowed to add something?

19 MR. ENGLISH: No. Your attorney can ask you any other
20 questions he wants to ask you.

21 I've got no further questions for you.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. PURIEFOY:

25 Q Mr. Bergeron, if we could go back to what was marked

1 as Plaintiff's Exhibit 8. Mr. Bergeron, if you look at
2 page 51 of the stock purchase agreement, this is
3 Disclosure 4(i) that Mr. English was just asking you about?

4 A Yes.

5 Q Can you see that? He specifically asked you about
6 Paragraph 3?

7 A Yes.

8 Q Mr. Bergeron, how is "employee" defined under
9 Schedule 4(i) disclosure?

10 A Employee is not defined.

11 Q And as you sit here today, do you understand that CC+I
12 had both owner and nonowner employees?

13 A Yes.

14 Q And based on the plain reading of this disclosure, can
15 you tell who bonuses were paid to, either owner or nonowner
16 employees?

17 A I cannot.

18 Q Okay. And Mr. English asked you during his
19 cross-examination about the ordinary course of business.
20 Do you recall the testimony of Mr. Sibley where he
21 indicated that the reason why he did not feel as though he
22 had to disclose the bonuses was because this was a payment
23 made in the ordinary course of business?

24 A Yes. I remember.

25 Q And do you agree that the payment was made within the

1 ordinary course of business?

2 A No, I do not.

3 Q And did Mr. Sibley ever disclose the payment of these
4 bonuses to you?

5 A He never did.

6 Q Mr. English asked you about the stock purchase
7 agreement, specifically on page 17, I believe,
8 Subsection C -- excuse me, page 18 -- which is the cash.
9 Mr. English expressly asked you whether the cash was an
10 asset. Do you recall that?

11 A Yes.

12 Q And you indicated that it was an asset?

13 A Yes.

14 Q And do you recall Mr. English asking you whether or
15 not the cash was to be paid out to the shareholders?

16 A Yes.

17 Q Okay. Was all of the cash, the asset, paid out to
18 shareholders?

19 A No, it was not.

20 Q Was there a portion of it that was paid out to
21 nonowners?

22 A Yes.

23 Q Just a few more. If you could go to -- well,
24 Mr. English asked you whether or not the bonus letters
25 constituted some plan or commitment. Do you recall that?

1 A Yes.

2 Q Okay. Do you believe that, in indicating that there
3 would be a repeat payment, that that rises to the level of
4 some commitment?

5 A I think it does.

6 Q Okay. And as you sit here today, do you believe that
7 those employees expected a bonus in that amount?

8 A I know they did expect the bonus. The -- the language
9 of that letter say if we repeat that same kind of good
10 year. Of course, the year after was a bad year because
11 they took all the money out. So they still expected the
12 bonus, probably less, but it created a commitment. Was
13 that a contract? I have no legal -- I'm not good enough to
14 say it was a contract, but it was for sure an expectation
15 and a commitment.

16 Q And one final question, Mr. Bergeron. Had the owners
17 not paid any cash of CC+I out to themselves, who would that
18 cash had gone to under the stock purchase agreement?

19 A I'm not sure that I understand.

20 Q So had any cash been left in CC+I at the time of
21 closing, had the owners failed to pull out cash to pay
22 themselves, who would that cash have gone to?

23 A It would have stayed in the company.

24 Q That you ultimately acquired?

25 A Yes.

1 MR. PURIEFOY: No further questions.

2 THE COURT: Thank you. You may step down.

3 MR. PURIEFOY: Your Honor, may we be heard outside the
4 presence of the jury for just a moment?

5 THE COURT: Okay. Ladies and gentlemen, I'm going to
6 send you back to your room. Don't discuss the case and
7 we'll bring you out as soon as we can.

8 (WHEREUPON, the jury exits the courtroom at 4:11 p.m.)

9 MR. PURIEFOY: Your Honor, I apologize, but that last
10 line of questioning cross-examination makes Justin Pavatte
11 -- we have to have him here.

12 THE COURT: I mean, why don't we ---

13 MR. PURIEFOY: I don't -- I'm not sure. I've never
14 dealt with someone not showing up.

15 THE COURT: I mean, we can send out the sheriff to get
16 him.

17 MR. PURIEFOY: We would be fine with that. It would
18 not be a very long ---

19 THE COURT: Well, I mean, do y'all want to try to call
20 him and tell him the sheriff's coming?

21 MS. THOMASON: That will probably be good.

22 THE COURT: Judge Patterson did this one time with a
23 doctor in surgery. Yeah. He called, made him come. Got
24 him in the middle of surgery.

25 UNIDENTIFIED: From Charleston.

1 THE COURT: I don't remember where it was. But, yeah,
2 it was quite an ordeal.

3 Yeah. Why don't y'all try to touch base with him.

4 MR. PURIEFOY: I apologize, Your Honor.

5 THE COURT: That's fine. And if y'all -- if y'all
6 know him, you may want to call him too. I don't know if
7 y'all knew him or not.

8 (WHEREUPON, a recess is taken at 4:15 p.m.; the jury
9 entered the courtroom at 4:32 p.m.)

10 THE COURT: You know, I realize if I was more
11 thoughtful, I could have just said y'all just stand right
12 there for a minute.

13 I'm sorry. We've got a matter that we've got to take
14 up before we can continue with additional witnesses, so
15 we're going to break until 9:30 in the morning. Does 9:30
16 work for y'all? All right. And we're going to be ready to
17 go right at 9:30.

18 And I'm just going to kind of warn you. Let me tell
19 you a little bit about tomorrow, what's going to happen
20 just so you can plan accordingly. What's going to happen
21 is we're going to have some additional testimony. And
22 after one testimony, we're going to have a little break.
23 And then we're going to have additional testimony possibly,
24 then we may have a longer break while we get all the jury
25 charge and all that stuff together. So it may seem really

1 disruptive tomorrow, but I can promise you, during all that
2 time, we're frantically working at getting the case so that
3 it can be sent to you. So I'm just kind of letting you
4 know you may have a little bit longer break.

5 And we can give you -- we may actually can let you,
6 you know, not just stay in that courtroom. They can let
7 you go out for a little bit, maybe do some shopping or
8 something. No. But anyway, I'm just kind of letting you
9 know so you can plan accordingly.

10 Otherwise, remember my four rules: do not discuss the
11 case; do not do any type of research; do not pay any
12 attention to any media coverage; and let the bailiff know
13 if anybody contacts you other than the clerk's office.
14 Other than that, y'all have a good evening and we'll see
15 you in the morning.

16 (WHEREUPON, the jury exits the courtroom at 4:34 p.m.;

17 Defendant's Exhibit Number 2 was marked for
18 identification.)

19 THE COURT: And I'll look at your jury charges now
20 that you've put them up. And y'all send me whatever, yeah,
21 because I'm going to need to look at them probably in the
22 morning.

23 MR. ENGLISH: I've got a verdict form, assuming
24 everything's going back to the jury. Do you want to look
25 at that?

1 THE COURT: How about emailing those to me.

2 MR. ENGLISH: Yeah, sure.

3 THE COURT: Make sure it's pgravelyj.

4 MR. ENGLISH: Yes.

5 THE COURT: Because if you look on the court system,
6 the email they give you is actually my secretary's.

7 MR. ENGLISH: Okay. Right.

8 THE COURT: Make sure you put the pgravelyj. Just,
9 yeah, email me that. That'll be good.

10 MR. ENGLISH: And do you want the full version of the
11 verdict form or do you want to wait on that?

12 THE COURT: Let's wait on that.

13 MR. ENGLISH: Okay. So here's the -- here are our
14 requests to charge. They're pretty vanilla. I will email
15 these to you.

16 THE COURT: Yeah. That way it's easy for me to cut
17 and paste.

18 MR. ENGLISH: Not that there will be anything to
19 change.

20 THE COURT: The format, if nothing else.

21 (WHEREUPON, proceedings recessed at 4:37 p.m.)
22
23
24
25

1 WEDNESDAY, JULY 28, 2021

2 (WHEREUPON, proceedings reconvened at 9:23 a.m.)

3 THE COURT: Did you get your witness?

4 MR. PURIEFOY: We didn't, Your Honor. We had three
5 individuals go out to try and serve him at three different
6 locations, and we just couldn't get him.

7 THE COURT: How about request to charge?

8 MR. PURIEFOY: We are finalizing them right now.
9 They'll be sent to us momentarily.

10 THE COURT: Do y'all have any additional witnesses or
11 evidence?

12 MR. PURIEFOY: We don't.

13 But before we close our case in chief, we would like
14 to make a motion to reconsider the Court's ruling on the
15 motion in limine just on a very particular matter. And to
16 the extent that the Court is inclined to deny that motion
17 to reconsider, we would ask for permission to make a
18 proffer of evidence for appeal.

19 THE COURT: All right. Mr. English?

20 MR. ENGLISH: Well, I think Your Honor has ruled and I
21 don't know that there are grounds for reconsideration at
22 this point.

23 THE COURT: Right. I mean, I agree.

24 And, again, you know, I guess maybe to protect
25 yourself, I think a proffer, I don't have a problem with a

1 proffer. How long do you think it will be?

2 MR. PURIEFOY: It's going to be an attorney proffer,
3 and it's just going to be some brief readings from the
4 deposition that's going to demonstrate what Mr. Bergeron
5 would have testified to about damages had he had an
6 opportunity.

7 THE COURT: All right.

8 MR. PURIEFOY: So if we could just have one moment,
9 Your Honor.

10 THE COURT: Yeah. That would be good.

11 (Pause in proceedings.)

12 MR. PURIEFOY: Your Honor, before we proceed to the
13 proffer, may I just get a clarification on the Court's
14 ruling on the motion in limine as it relates to evidence
15 that's allowed to be presented to the jury?

16 THE COURT: I mean, my motion in limine was that you
17 would not be able to present any damages.

18 MR. PURIEFOY: Correct. And, I guess, the motion to
19 reconsider was to address that issue. But to the extent
20 that we're going to be moving into closing arguments, my
21 question for clarification purposes, are we allowed to make
22 reference to documents that have already been admitted into
23 evidence? Because what has been admitted already was the
24 spreadsheet that breaks out what Mr. Bergeron ---

25 THE COURT: Right. And I think that goes to your

1 defenses even though -- I mean, without any damages, of
2 course, I don't think you can go forward on any of your
3 counterclaims, you know. And that's something that will be
4 addressed in a minute. But, you know, any of the figures,
5 I think that testimony goes towards your defenses, though.
6 So I don't -- I mean, those are into evidence. I don't see
7 any reason why you wouldn't be able to refer to them.

8 MR. PURIEFOY: So we're not being ---

9 THE COURT: Well, I guess we haven't gotten to that
10 point yet.

11 MR. PURIEFOY: Yes, sir.

12 MR. ENGLISH: Your Honor, and on the proffer, maybe
13 what we ought to do is just introduce it. If it's from the
14 deposition of Mr. Bergeron, just introduce the deposition
15 of Mr. Bergeron as a court exhibit. I know Your Honor
16 referred to portions of it, and if it's a court exhibit,
17 then it would be part of the record that can be considered.

18 MR. PURIEFOY: Well, Your Honor, my only problem with
19 that is the purpose of this proffer is not to state that
20 everything that Mr. Bergeron represented in his deposition
21 would have been submitted for purposes of trial.

22 THE COURT: I'll let you do whatever you feel is
23 appropriate.

24 (Pause in proceedings.)

25 THE COURT: Mr. English, I believe you have -- are you

1 going to have a rebuttal witness?

2 MR. ENGLISH: Yes, sir.

3 THE COURT: All right. Tell the jury that it's going
4 to probably be about 30 minutes. We've got some things we
5 need to go over. Just so they won't be wondering where the
6 next . . .

7 Do you care -- I mean, you don't need to rest in front
8 of the jury, do you?

9 MR. PURIEFOY: I don't, Your Honor.

10 THE COURT: Okay. I've never seen that that's a
11 requirement. I know a lot of people are -- they don't
12 think it's -- some people really like to be able to do
13 that.

14 (Pause in proceedings.)

15 MR. PURIEFOY: All right. Your Honor, it's just a few
16 that I'd like to read.

17 THE COURT: And you want to, I guess, just publish.
18 You want to also put those portions in the record as an
19 exhibit? I guess if you publish them, that will be fine.

20 MR. PURIEFOY: Yeah. If we choose to publish them,
21 this is just for appellate purposes.

22 THE COURT: Yeah. For proffering. Okay.

23 MR. PURIEFOY: So, Your Honor, for purposes of the
24 defendant's proffer of evidence, we would like to, of
25 course, present to the Court what evidence would have been

1 presented had Mr. Bergeron been permitted to testify about
2 either special or actual damages during the course of this
3 trial. Specifically, there was a deposition of
4 Mr. Bergeron that was taken by Mr. Sibley -- or, excuse me
5 -- by Mr. English on September 29th of 2020. Reading from
6 page 37 beginning at Line 12, Mr. Bergeron would have
7 testified during the course of the trial, "It was my
8 impression that four point four million dollars was my gut
9 feeling the best valuation. You asked me if you thought
10 you were buying. I thought I was buying it at a fair
11 price. The valuation is used as a method that experts
12 use."

13 He then goes on to state that he thought the company
14 was making a profit, and based on those things -- the
15 company that I thought was making a profit and was [sic]
16 based things on the profit it was making, it was making
17 less.

18 We then have a line of questioning by Mr. English
19 that, of course, Mr. Bergeron would have been able to
20 testify about where the question was, "Then it looks like
21 you divided the purchase price of four point four million
22 dollars by that EBITDA and got an EBITDA multiple of three
23 point seven five; is that right?"

24 "No," was Mr. Bergeron's response.

25 The question, "Where did you get the multiple?"

1 The answer, "That's what we had agreed on before --
2 the very second meeting we had, the seller represented
3 EBITDA was one million one hundred seventy-three. For type
4 and size of company that we had, we agreed it was somewhere
5 between three point five and four by EBITDA. That's how
6 the purchase price was calculated. The three point seven
7 five is not coming from the purchase price. The purchase
8 price is coming from the multiple."

9 Again, Mr. English asked, "But regardless, if you
10 divided the purchase price of four point four million
11 dollars by EBITDA number, you believe one point one seven
12 three million, that gives you an EBITDA multiple of three
13 point seven five, right?"

14 "It does, right."

15 Mr. English then asked, "And then you subtracted the
16 twenty-five hundred dollar salary and these bonuses along
17 with payroll taxes from the EBITDA to come up from the one
18 point one seven three to come up with a new EBITDA number;
19 is that right?"

20 "With a potential number, yeah."

21 "That's what you called actual EBITDA of eight hundred
22 and twenty-two thousand; is that right?"

23 "Yeah."

24 "Then you multiplied that earnings number times the
25 three point seven five multiple and came up with a claim

1 for the reduction of the company value of one point three
2 million dollars; is that right?"

3 Each one of those instances, of course, Mr. Bergeron
4 would have been able to discuss how he personally viewed
5 the value of the company and how he believed he was
6 damaged, either special damages or actual damages.

7 Mr. Bergeron then states on page 105 of his
8 deposition, "I replaced all the people with -- all those
9 people with people that could actually code. We have
10 changed the name of the company to modernize it. The
11 product was obsolete. We spent a lot of money to go from a
12 Windows base system to a web-based system."

13 When asked about -- by Mr. English about the employees
14 that have left, Mr. Bergeron responded on
15 page 107 of his deposition, "Because all of these things we
16 had to do. We had to hire more people to compensate. We
17 had to bring a better location. We had to improve the
18 health plan and the employees. Altogether it was an
19 increase in cost."

20 So, Your Honor, for purposes of the proffer of
21 evidence, that's all we have.

22 THE COURT: All right. Anything in response to that?

23 MR. ENGLISH: Yes, Your Honor. It looks like after
24 Mr. Puriefoy proffered beginning on page 37, he started
25 reading from page 71, and I would just like the Court's

1 record to include pages 71 through 88 of Mr. Bergeron's
2 deposition so that the record includes the full context of
3 those discussions.

4 THE COURT: All right. Do you want to put those in
5 since you're not -- I mean, do we have that in -- well, the
6 deposition, has that part already been published?

7 MR. ENGLISH: No. It has not been published to the
8 jury, or not all of it. I think I handed up a copy that
9 Your Honor reviewed when you made your ruling on the motion
10 in limine, and I would just like to make sure that we can
11 pull it out as a court's exhibit, but just that those pages
12 71 to 88 be included in the record.

13 MR. PURIEFOY: And, of course, Your Honor, for the
14 record, we have not read the entirety of Mr. Bergeron's
15 deposition as a proffer of evidence. However, the reason
16 why no evidence or counter-designations were submitted to
17 Mr. English's designation were because, of course, it was
18 our intent to have Mr. Bergeron testify at trial about
19 those damages.

20 THE COURT: All right. And I think as for a proffer,
21 I guess he has the -- I'm going to give you this deposition
22 back then. You said 71 through 88?

23 MR. ENGLISH: Yes.

24 THE COURT: I'm going to give you this, the deposition
25 you provided to me and you can do . . .

1 MR. ENGLISH: And I could pull the pages out ---

2 THE COURT: Yeah.

3 MR. ENGLISH: --- and mark it as a court's exhibit?

4 THE COURT: Right.

5 MR. ENGLISH: Okay.

6 (WHEREUPON, Court's Exhibit Number 2 was marked for
7 identification.)

8 THE COURT: All right. Anything else from the
9 defense?

10 MR. PURIEFOY: Nothing, Your Honor.

11 THE COURT: All right. So the defense closes at this
12 time.

13 You had something else?

14 MS. THOMASON: Your Honor, is it the Court's ruling
15 you won't even allow us to submit our motion to reconsider?

16 THE COURT: I mean -- no. I mean, my ruling was
17 denied, but I'll be glad to look at it.

18 Have you given a copy to Mr. English?

19 (Pause in proceedings.)

20 THE COURT: You would cite Balloon Plantation. You
21 know that was my case. That was a nightmare that was not
22 of my doings. You can't tell that from the opinion.

23 (Pause in proceedings.)

24 THE COURT: All right. I've reviewed your motion to
25 reconsider, and as I indicated earlier, I'm going to deny

1 that and go forward on this.

2 All right. With that being said, does the defendant
3 rest?

4 MS. THOMASON: Yes, Your Honor.

5 THE COURT: All right. Okay. I'll hear from the
6 plaintiff now.

7 MR. ENGLISH: Yes, Your Honor. At this time,
8 plaintiffs and third-party defendant would move for a
9 directed verdict.

10 THE COURT: And I'm going to tell you, I'm going to
11 review -- I want to hear all motions before I make a
12 decision on any of them. All right.

13 MR. ENGLISH: Thank you, Judge.

14 Plaintiff and third-party defendant are moving for a
15 directed verdict, seven different motions. The first is
16 the sellers are both entitled to a directed verdict on all
17 of Decide4Action's counterclaims and third-party claims
18 because Decide4Action has not satisfied its burden to prove
19 nonspeculative damages.

20 All causes of action that -- or counterclaims or
21 third-party claims, which I'm just going to refer to as
22 counterclaims for simplicity, require damages as an
23 element. They have not provided any evidence of damages.
24 Instead they just offered inadequate opinions. And
25 specifically, the three things that -- and this goes to the

1 substance apart from the whole disclosure issue, these
2 claims were doomed to fail just as a matter of law.

3 First of all, Mr. Bergeron has admitted in his
4 deposition that he is not qualified to value the company or
5 give an opinion on damages, so that's an admission that he
6 couldn't prove them.

7 Second of all, his -- the methodology he used in what
8 was attached, that spreadsheet, does not follow the South
9 Carolina methodology under Santee Oil. That requires
10 experts to do all of adjusted net asset -- or consider
11 adjusted net asset market and income or earnings approach.
12 The Bergeron calculations ignore the first two of those and
13 they don't really follow an adequate earnings approach.

14 Second, on the damages point, Decide4Action's claim
15 that the sellers are the proximate cause of any damages to
16 it are speculative and not reasonably certain. There's
17 just no evidence that anything, and specifically payment of
18 these bonuses, caused any damages.

19 And third, the claims for damages are based on things
20 that are prohibited by the stock purchase agreement.
21 Specifically, they include claims based on a multiple of
22 earnings and a diminution in value of the company. And
23 both of those things are expressly prohibited by Section 8
24 -- I'm sorry -- Plaintiff's Exhibit 8, Section 8(b), the
25 stock purchase agreement.

1 So that's the first motion for a directed verdict.

2 THE COURT: All right.

3 MS. THOMASON: Your Honor, defense and counterclaim
4 defendants actually would ask that you turn this to the
5 jury, Your Honor. First, we did present evidence of
6 damages, and it was an inadvertence. And what we have
7 here, because I am going to speak to the disclosure issue,
8 is -- is not a discovery war like we have in cases. We've
9 worked through this. There have been three depositions.
10 Mr. Bergeron testified at length in his deposition about
11 how he went through the calculation. Mr. English's entire
12 case has been based on the fact that it was a multiple and
13 the methodology used. The spreadsheet that he put in front
14 of the jury was without limitation, so it's in evidence for
15 the truth of the matter asserted in it. He then put
16 deposition designations up from my client. We did not
17 counter-designate because our client was going to be able
18 to testify to the rest of that deposition testimony that
19 clarified it. And so now we have a calculation our client
20 created in evidence with partial testimony about it, but it
21 is evidence.

22 In addition, all of the bonus letters went in.

23 There's direct evidence of the payment of money out
24 and testimony that it would have stayed with the buyer
25 because it was not paid to the shareholders. We

1 supplemented discovery on the 27th of January on the 8th of
2 February. We've had countless conversations since then
3 with Mr. English. It was an advertence. We provided the
4 documents that supported ours. Did not realize. Caught
5 totally off guard yesterday. Mr. English can't say he was
6 prejudiced or his client was prejudiced because they spent
7 all of this time talking about the methodology. And on top
8 of that, not even a phone call.

9 The sense of fair play, I also want to say, Your
10 Honor, that this can't be a rule to show cause because
11 there's no accompanying affidavit or pleadings, so it has
12 to be a discovery.

13 THE COURT: But don't you have -- the other issue -- I
14 think I made my ruling, actually, on two, maybe even three
15 of the grounds. One is the lack of having an expert that
16 you need to be able to do this evaluation, and the other
17 one was that he testified clearly I'm not the one to be
18 able to testify to my damages. We have to have experts. I
19 mean, that's what he said in reference to what are my
20 damages.

21 MS. THOMASON: Your Honor, he also said he had special
22 knowledge throughout the rest of that. You got part of it,
23 deposition testimony. He's saying he's not even pretending
24 to be evaluation, but if he -- he doesn't consider himself
25 that, but if I can demonstrate through questioning that he

1 has special knowledge through his experience at acquiring
2 companies.

3 The reports that were referenced, he got the second
4 one after he had already sent the damages calculation to
5 Mr. Coburn -- well, to Mr. Sibley and Mr. Coburn. That
6 damages calculation, the number we had from the very
7 beginning is the same, but it's his calculation. I could
8 have questioned him.

9 THE COURT: But if you're going to qualify him as an
10 expert, isn't that something that you would also have to
11 disclose to the plaintiff? That even if it's your client,
12 I mean, you'd have to say my client plans on being an
13 expert on this.

14 MS. THOMASON: I have -- he did know that that was a
15 possibility because you can do that at any time. I could
16 have moved for that if we thought it was expert testimony
17 that the Court needed. I also have a case, Whisenant v.
18 James Island, that I can provide to the Court where the
19 Court in that case said there was enough to take it to the
20 jury, and the judge actually said you need an expert, you
21 need this, but where there was proof that he had knowledge
22 to value what it was to him.

23 Furthermore, you don't have to have a valuation expert
24 to demonstrate how much money was paid to nonshareholders.
25 That's actual damages that flow from the natural breach of

1 the agreement that you would expect. We were supposed to
2 keep it for ourselves or it stays with the buyer. We know
3 the amount. The letters came in. Mr. English opened the
4 door to the evidence of damages when he put our damages
5 calculation up. Now we're being prejudiced by not being
6 able to produce counter-testimony when he put partial
7 excerpts from a deposition as designations from our client.
8 We could have done that same thing had we had any idea this
9 was going to be an issue. We had him here ready to
10 testify. The real prejudice here is going to be to him.

11 Not one phone call. It's feigned surprise. I don't
12 have what I need to come into this court. And, frankly,
13 it's not fair play. It's not how we practice. I've never
14 done anything like that ever. Now, you can say shame on me
15 for not anticipating those kinds of tricks, but we
16 cooperated throughout this entire process. There was one
17 motion filed, and we resolved it beforehand and were so
18 busy producing the documents that were a second part of
19 that consent order, and then right after that, the day
20 after, the second production of it we're in conversations
21 about the term of court. I mean, a lot has happened in
22 this case.

23 We took Mr. Sibley's deposition. He died suddenly,
24 tragically, but we don't have him here to cross-examine.
25 We're stuck with those designations.

1 Another shareholder, Mr. Clark, passed away just last
2 month or the month before. We don't have him.

3 I mean, a lot has happened. It is an extreme
4 prejudice. And no prejudice to the plaintiff because they
5 have made their whole case about our damages methodology.
6 But to say that we can't even argue nominal damages, we
7 can't argue actual damages that don't require an expert.
8 Mr. Bergeron can certainly testify to how much money was
9 taken, and Mr. Sibley testified to it and Mr. English put
10 it up in his case. There was no limit as to how he was
11 going to use it. There's no limiting, there's no request
12 it be admitted for a limited purpose. So it's in.

13 THE COURT: But, I mean, is the -- let me ask you
14 this. The fact that these bonuses were paid, I mean, how
15 can that be related to -- I mean, how can that be converted
16 to actual damages?

17 MS. THOMASON: Because one thing we know for sure from
18 all the testimony and the documents is -- and Mr. Sibley's
19 own testimony, if the bonuses weren't paid out to
20 shareholders, they stayed with the company and would be the
21 property of the buyer. That's actual damages. They knew
22 that. There's testimony on the record already as to that.

23 THE COURT: Is the testimony that the -- is there
24 division between the bonuses of which went to nonowners and
25 which went to owners?

1 MS. THOMASON: That's in the record also, Your Honor.

2 THE COURT: Okay.

3 MS. THOMASON: We have testimony with the letters of
4 what went to the nonowners. They're in evidence. We also
5 have the spreadsheet that was put in evidence that we
6 created that lists the exact amount of bonuses paid to
7 nonowners versus owners.

8 THE COURT: All right. Go ahead.

9 MS. THOMASON: Your Honor, I understand the Court's
10 ruling, but it's not clear to me if it -- I know it had to
11 be a discovery sanction, but that is so extreme. Directed
12 verdict should allow ---

13 THE COURT: As I told you before, it was not just a
14 discovery ruling.

15 MS. THOMASON: Well, I'm addressing the other
16 things ---

17 THE COURT: Yeah.

18 MS. THOMASON: --- you said based on that is that he
19 can testify from firsthand knowledge to what he had. But
20 what I wanted to just address is the sellers, what has to
21 be demonstrated is that the breaching party knew that, as a
22 natural result of their actions, the harmed party would
23 suffer that amount. They knew that he would have gotten
24 that money. They knew. They hid it in their reps and
25 warranties. They expressly excluded Ms. Featherstone from

1 those reps and warranties and then indemnified her for any
2 damage that might come when he learned of it. They knew at
3 least the amount of those bonuses. And we've got evidence
4 that that is the amount that came out of the company that
5 would have been there for him. That is actual damages.

6 There's also evidence of the intent, the willfulness,
7 the knowing, and all of that should be allowed to go to the
8 jury on the actual damages.

9 THE COURT: All right. Mr. English?

10 MR. ENGLISH: Judge, again, on the disclosure issue,
11 that's already been covered by the motion in limine.

12 But I take offense to the claim that I'm engaged in
13 some sort of tricks. I wrote them about eight different
14 times both before and after my motion to compel to please
15 supplement their answers to interrogatories. They agreed
16 in an order to do that, and they did not. The reason that
17 they did not, I suspect, is they're trying to have it both
18 ways.

19 Your Honor might recall that this \$1.3 million, they
20 want to -- they know they can't rely on what Mr. Bergeron
21 submitted to UCB because he's not a valuation expert. He
22 gave an opinion of the value of the company which is
23 prohibited by the stock purchase agreement, and he used a
24 multiple which is prohibited by the stock purchase
25 agreement. So then what they wanted to do, they want to

1 take these Patton reports -- and Patton & Associates is not
2 here. They've never been identified as an expert. And
3 they actually moved in limine to exclude what that Patton &
4 Associates report said because those reports showed that
5 the company was worth somewhere between 7.3 and \$6 million
6 when he paid 4.4 million.

7 So the people who are trying to play cute with the
8 damage claim is the defendant because they know that those
9 reports, their own expert reports, hurt them. So instead
10 of telling me what their damage claims are going to be,
11 they're withholding that information.

12 And then they want to come in here for the first time
13 and argue that the bonus, the cash bonuses that went to the
14 nonowner employees somehow damaged them. Both the letter
15 of intent that had expired and the stock purchase agreement
16 were both clear that the cash could be paid. The cash went
17 to the sellers. It was excluded from the 4.4 million
18 offer. And it's not damages to them, and they haven't
19 shown that there's any damages by the fact that the sellers
20 decided to direct their cash that they would have gotten to
21 their own employees.

22 So it's not actual damages. It's nothing that's been
23 -- that's the -- the first time they raised this theory is
24 once it became clear they weren't going to be able to allow
25 Mr. Bergeron to testify to some opinion that they want to

1 keep the Patton & Associates report that it's based on out.

2 THE COURT: And I don't get too much in this, and I
3 will remark that based on -- and, again, this is not
4 actually before me, but the proffered testimony, your
5 damages, I'm sure the moment y'all started that we'd have
6 had an objection. And I'm not sure that I wouldn't have
7 sustained his objection based on the proffer that you had.
8 And, again, that's not before me. But, you know, I really
9 think that without an expert, you really are kind of
10 jam-dammed.

11 So anyway, let's stick to this. We don't get too much
12 into the motion.

13 MS. THOMASON: That's okay. But I want to address
14 denied. The last conversation we supplemented on
15 February 8th. He emailed us two times in the next couple
16 of days, and then we started with the trial prep. The fact
17 that we want to have it both ways, we wanted the valuation
18 report out because Richard was going to testify from his
19 personal calculation. They've had that.

20 This is not a new theory either. It's in our pleading
21 and it's in the spreadsheet, the actual damage from the
22 bonuses. The second part is his multiple that he wasn't
23 allowed to testify to.

24 But this is not a new theory. We pled it, we have
25 included it, he put it in one as an actual, we pled actual

1 all the way through. We've gotten testimony on it as to
2 the actual. We did not hold it back because we want it
3 both ways.

4 And, in fact, the \$7 million, it's the same reason
5 Mr. English didn't want the offering memorandum in. He did
6 pay 4.4 and 2.5 in cash. I mean, 2.5 came out to them too.
7 It's about -- that's not even apples to apples. The point
8 is, we weren't allowed to ask the questions that would
9 have. So that's fine. Now we have the testimony and the
10 evidence that's in. The evidence is already in for the
11 truth of the matter. It has partial testimony about it.

12 But this, we should be allowed to argue to the jury
13 the damages. I mean, there was so much production. We've
14 not heard anything about this issue since February. We
15 didn't even -- but that's okay. Now we have enough
16 evidence in that the jury could decide the actual amount
17 that would have gone to Mr. Bergeron, because it can't go
18 to -- if it doesn't go to the shareholders, it's forfeited
19 to the company. There's testimony. It's in the stock
20 purchase. There's testimony from both sides.

21 THE COURT: All right. Let's go to the second portion
22 of your motion.

23 MR. ENGLISH: All right, Judge. And these are -- will
24 be additional sustaining grounds to dismiss all of the
25 counterclaims and third-party claims.

1 The second one is there's no evidence that the stock
2 purchase agreement was breached. And, again, the payment
3 of bonuses was not a material adverse change. But even if
4 it was, it was disclosed by Schedule 4(i), Section 3 of the
5 stock purchase agreement. So there's just no evidence that
6 either the payment -- I'll say on that point Mr. Bergeron
7 admitted that if the payment to the nonowner employees
8 would not be -- he wouldn't have a claim for that if it was
9 disclosed, and it was disclosed.

10 MS. THOMASON: So, Your Honor, we believe there's
11 sufficient, and there is testimony and evidence for the
12 jury to find that they were not disclosed. They were
13 buried at best, and they were advertly misleading and
14 misrepresented. And that testimony came in through
15 Mr. Bergeron who said if they had been disclosed, it would
16 have been okay. It was not okay to pay anything over
17 \$2,000. That came in. Couldn't pay anything out of the
18 ordinary course over \$2,000.

19 It is definitely a jury question as to whether paying
20 \$359,000 in bonuses is in the ordinary course or not.
21 There was a reason. There's testimony as to the reason for
22 that is to know what you're paying for the employee
23 salaries. All that testimony is in the record. There is
24 evidence of a breach. They weren't to pay anything over
25 \$2,000 except the money out to the shareholders.

1 They also weren't supposed to change employees'
2 compensation or bonus or incentives. They were not
3 supposed to change that. They weren't supposed to do
4 anything that was a material adverse effect on the company,
5 and that's defined in the contract. And there's testimony
6 and evidence that they violated that by the very number of
7 what they spent.

8 THE COURT: Mr. English?

9 MR. ENGLISH: Just in reply to that, again,
10 Mr. Bergeron admitted if it were disclosed, it wouldn't be
11 a claim, and it was disclosed.

12 I'll move on to my third motion for a directed
13 verdict, and this would be an additional sustaining ground
14 to the damages, and that is third-party defendant Joyce
15 Featherstone is entitled to a directed verdict because
16 there's no evidence that she's done anything wrong or that
17 she's liable. The only evidence is that she was a passive
18 shareholder. There's no evidence that she breached the
19 stock purchase agreement. In fact, they acknowledged that
20 she was excluded from the reps and warranties. There's no
21 evidence Ms. Featherstone committed a fraudulent act,
22 committed fraud or made any intentional misrepresentation.
23 So she is entitled to a directed verdict on the third-party
24 claims.

25 THE COURT: Ms. Thomason?

1 MS. THOMASON: Your Honor, a moment, please.

2 (Pause in proceedings.)

3 MS. THOMASON: Your Honor, we have no objection to
4 that. We will dismiss her.

5 THE COURT: All right. You're out. It was that green
6 dress.

7 All right next one.

8 MR. ENGLISH: But we do want to keep her with us.

9 Your Honor, the next motion for a directed verdict, it
10 would also be an additional sustaining ground to the
11 damages motion, and that is the counterclaims include
12 something called "intentional misrepresentation" as a cause
13 of action, but we can find no such cause of action under
14 South Carolina law. We think that's just a restatement of
15 the fraud claim, and so that -- we don't think there should
16 be separate charges or anything on the verdict form about
17 that. It's subsumed in fraud.

18 MS. THOMASON: We haven't charged any differently,
19 Your Honor.

20 THE COURT: All right. Okay.

21 MR. ENGLISH: Your Honor, the fifth motion for a
22 directed verdict is also an additional sustaining ground to
23 the damages motion, and that is the plaintiff is entitled
24 to a directed verdict on the counterclaim for breach of
25 contract accompanied by a fraudulent act because there's no

1 evidence of an independent fraudulent act which accompanied
2 the breach.

3 THE COURT: Ms. Thomson?

4 MS. THOMASON: We believe there is, Your Honor. We
5 believe the action in intentionally concealing and
6 presenting the additional P&L's that did not clearly lay
7 out and disclose the business at the time the SPA was
8 executed and in presenting the documentation in
9 anticipation of the execution of the SPA that was not --
10 that did not disclose.

11 THE COURT: Okay. Mr. English?

12 MR. ENGLISH: Your Honor, I think that just goes to
13 their claim that the stock purchase agreement was breached
14 by failure to disclose these nonowner bonuses. It's all
15 the same thing regardless of the time any failure to
16 disclose occurred. But as we saw in the stock purchase
17 agreement, the last page, Schedule 4(i), it did disclose
18 that they paid employee bonuses.

19 THE COURT: All right. Your next motion?

20 MR. ENGLISH: Next motion is for a directed verdict on
21 punitive damages, and that is that there's no evidence or
22 grounds for punitive damages against the plaintiff. First
23 of all, the stock purchase agreement, and, again, this is
24 that Section 8(b) on page 21, expressly says, "In no event
25 shall seller be liable to buyer for any punitive damages."

1 And I think there's a case. The Maybank case holds that
2 exculpatory clauses like that are enforceable, and so that
3 would preclude punitive damages.

4 In addition, Decide4Action has not put forth any
5 evidence sufficient to satisfy the high standard of proof
6 that you have to have clear and convincing evidence of a
7 reckless, willful or wanton infringement of the defendant's
8 rights.

9 THE COURT: Yes, Ms. Thomason.

10 MS. THOMASON: Your Honor, so as to the punitive
11 damages, we believe that in proving willful intent
12 intentionally misrepresented, that's the fraud. Once the
13 jury can find willful intent, I think we're entitled to
14 punitive damages if the jury so awards.

15 THE COURT: But how do you overcome the language in
16 the SPA?

17 MS. THOMASON: There's also language in the SPA
18 exactly on point with fraud takes out the caps.

19 THE COURT: That's in the SPA as well?

20 MS. THOMASON: Yes, it is, Your Honor. And any
21 postmotions that ---

22 THE COURT: It takes out the cap or does it take out
23 the ---

24 MS. THOMASON: So there's a cap of 2.5 million and
25 there's a threshold of 25,000. And so it takes out those

1 caps anticipating anything with fraud. But further, and
2 there's case law to this, I believe the case that was just
3 cited goes as to the breach of contract, but not the fraud
4 itself. But there's case law that if there's fraud and
5 inducement and so forth, then there's no waiver, there's no
6 -- I mean, the contract, the provision relating to that.

7 THE COURT: But is this fraud an inducement? I mean,
8 that's not -- I don't think y'all pled that, have you?

9 MS. THOMASON: Well, in our pleadings, we pled that
10 the facts in that claim that ---

11 THE COURT: Right. The fraud but not fraud in -- and
12 I haven't looked at that case, but, I mean, and I don't
13 know exactly where the caps are, but if the caps -- you
14 know, if fraud removes the caps, that doesn't necessarily
15 remove punitive damages, does it?

16 MS. THOMASON: I think it does, Your Honor. I think
17 that was the intent.

18 THE COURT: Okay. I mean, I don't -- where's the --
19 do you have the reference to where in the SPA the cap is?
20 I know I've seen it through -- is it 8(a) maybe?

21 (Pause in proceedings.)

22 MS. THOMASON: I'm sorry, Your Honor. Bear with me
23 just a minute.

24 (Pause in proceedings.)

25 MS. THOMASON: Your Honor, it's in here. If you'll

1 allow me ---

2 THE COURT: All right. Anything else you want to say
3 on the ---

4 MS. THOMASON: Your Honor, also, we pled breach of
5 contract accompanied by a fraudulent act. And the payment
6 of the bonuses was the breach and the failure to disclose,
7 we have indicated, was the fraudulent act and the deception
8 accompanying that. And we believe that if the jury can
9 find the breach of contract, the fraud gets them to the
10 punitive under that claim.

11 THE COURT: All right.

12 MR. ENGLISH: Your Honor, on that point, this isn't a
13 claim of fraud in that there was a factual
14 misrepresentation. The defendant is claiming that there
15 was a failure to disclose or an omission, and that any duty
16 to disclose, that arose only by virtue of the contract. So
17 they can't both claim rights under the contract and then
18 disclaim the language from the contract, the exculpatory
19 clause in the contract. It's all one package. And the
20 contract says no matter what, we're not -- sellers are not
21 liable for punitive damages or diminution in value or any
22 type of multiple.

23 MS. THOMASON: Your Honor, there absolutely is a claim
24 about a misrepresentation of fact. It's in our pleadings
25 that way. We presented it in the testimony that way. It

1 is a misrepresentation of fact. And we've alleged that the
2 fraud in that -- accompanying that breach of contract
3 entitles us to punitive damages.

4 THE COURT: All right. Next motion.

5 MR. ENGLISH: Your Honor, and then moving to the
6 plaintiff's claim, plaintiff would move for a directed
7 verdict on her breach of contract claim. The indemnity
8 escrow agreement, which is Plaintiff's Exhibit Number 9, at
9 page 2 in Section 3(d) requires Decide4Action to prove a
10 pending claim amount in order to recover any amount. And
11 as Your Honor knows, UCB has this \$443,000 in an escrow
12 account. Because Decide4Action has not proven any damages,
13 its pending claim amount is zero, and it cannot be entitled
14 to this escrow. So the only place for the escrow to go is
15 to the plaintiff. And for that reason, we'd ask Your Honor
16 to grant plaintiff judgment as a matter of law on directed
17 verdict on the breach of contract claim and direct that the
18 escrow fund be paid to the plaintiff.

19 THE COURT: Let me just ask you this. Were y'all
20 seeking additional damages? I mean, I know you put
21 attorneys fees, but did you have any basis for attorneys
22 fees?

23 MR. ENGLISH: I don't think we've pled for attorney
24 fees. I don't think the contract provides for attorney
25 fees.

1 THE COURT: I actually looked at it this morning, so,
2 hey.

3 MR. ENGLISH: You're right. You're right. But we
4 have, we do think -- and this is sort of beyond this
5 motion, but I do think we have also got a cause of action
6 for breach of contract accompanied by a fraudulent act that
7 we think should go to the jury.

8 THE COURT: Okay. All right. Your response to that?

9 MS. THOMASON: Yes, Your Honor. Well, and I just want
10 to add on the claims that we just talked about, all of
11 those motions are to be viewed in the light most favorable
12 to the nonmoving party. We'd ask and we believe in viewing
13 all the evidence and testimony in light of the nonmoving
14 party, it's only appropriate to allow the evidence to speak
15 for itself and us to argue it to the jury. We ask that you
16 deny the directed verdict.

17 As to the plaintiff's claim for breach of contract
18 accompanied by a fraudulent act, they haven't pled the
19 fraudulent act. They said general dishonesty and a pattern
20 of behavior, but not one bit of testimony came in as to
21 that. Not one bit of testimony as to dishonesty.

22 THE COURT: I think his motion just was as to his
23 breach of contract.

24 MS. THOMASON: Accompanied by a -- I'm sorry.

25 THE COURT: Yeah.

1 MS. THOMASON: Okay. So as to the breach of contract,
2 the contract said that you cannot pay out to anyone but
3 shareholders. It was very explicit. And you cannot pay
4 out anything over \$2,000 without getting the written
5 expressed permission of the buyer. And there's been
6 testimony as to the very good reasons for that. And so we
7 believe that we've demonstrated that they did breach the
8 contract by paying it out, by material adverse change, and
9 then failing to disclose, and then not including in their
10 disclosure schedule and maintaining that until postclosing.

11 The other thing is we have demonstrated that, in
12 paying out the bonuses, they put the evidence themselves up
13 of how much was paid out in violation of the terms of the
14 contract to nonowners, and so there's evidence that it was
15 paid out to nonowners in the record entered by plaintiff.

16 THE COURT: All right.

17 MR. ENGLISH: Your Honor, the defendant's asking the
18 Court to rewrite the contract. They argue the contract
19 says you can only pay cash to the sellers. That's not what
20 the contract says. The contract says the cash belongs to
21 the sellers. There is no prohibition in the contract for
22 the sellers paying out bonuses to nonowner employees. It's
23 just it's not in there. And, again, because they can't
24 prove damages, this escrow money can't go to them because
25 they have no pending claim or their amount is zero.

1 THE COURT: All right. Anything else from the
2 plaintiff?

3 MR. ENGLISH: No, Your Honor.

4 THE COURT: All right. Any motions from the
5 defendant?

6 MS. THOMASON: Just in response to that last
7 statement, Your Honor. That's not what the contract says.
8 And we're referencing it and have -- the LOI is in
9 evidence. They continue to say it was expired. There are
10 two executed copies of it. But that doesn't matter because
11 in the SPA, they reaffirmed the May 17th date and said
12 nothing has changed.

13 And there's a reason that it said you can't spend more
14 than \$2,000 out of the ordinary course without telling us
15 unless you give it to yourselves which is supposed to be
16 taken out to them because it altered the amount of money
17 that would have either remained with the buyer if it wasn't
18 disclosed to the -- or if it wasn't distributed to the
19 sellers. But there is evidence and the contract does say
20 that it can only . . .

21 And there's a reason that it says there's no material
22 adverse change. "Adverse change" is defined. Can't spend
23 more than \$2,000 over the ordinary course. I believe the
24 evidence shows that \$359,000 had never been paid before in
25 20 years in bonuses. So that can't be in the ordinary

1 course. All that's in the record. So we would ask for
2 that motion be denied.

3 THE COURT: All right. And then motions on behalf of
4 the defendant?

5 MR. PURIEFOY: And, Your Honor, we're going to renew
6 our directed verdict motion on Mr. English's claim for
7 breach of contract accompanied by a fraudulent act.

8 What the testimony has beared out throughout the
9 course of this trial ---

10 THE COURT: And I think I never actually ruled on
11 that, so -- but I'll definitely hear further from you.

12 MR. PURIEFOY: Sure, Your Honor.

13 The plaintiffs in this case have alleged that there
14 was a breach of contract accompanied by a fraudulent act.
15 As the Court knows, the breach of the contract itself
16 cannot constitute a fraud. There must be some independent
17 basis to allege fraud. The only allegation and testimony
18 that's come in through the course of this trial is that
19 Mr. Bergeron filed a claim with United Community Bank. And
20 filing the claim itself cannot constitute fraud. There
21 must be some additional act beyond the breach that they've
22 alleged to constitute or give rise to fraud.

23 There's been absolutely no evidence put in the record
24 today that any conduct beyond the filing of the claim
25 itself was fraudulent. In fact, we are here before the

1 Court on day three of a jury trial, and that claim has
2 still survived. There's not been any motions to dismiss,
3 motions for summary judgment or otherwise to demonstrate
4 that that was some frivolous claim. This was filed back in
5 2019 and it is now mid-2021 and we're trying this case.
6 There was no fraudulent act, Your Honor, beyond the filing
7 of the claim itself which was permitted expressly under the
8 terms of the escrow indemnity agreement.

9 The terms of that contract, Your Honor, indicated that
10 if Mr. Bergeron, as the buyer, had reason to believe that
11 the sellers had misrepresented or violated the
12 representations and warranties contained in the stock
13 purchase agreement, his only recourse was to file a claim
14 with United Community Bank to instruct them not to release
15 those funds. Those funds did not then -- were not then
16 diverted to Mr. Bergeron. They've sat in trust and they've
17 not been accessible to Mr. Bergeron.

18 There was no fraudulent conduct. Mr. Bergeron, in
19 November of 2017, determined that \$359,000 of nonowner
20 bonuses were paid out. He certainly found that to be in
21 violation of the express provisions of the letter of intent
22 which said all cash was to go to shareholders, and then
23 reaffirmed once again in the stock purchase agreement on
24 page 17, Section C under "cash" which says with great
25 specificity that seller shall ensure all target cash be

1 distributed or otherwise paid out to sellers. When he made
2 the determination and the discovery that cash was paid out
3 to individuals other than the owners of the business, he
4 certainly had reasonable grounds to believe that the terms
5 of the stock purchase agreement had been violated, and his
6 only recourse under the escrow indemnity agreement was to
7 file a claim with United Community Bank.

8 THE COURT: Mr. English?

9 MR. ENGLISH: Your Honor, I think the jury could find
10 at least two fraudulent acts by the defendants here. First
11 of all, Mr. Puriefoy says that their filing of the claim
12 cannot be the fraudulent act, but he ignores that that
13 initial claim dated September 19, 2018, contained multiple
14 claims. One of those claims in that letter was a claim
15 that the value of the company was diminished. And that
16 calculation was based on a multiple, and that was expressly
17 prohibited by the stock purchase agreement. So that claim,
18 I think the jury could find, constitutes a fraudulent act
19 by telling the escrow agent to turn over the money based on
20 something the contract prohibits. That initial letter also
21 included a claim that employees had left because they
22 didn't get a similar bonus in 2018.

23 And so I think a party can make a claim -- a
24 multifaceted claim, and part of it can be a fraudulent act,
25 and part of it could be -- at least pass muster under the

1 law. But then we provided the escrow agent with affidavits
2 from those employees that were referenced saying they
3 didn't leave because they didn't get a bonus. That had
4 nothing to do with it. And in the face of that, I think
5 the jury could also find as a second fraudulent act the
6 defendant's maintenance of their claim beginning December
7 13, 2018, with Plaintiff's Exhibit Number 12 and continuing
8 on to this time.

9 So I think there is evidence from which a jury could
10 find breach of contract accompanied by a fraudulent act.

11 MR. PURIEFOY: Your Honor, just briefly. The
12 assertion that the inclusion of the value that Mr. Bergeron
13 included as part of the letter to United Community Bank, I
14 believe, again, is cutting both ways, because the
15 plaintiffs in this case have argued that the defendant
16 should not be able to present any evidence of damages in
17 this case, yet they have continued to present it not only
18 to this court but to the jury repeatedly.

19 Your Honor, the breakdown of the damages that was
20 contained in the letter to United Community Bank was simply
21 done in accordance with the escrow indemnity agreement.
22 The escrow indemnity agreement said that you have to give a
23 basis for the claim and an amount for the claim so as to
24 allow the escrow agent to determine if a portion of those
25 funds were going to be released. Mr. Bergeron did exactly

1 what we've been representing to the Court throughout this
2 trial. He did his own basis of the damages that he
3 believed that he sustained based on no professional
4 evaluation but based on what he believed his damages to be
5 and submitted it to the United Community Bank.

6 To suggest that a letter setting forth the damages
7 that he anticipated somehow was in violation of the
8 provisions of the stock purchase agreement is absurd. What
9 the stock purchase agreement was speaking to was
10 utilization of some multiple in a lawsuit filed by
11 Mr. Bergeron against the plaintiff in this case. However,
12 of course, we've also alleged fraud, and so the utilization
13 of that multiple may be permitted had we been able to
14 submit that to the jury. But Mr. English and the
15 plaintiffs have submitted absolutely nothing to this court
16 to suggest that anything that Mr. Bergeron did as related
17 to the sending of that letter to United Community Bank was
18 fraudulent in any way.

19 Mr. Bergeron was made aware of \$359,000 of nonowner
20 bonuses that were paid to the employees of -- employees of
21 CC+I. Ironically, and I do not believe coincidentally,
22 four of the five key employees left before the end of the
23 next fiscal year, and we believe it was because they were
24 not receiving the bonuses that they thought they had been
25 promised.

1 Your Honor, this is very simple. Fraud requires that
2 there be specific evidence and specific testimony elicited
3 throughout the course of the trial that demonstrates that
4 there was some fraudulent intent in Mr. Bergeron's conduct.
5 Mr. Bergeron simply informed United Community Bank that he
6 believed that there was a claim and that he thought the
7 claim amount was above and beyond what was being held in
8 escrow, and the only thing he was asking that agent to do
9 was hold those funds. We are here today, Your Honor, to
10 determine who is, in fact, entitled to those funds.

11 THE COURT: Briefly.

12 MR. ENGLISH: Just briefly. The defendants continue
13 to confuse the proof requirements for fraud and breach of
14 contract accompanied by a fraudulent act. The law is clear
15 that breach of contract accompanied by the fraudulent act
16 doesn't require proof of the nine elements of fraud. In
17 fact, and our jury charges reflect this, a fraudulent act
18 is just something characterized by dishonesty in fact,
19 unfair dealing, or the unlawful appropriation of another's
20 property by design. And we think the submission of the
21 initial claim in September to UCB and then the maintenance
22 of that claim in December and thereafter, the jury could
23 find that that qualifies -- either one of those qualifies
24 as a fraudulent act.

25 THE COURT: All right. Anything else from the

1 defendant?

2 MR. PURIEFOY: Nothing, Your Honor.

3 THE COURT: Anything else from either side?

4 MR. ENGLISH: Your Honor, I just want to clarify, my
5 motions for a directed verdict for lack of evidence
6 included there's no evidence of breach of contract. I know
7 I said breach of contract accompanied by a fraudulent act
8 and also fraud. There's no evidence that the plaintiffs
9 either made a misrepresentation of fact or failed to
10 disclose when they had a duty to. I think it was covered.
11 I just want to make it clear.

12 THE COURT: All right. Any further response to that?

13 MS. THOMASON: And, again, Your Honor, all the
14 evidence considering the light most favorable to the
15 nonmoving party, I think that there's sufficient evidence
16 for the jury to find that they paid the bonuses in
17 violation of the contract as the breach, that they failed
18 to disclose them as a fraudulent act, that they intended
19 that Mr. Bergeron rely on the fact that they acted in the
20 ordinary course from May 17th until the SPA was executed,
21 and that they had not changed any employee pay or
22 incentive. And he did rely on it. It was false. It was
23 reasonable to rely on it because he did his own test up
24 until May 17th. He didn't get to look at the books again
25 after that. All that's in evidence. They intended that

1 they keep that from him until a month after closing when
2 they gave him the letters. So I think there is evidence in
3 the record sufficient for the jury to find there was fraud.

4 THE COURT: All right. I'm going to take it -- let me
5 spend a few minutes. So we'll take a ten minute break and
6 I'll let you know what I come up with.

7 (WHEREUPON, a recess is taken at 10:25 a.m.)

8 MS. THOMASON: Your Honor, that provision I was
9 referencing, just for the record, is on page 24. It's
10 8(f).

11 THE COURT: All right. Considered all the motions,
12 and I can say that none of the motions were not what I
13 expected.

14 So I do want you to know I spent more than just the
15 ten minutes there, that I thought long and hard about this
16 a lot last night on the way home. And since I believe
17 that, in light of the motion in limine -- and, again, I
18 made it on three bases and not just the discovery issue.

19 I think, in light of the motion in limine which
20 strictly said that no damages could be presented and any
21 information along the damages would go towards your
22 defenses, that there would not be any damages allowed. And
23 I think even in the proffer of testimony, again, that
24 wasn't directly before me, but I'm not sure that that
25 crossed the threshold needed either for the damages anyway.

1 If no damages can be presented, clearly, every one of
2 the counterclaims has an element that damages must be
3 shown, so therefore, that, and in addition to the other
4 arguments on the counterclaim, I grant the plaintiff's
5 motion for a directed verdict on each of the counterclaims.

6 Since there is no claim or any offset that -- whether
7 there was an offset pled, but anything -- any claim I'm not
8 sure since this is not a damages kind of issue, per se,
9 it's dealing with an escrow account, I don't know that
10 there's any basis for any offsets for the escrow, so I
11 grant plaintiff's motion as to that.

12 I do not find that there was any -- I find as a matter
13 of law that the plaintiff has not met its burden on
14 establishing any breach of contract with fraudulent intent,
15 so I grant the defendant's motion on that and rule that the
16 escrow account should be paid over to the plaintiff.

17 I believe that, due to the claim that was presented by
18 the defendant, that there was a dispute, so I'm going to
19 deny any prejudgment interest.

20 Attorney's fees are out.

21 So therefore, it will be a judgment -- or, I guess, a
22 finding for the plaintiff then that the escrow account be
23 transferred to the plaintiff. And I would ask -- since I
24 know you'll need specific language, I would ask that the
25 plaintiff draft an order to be submitted to the bank on

1 that regard.

2 And based on this ruling, I believe there's nothing
3 left to present to the jury.

4 And that's the ruling of the Court.

5 MS. THOMASON: Your Honor, for the record, may I ask
6 you to reconsider on the directed verdict and allow us to
7 take it to the jury on the evidence that's in? When the
8 evidence was presented, I renew that objection. Evidence
9 was presented and was no limiting instruction on its
10 admission. And we believe that, in our pleading and our
11 testimony, Mr. Bergeron did testify to what he would have
12 been entitled to. In the interest of judicial economy, we
13 tried it before the jury. At least if there's appeal after
14 the fact, it's established and we can separate on the jury
15 verdict forms liability and damages.

16 THE COURT: All right. And I understand. I mean, I
17 appreciate your motion, but I respectfully deny your
18 motion.

19 Anything else?

20 MR. ENGLISH: Yes, Your Honor. We'd ask for ten days
21 for posttrial motions, and I think that would end on the
22 weekend, so that we'd have until Monday, August 9th for
23 posttrial motions.

24 THE COURT: All right.

25 MS. THOMASON: Your Honor, one more issue.

1 THE COURT: Yes.

2 MS. THOMASON: There are -- we have settlement
3 agreements with the other shareholders. Some of them
4 forfeited portions of their -- their proportionate share.

5 THE COURT: Okay. Well, I'm not sure how that -- then
6 that means ---

7 MS. THOMASON: It's just the entire amount.

8 MR. ENGLISH: Well, they can work that out with the
9 other shareholders. They didn't name them as parties in
10 this action. And if the other shareholders get money that
11 they say they're entitled to, they can work that out with
12 them.

13 THE COURT: All right. I mean, I think the only thing
14 before the Court is what to do with that escrow. I mean, I
15 don't know that I can award that a portion go anywhere
16 based on what's in front of me. And it can't stay in the
17 bank.

18 MS. THOMASON: Right. And so it being released then,
19 as I understand it, plaintiff is going to then -- just the
20 shareholders will work it out among themselves on how it's
21 paid out?

22 THE COURT: I guess. I mean, all I've got if it was a
23 breach of contract and what to do with escrow.

24 And like I said, you'll have ten days for any
25 posttrial motions.

1 MS. THOMASON: Thank you, Your Honor.

2 THE COURT: All right. We'll be adjourned.

3 (WHEREUPON, proceedings concluded at 10:37 a.m.)

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decide4action Inc.
4016 Messina dr.
Lake Mary, FL
32746

Computer Control + Integration Inc.
1200 Woodruff Road Suite C-39
Greenville, SC 29607

March 10, 2017

Att'n: William Sibley

Subject: Letter of Intent to Acquire Computer Control + Integration

Dear Bill,

Decide4action Inc. is pleased to present you with the terms (the "Indicative Offer") under which it would consider the acquisition of CC+I.

1. Selling Price

- Purchase price will be USD 4,400,000 for 100% of the stock of CC+I;
- The transaction will be a stock purchase;
- The Company is Debt Free;
- 90% of the purchase price will be paid in cash at closing with the remaining 10% to be put in Escrow for 12 months with Interest for the Sellers;
- The Escrow shall have a threshold of \$25K, and maximum amount equal to Purchase Price, to submit a claim through arbitration in case of difference from the Representation and Warranties;
- Representations and Warranties to survive for 24 months;
- The offer excludes the cash at closing (for both the checking and savings accounts) and includes the balances of A/R and A/P at closing.

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2. Conditions of the offer

- This LOI is conditional to a due diligence over the last 3 completed years and the current Year to Date;
- The Due diligence shall demonstrate that the average EBITDA of 2015 and 2016 including the recast to be no less than 98% of the EBITDA from the financials of the Offering memorandum and of the financials submitted by Bill Sibley for year 2016;
- The Due diligence shall demonstrate that the YTD Sales to be in line to produce a 2.8M revenue at year end 2017 and an EBITDA consistent with the year 2015 and 2016;

3. Representation and warranty required by the seller

- There is no current litigation or threat of litigation;
- CC+I is in good standing with all applicable regulations;
- There is no union and no labor conflict;
- There is no lien, lease or encumbrance on any asset;
- There is no Customer that have indicated their intention of a significant decline in their future business;
- There is no material Customer warranty issue for any products already delivered;
- The Seller shall not cause any reduction of A/R or increase or A/P prior to closing by changing its current operating procedure;
- The Seller shall not cause any increase or decrease of inventory by changing its current operating procedure;
- The cash at the time of closing will be distributed to the current shareholders prior to closing, any cash not distributed prior to closing will be forfeited by the Seller;
- From the time that this LOI is submitted, the Seller shall not dispose of any asset either by selling, giving or scrapping unless submitted and approved in writing by the Buyer;
- After the signature of the LOI, the Seller shall not acquire any asset (above \$2K) unless submitted and approved in writing by the Buyer;
- There is no existing products defect;
- There is no significant inventory write off required from the value shown on the balance sheet;
- Any Environmental Issue at the current facilities existing as of the date of Closing will be the responsibility of the Seller. The Seller will provide a complete and

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unconditional release for any environment issue for the past and for 90 days after closing for the Greenville, SC facility. The Seller shall have the right to prevent the buyer from making changes to the current process at the facility if these changes would result in new environmental problems that did not exist at closing;

- The Seller will incur the cost of its broker (Buyer represents no engagement or use of broker);
- Each party will be responsible for its own Legal fees. The Buyer will prepare the Share Purchase Agreement (SPA) and associated documents;
- The facility in Greenville, SC is leased from an unrelated third party;
- There are no supply agreement between CC+I and any related party.

4. Personal

- Bill Sibley will remain at his current position for a period of 30 days after closing with the same compensation as he currently has without any bonus. In addition, during the first 12 months Bill Sibley will make himself reasonably available from time to time, free of charge, for meetings at the facility or by phone should the Buyer request his opinion on the Company, its Customers, Vendors or Employee;
- Terry Starrett and Robert Leviner, will remain at their current position for a period of 12 months at their current compensation and numbers of hours. The Seller shall have the right to terminate such employment with a written notice of 30 days. If the buyer wished to retain their services for a longer period then a new agreement shall be negotiated between the parties;
- Tim Clark and Scott Dozier will stay with the company at their current role for a period of at least 5 years;
- The Salaries and benefits of Tim Clark and Scott Dozier will be the same as the current salary for the first 3 years and will be adjusted reasonably for year 4 and 5;
- 5 years non compete agreement for all Sellers;
- Tim Clark and Scott Dozier will be offered to invest in CC+I group as part of the preferential manager's share program. Tim Clark shall invest at least 6.5% (and up to 10%) of CC+I stock and Scott Dozier at least 2.5% (and up to 5%) of CC+I stock. All stock will be purchased at the same price used for Decide4action purchase.

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5. Other

- The buyer shall have 45 days after the signature of the LOI to complete the Due Diligence process;
- The Buyer shall have 90 days after the Completion of the due diligence to complete the acquisition;
- The Buyer and the Seller shall have 90 days to agree on the SPA, if within that period the SPA is not essentially agreed then this LOI shall be null and void;
- The buyer intent to obtain an SBA loan for this acquisition. The Seller will assist as required to provide any required documentation or support visit for this process;
- Should the Buyer be unable to obtain the financing for any reasons then this LOI will become null and void and no compensation nor legal fee will be due from either party;
- After he signature of this LOI and until the LOI becomes nullified by one of its deadline, the Seller shall not engage with any discussions either verbal or written regarding the sales of CC+I to another party.

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This LOI is valid until April 9, 2017.

A handwritten signature in black ink, appearing to read "Richard Bergeron".

Richard Bergeron
President and CEO
decide4action Inc

A handwritten signature in black ink, appearing to read "Bill Sibley".

Bill Sibley
CEO
CC+I Inc.

A handwritten signature in black ink, appearing to read "Tim Clark".

Tim Clark
President
CC+I Inc.

A handwritten signature in black ink, appearing to read "Scott Dozier".

Scott Dozier
VP of Marketing
CC+I Inc.

A handwritten signature in black ink, appearing to read "Terry Starrett".

Terry Starrett
Vice President
CC+I Inc.

A handwritten signature in black ink, appearing to read "Robert Leviner".

Robert Leviner
Vice President
CC+I Inc.

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	CC-H Fiscal 2017 as of 4/28/2017		CC-H Fiscal 2016		CC-H Fiscal 2015		CC-H Fiscal 2014		CC-H Fiscal 2013	
	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus
<u>OWNERS:</u>										
Clark, James T.	\$125,000		\$150,000	\$100,000	\$150,000	\$75,000	\$106,703	\$0	\$97,811	\$0
Dozier, Scott W.	\$86,249		\$103,888	\$100,000	\$100,200	\$75,000	\$77,000	\$0	\$70,583	\$0
Leviner, Robert E.	\$33,412	(*)	\$60,141	\$20,000	\$80,188	\$30,000	\$71,597	\$0	\$64,447	\$0
Sibley Jr, William A. L.	\$125,000		\$150,000	\$80,000	\$150,000	\$65,000	\$162,917	\$0	\$57,500	\$0
Starrett, Frank T.	\$76,934		\$92,321	\$45,000	\$83,921	\$0	\$83,921	\$0	\$76,928	\$0
Featherstone, Ernest H.	\$12,000	(**)	\$24,000	\$0	\$24,000	\$0	\$24,000	\$0	\$91,667	\$0
NOTES:										
(*) Began Working Half Time										
(**) Deceased December 2016										
<u>NON-OWNERS:</u>										
Lahti, Diane E.										
Morrow, Holie A.	\$28,225		\$37,500	\$0	\$34,375	\$0	\$0	\$0	\$14,241	\$0
Childress, William C.							\$7,731	\$0		
Taylor, Joseph B.	\$38,333		\$0	\$0	\$44,275	\$0	\$7,497	\$0		
Date of Hire			\$46,000	\$15,000	\$43,000	\$0	\$1,867	\$0		
Herrmann, Nathan D.	\$52,905		\$59,382	\$15,000						
Date of Hire --- July 2015										
Viveros, Carlos A.	\$62,028		\$21,863	\$5,000						
Date of Hire --- Mar. 2016										
Clark, Ryan O.	\$24,904									
Date of Hire --- Oct. 2016										
Jones, Christopher L.	\$23,750									
Date of Hire --- Oct. 2016										
Pavatte, Justin D.	\$18,333									
Date of Hire --- Jan. 2017										





DanCalton
CPA, PA

June 22, 2017

Mr. Richard Bergeron
4016 Messina Drive
Lake Mary, FL 32746

Dear Richard:

This report outlines the results of the due diligence activities performed May 16 and 17, 2017 during our visit to the Computer Control + Integration (CC+I) facility in Greenville, SC. The due diligence activities performed were prescribed by you in conjunction with your potential acquisition of CC+I.

SCOPE AND PROCEDURES

As discussed in our meeting prior to the site visit the financial information supplied by CC+I indicated a low complexity balance sheet and significant increases in revenue reflected in the income statements. As such the plan was to focus on the validity of the revenue reported for the nine months ended March 31, 2017 and to review the current bank reconciliations.

CC+I internally reports revenue as either Project or Maintenance revenue. The rapid growth in revenue over the last 3 years is from Projects. For the 9 months ended March 31, 2017 CC+I has internally reported \$2,722,522 of Project revenue. We selected 18 invoices (see attached schedule) comprising \$2,250,013 (83%) of the total reported as of March 31, 2017. Each invoice was traced to inclusion in CC+I's QuickBooks file as well as to subsequent deposit on a bank statement. No exceptions were noted.

We noted that CC+I internally reported \$1,019,031 of project revenue in the month of March 2017. March Project revenue comprises over 37% of total Project revenue for the 9 months ended March 31, 2017. For the year ended June 30, 2016 May was the highest reported Project revenue month at 23% of the annual total. For the year ended June 30, 2015 July (2014) was the highest reported Project revenue month at 22% of the annual total.

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We also noted a significant increase in the size of the average project revenue invoice as reported by CC+I:

9 month ended March 31, 2017	\$61,983
Year ended June 30, 2016	\$39,716
Year ended June 30, 2015	\$23,654

Similar procedures were followed for testing Project revenue for the years ended June 30, 2016 and June 30, 2015. For those two years 22% and 24% (see attached schedules) of Project revenue invoices were traced to inclusion in CC+I's QuickBooks file as well as subsequent deposit on a bank statement. No exceptions were noted.

OTHER ITEMS

Note that CC+I provided a QuickBooks file for financial reporting. CC+I did not provide financial statements that were audited, reviewed, or compiled by a CPA.

Inquiries should be made of CC+I and their legal counsel about the nature and scope of any contingent unrecorded liabilities as of the acquisition date.

CC+I has made no provision for federal and state income taxes in the financial information supplied for due diligence. If reported income is accurate, CC+I will have significant income tax liabilities as of June 30, 2017. It appears that CC+I has made estimated federal tax payments that may be sufficient to prevent an underpayment penalty for the tax year ended June 30, 2017.

CC+I has not provided proper bank reconciliations as of March 31, 2017. During our site visit it was noted that the main operating bank account reconciliation contained several old and large amounts. The updated QuickBooks file that we received on June 20, 2017 indicates an increase to the main operating account of \$443,112 as of March 31, 2017 to a balance of \$1,345,761. The previously reported balance in that account as of March 31, 2017 was \$902,669.

The management of CC+I stated that a copier was leased from Great American Leasing beginning November 2014 for a 36 month term. CC+I further stated that this was the only lease in place with any future obligation in excess of 3 months as of March 31, 2017.

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USE OF REPORT

Any person who is not an addressee of this report is not authorized to have access to this report. Should any unauthorized person obtain access to and read this report, they assume all risk from any decisions made and agree to hold harmless Dan Calton, CPA, PA for any loss incurred from reliance on this report. Our work was performed in accordance with instructions from Richard Bergeron and was performed exclusively for Richard Bergeron.

Dan Calton, CPA, PA

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Lake Mary, FL

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Computer Control + Integration (CC+I)
Invoices traced to bank statements
9 months ended March 31, 2017

Amount	Invoice Date	QB Date	Bank Date	Notes
130,241.50	5/23/2016	7/8/2016	7/11/2016	
79,084.00	5/23/2016	7/8/2016	7/11/2016	
40,208.50	5/23/2016	7/8/2016	7/11/2016	
184,344.00	9/15/2016	9/30/2016	10/3/2016	
66,757.63	10/6/2016	11/30/2016	11/28/2016	
54,768.87	8/22/2016	11/14/2016	11/15/2016	
39,849.00	6/6/2016	2/10/2017	2/6/2017	
34,660.00	12/21/2016	2/6/2017	2/8/2017	
175,686.50	8/24/2016	10/24/2016	10/24/2016	
175,686.50	11/3/2016	12/19/2016	12/21/2016	
188,984.00	12/19/2016	1/18/2017	1/19/2017	
56,000.00	12/15/2016	1/18/2017	1/20/2017	
163,671.50	1/19/2017	3/6/2017	3/8/2017	
189,985.00	1/25/2017	3/13/2017	3/14/2017	one deposit 329,518.50
139,533.50	1/25/2017	3/13/2017	3/14/2017	one deposit 329,518.50
180,652.50	1/31/2017	3/20/2017	3/20/2017	
172,519.50	3/6/2017	3/20/2017	3/17/2017	one deposit 349,900.50
177,381.00	3/6/2017	3/20/2017	3/17/2017	one deposit 349,900.50
2,250,013.50				
Project revenue tested				
% project revenue tested				83%
Project revenue, per CC+I				2,722,521.90
Maint. Revenue, per CC+I				455,290.38
Other revenue, per CC+I				3,482.02
Total revenue, per CC+I				3,181,294.30

Computer Control + Integration (CC+I)
Invoices traced to bank statements
FY ended June 30, 2016

Amount	Invoice Date	QB Date	Bank Date	Notes
9,959.00	8/17/2015	9/17/2015	9/18/2015	
6,979.41	6/22/2015	9/21/2015	9/22/2015	
9,959.00	10/22/2015	11/23/2015	11/25/2015	
190,988.51	12/17/2015	2/1/2016	2/1/2016	customer paid late fee
10,750.00	1/29/2016	2/15/2016	2/17/2016	part of total deposit 80,317 on 02/17/16
59,547.50	1/29/2016	2/24/2016	2/17/2016	part of total deposit 80,317 on 02/17/16
39,849.00	2/22/2016	2/22/2016	2/29/2016	
15,680.00	3/20/2016	4/14/2016	4/27/2016	
18,481.00	3/20/2016	4/28/2016	4/28/2016	one deposit 55,442
36,961.00	3/20/2016	4/28/2016	4/28/2016	one deposit 55,442
Project revenue tested	399,154.42			
% project revenue tested	22%			
Project revenue, per CC+I	1,825,222.97			
Maint. Revenue, per CC+I	538,516.03			
Other revenue, per CC+I	-			
Total revenue, per CC+I	2,363,739.00			

Computer Control + Integration (CC+I)
Invoices traced to bank statements
FY ended June 30, 2015

	Amount	Invoice Date	QB Date	Bank Date	Notes
	63,989.04	6/27/2014	9/8/2014	9/8/2014	one deposit 151,670.28
	73,577.30	7/17/2014	9/8/2014	9/8/2014	one deposit 151,670.28
	14,103.94	6/27/2014	9/8/2014	9/8/2014	one deposit 151,670.28
	30,373.00	11/21/2014	12/29/2014	12/31/2014	one deposit 126,009.80
	34,325.00	11/21/2014	12/29/2014	12/31/2014	one deposit 126,009.80
	30,373.00	11/21/2014	12/29/2014	12/31/2014	one deposit 126,009.80
	30,938.80	11/21/2014	12/29/2014	12/31/2014	one deposit 126,009.80
	<u>109,462.50</u>	2/19/2015	3/4/2015	3/4/2015	
Project revenue tested	387,142.58				
% project revenue tested	24%				
Project revenue, per CC+I	1,632,147.27				
Maint. Revenue, per CC+I	445,677.81				
Other revenue, per CC+I	11.00				
Total revenue, per CC+I	<u>2,077,836.08</u>				

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08/09/17

Cash Basis

Computer Control + Integration
Profit & Loss
 July 2017

Jim Clab
[Signature]

	Jul 17
Ordinary Income/Expense	
Income	
Services	
70100 • Maintenance Income	63,347.57
70200 • Project Income	100,635.50
Total Services	163,983.07
70500 • Discounts given	-13.01
Total Income	163,970.06
Cost of Goods Sold	
50000 • *Cost of Goods Sold	
30240 • Sales - Meals & Entertainment	1,744.92
30230 • Sales - Lodging	2,123.25
30220 • Sales - Transportation	2,253.85
30510 • Sales - Parts Repair	1,927.00
30800 • Sales - Shipping/Freight	337.75
30500 • Sales-Parts	1,254.85
Total 50000 • *Cost of Goods Sold	9,641.62
Total COGS	9,641.62
Gross Profit	164,328.44
Expense	
40016 • Contract Labor	1,000.00
40020 • Janitorial Service	500.00
60010 • Salaries, Wages, Bonuses	76,653.53
60041 • Key Man Life Insurance	3,070.23
60045 • Medical Insurance	
70060 • Company Medical Insurance	7,350.67
60042 • Group 125 Plan Insurance	66.91
60045 • Medical Insurance - Other	428.34
Total 60045 • Medical Insurance	7,845.92
60240 • Meals and Entertainment	36.19
60540 • Dues & Subscriptions	66.93
60610 • Telephone	1,631.07
60670 • Office Supplies	130.74
60680 • Office Equipment Expense	127.10
60790 • Other Office Expenses	9.50
60810 • Utilities	1,117.92
60830 • Rent or Lease	4,060.75
60920 • Accounting Fees	7,350.00
60930 • Legal & Professional Fees	987.50
60950 • Bank Charges	240.00
Total Expense	104,827.38
Net Ordinary Income	49,501.06
Other Income/Expense	
Other Income	
90000 • Misc Income	28.00
60085 • Interest Earned	69.58
Total Other Income	97.58
Net Other Income	97.58
Net Income	49,598.64



3:34 PM

08/09/17

Cash Basis

Computer Control + Integration
Profit & Loss
 June 2017

Jim Clark
Adrian

	Jun 17
Ordinary Income/Expense	
Income	
Services	
70100 · Maintenance Income	77,287.49
70200 · Project Income	197,739.50
Total Services	275,026.99
70500 · Discounts given	-3.78
Total Income	275,023.21
Cost of Goods Sold	
50000 · *Cost of Goods Sold	
30240 · Sales - Meals & Entertainment	1,285.36
30230 · Sales - Lodging	2,279.22
30220 · Sales - Transportation	3,986.07
30800 · Sales - Shipping/Freight	158.06
30500 · Sales-Parts	8,533.42
Total 50000 · *Cost of Goods Sold	16,222.13
Total COGS	16,222.13
Gross Profit	258,801.08
Expense	
60530 · Stationery & Printing	126.86
19920 · Computer Software (Computer Software)	299.99
40016 · Contract Labor	3,335.80
40020 · Janitorial Service	250.00
60010 · Salaries, Wages, Bonuses	2,468,861.78
60041 · Key Man Life Insurance	5,770.23
60045 · Medical Insurance	
60042 · Group 125 Plan Insurance	66.91
60045 · Medical Insurance - Other	7,782.53
Total 60045 · Medical Insurance	7,849.44
60220 · Transportation Expense	319.28
60520 · Conventions & Seminars	479.95
60540 · Dues & Subscriptions	744.60
60610 · Telephone	2,134.18
60640 · Computer Expense	261.69
60670 · Office Supplies	428.57
60650 · Postage/Shipping	7.95
60680 · Office Equipment Expense	726.24
60790 · Other Office Expenses	150.18
60830 · Rent or Lease	8,121.50
60950 · Bank Charges	32.00
Total Expense	2,499,900.24
Net Ordinary Income	-2,241,099.16
Other Income/Expense	
Other Income	
60090 · Dividends	8.80
60085 · Interest Earned	142.04
Total Other Income	150.84
Net Other Income	150.84
Net Income	-2,240,948.32



Form **1120****U.S. Corporation Income Tax Return**

OMB No. 1545-0123

For calendar year 2016 or tax year
beginning JULY 1, 2016, ending JUNE 30, 2017**2016**Department of the Treasury
Internal Revenue ServiceInformation about Form 1120 and its separate instructions is at www.irs.gov/form1120.

A Check if: 1a Consolidated return (attach Form 951) ☐ 1b Life/nonlife consolidated return (attach Sch. PH) ☐ 2 Personal holding co. (see instructions) ☐ 3 Personal service corp. (see instructions) ☐ 4 Schedule M-3 attached ☐	TYPE OR PRINT	Name COMPUTER CONTROL + INTEGRATION, INC.	B Employer identification number [REDACTED]
		Number, street, and room or suite no. If a P.O. box, see instructions. 1200 WOODRUFF ROAD, SUITE C39	C Date incorporated 06/30/1988
		City or town, state, or province, country, and ZIP or foreign postal code GREENVILLE, SC 29607	D Total assets (see instructions) \$ 702,795.
		E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change	

Income	1a Gross receipts or sales	1a	4,430,442.
	1b Returns and allowances	1b	
	2 Cost of goods sold (attach Form 1125-A)	1c	4,430,442.
	3 Gross profit. Subtract line 2 from line 1c	2	625,859.
	4 Dividends (Schedule C, line 19)	3	3,804,583.
	5 Interest	4	
	6 Gross rents	5	1,357.
	7 Gross royalties	6	
	8 Capital gain net income (attach Schedule D (Form 1120))	7	
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	8	
	10 Other income (attach statement)	9	
11 Total income. Add lines 3 through 10	10	33,865.	
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (attach Form 1125-E)	11	3,839,805.
	13 Salaries and wages (less employment credits)	12	2,550,379.
	14 Repairs and maintenance	13	687,405.
	15 Bad debts	14	170.
	16 Rents	15	
	17 Taxes and licenses	16	45,742.
	18 Interest	17	166,772.
	19 Charitable contributions	18	
	20 Depreciation from Form 4562 not claimed on Form 1125-A or else. re on rat (attach Form 4562)	19	160.
	21 Depletion	20	6,366.
	22 Advertising	21	
	23 Pension, profit-sharing, etc., plans	22	4,808.
	24 Employee benefit programs	23	
	25 Domestic production activities deduction (attach Form 8903)	24	
	26 Other deductions (attach statement)	25	
	27 Total deductions. Add lines 12 through 26	26	70,330.
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	27	3,532,132.
29a Net operating loss deduction (see instructions)	28	307,673.	
29b Special deductions (Schedule C, line 20)	29a		
29c Add lines 29a and 29b	29b		
Tax, Refundable Credits, and Payments	30 Taxable income. Subtract line 29c from line 28. See instructions	29c	307,673.
	31 Total tax (Schedule J, Part I, line 11)	30	103,243.
	32 Total payments and refundable credits (Schedule J, Part II, line 21)	31	206,152.
	33 Estimated tax penalty. See instructions. Check if Form 2220 is attached ☐	32	
	34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed	33	0.
	35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid	34	102,909.
	36 Enter amount from line 35 you want: Credited to 2017 estimated tax ☐ Refunded ☒	35	102,909.

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ **OTHER** _____

May the IRS discuss this return with the preparer shown below? ☒ Yes ☐ No

Paid	Print/Type preparer's name CANDACE MCMILLAN	Preparer's signature	Date	Check if self-employed ☐	PTIN [REDACTED]
Preparer	Firm's name CHERRY BEKAERT LLP			Firm's EIN [REDACTED]	
Use Only	Firm's address 110 EAST COURT STREET, SUITE 500 GREENVILLE, SC 29601			Phone no. 864-233-3981	

832001

12-27-16 JWA For Paperwork Reduction Act Notice, see separate instructions.

Form 1120 (2016)



STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "**Agreement**") is entered into as of October 13, 2017 (the "**Effective Date**"), by and among Decide4action Inc., a Florida corporation ("**Buyer**") on the one hand, and William A.L. Sibley, Jr, Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr, Scott W. Dozier and Robert E. Leviner ("**Sellers**"). Buyer and Sellers are referred to collectively herein as the "**Parties**." Computer Control + Integration, Inc., a South Carolina corporation (the "**Target**") shall join in this Agreement for the purposes of Section 6.

RECITALS

WHEREAS, Sellers, in the aggregate, own all of the issued and outstanding capital stock of Computer Control + Integration, Inc. ("**CC+I**"), a South Carolina corporation ("**Target**"); and

WHEREAS, this Agreement contemplates a transaction in which Buyer will purchase from Sellers, and Sellers will sell to Buyer, all of the outstanding capital stock of Target in return for cash; and

WHEREAS, subject to the terms and conditions of this Agreement, Sellers have agreed to sell to the Buyer, and the Buyer has agreed to purchase from Sellers, all of the issued and outstanding Target Shares.

AGREEMENT

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, covenants and agreements herein contained, the Parties hereby agree as follows.

1. *Definitions.* Capitalized terms set forth herein shall have the meanings set forth in Appendix A attached hereto and incorporated herein by this reference.

2. *Purchase and Sale of Target Shares.*

(a) *Basic Transaction.* On and subject to the terms and conditions of this Agreement, at the Closing, Buyer shall purchase from each Seller, and each Seller shall sell, transfer and deliver to Buyer, free and clear of any Lien, all of the Target Shares set forth opposite such Seller's name on §4(b) of the Disclosure Schedule for the consideration specified below in this §2.

(b) *Purchase Price.* The purchase price for the Target Shares and the other transactions contemplated by this Agreement shall be \$4,400,000.00 (the "**Purchase Price**"), payable in the following manner:

(i) At the Closing, \$259,100.00 of the Purchase Price will be paid directly to Generational Equity, LLC in payment of broker fees due.

(ii) At the Closing, Buyer shall pay the balance of the Purchase Price (the "**Closing Payment**") to the Sellers by wire transfer of immediately available funds to an account or accounts



designated by the Sellers (which designation will be provided to Buyer at least three (3) days prior to the Closing Date). The portion of the Closing Payment payable to each Seller shall be the Seller's Allocable Portion of the Closing Payment for such Seller, as set forth in Annex A.

(c) *Closing.* The closing of the purchase and sale of the Target Shares and the other transactions contemplated by this Agreement (the "Closing"), except as otherwise provided for herein, shall take place at the offices of Target on October 16, 2017, upon the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby, as set forth in §7 below or such other date as Buyer and Requisite Sellers may mutually determine (the "Closing Date").

(d) *Deliveries at or before Closing.* On or before the Closing:

(i) Sellers shall deliver to Buyer:

(A) the various certificates, instruments, and documents referred to in §7(a) below;

(B) a certificate of good standing with respect to Target (issued within fifteen (15) days of Closing Date);

(C) one or more stock certificates, with respect to each Seller, representing all of the Target Shares set forth opposite such Seller's name on §4(b) of the Disclosure Schedule, duly endorsed in blank or accompanied by duly executed stock powers or other appropriate assignment documents;

(D) the corporate minute book and all related organizational documents including, but not limited to, the Target's Articles of Incorporation, written board and shareholder resolutions and any stock transfer ledger;

(E) a release with respect to any obligations due from Target to each Seller, in a form substantially similar to Exhibit B-3 attached hereto; and

(ii) Buyer shall deliver to Sellers:

(A) the various certificates, instruments, and documents referred to in §7(b) below; and

(B) the Closing Payment (or cause the Closing Payment to be paid) in accordance with §2(b) above.

3. *Representations and Warranties Concerning Transaction.*

(a) *Sellers' Representations and Warranties.* Each Seller represents and warrants to Buyer that the statements contained in this §3(a) with respect to such Seller are correct and complete as of the date of this Agreement:

(i) *Authorization of Transaction.* Such Seller has full power and authority to execute and deliver this Agreement, to perform his or its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by such Seller and constitutes the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions subject to principles of equity and the laws governing debtor-creditor relations. Such Seller need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order to execute, deliver, perform, or consummate the transactions contemplated by this Agreement.

(ii) *Non-contravention.* Neither the execution, delivery or performance of this Agreement by such Seller, nor the consummation by him or it of the transactions contemplated hereby, will, with or without the giving of notice or the lapse of time or both, (A) violate any constitution, statute, law, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which such Seller is subject, (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice, consent, approval or other action under or with respect to, any agreement, contract, lease, license, instrument, or other arrangement to which such Seller is a party or by which he or it is bound or to which any of his or its assets is subject, other than the Shareholders Agreement or (C) result in the imposition or creation of a Lien upon or with respect to any of the Target Shares.

(iii) *Broker's Fees.* Such Seller has not engaged any Broker in connection with the transactions contemplated by this Agreement, although Sellers have agreed to bear the cost of the fees due to the Broker hired by Target, Generational Equity, as provided under Section 2(b). Except as agreed pursuant to Section 2(b) of this Agreement, such Seller has no liability or obligation to pay any fees or commissions to any broker, investment banker, finder, or agent with respect to the transactions contemplated by this Agreement.

(iv) *Target Shares.* Such Seller holds of record and owns beneficially the number of Target Shares set forth next to his or its name in §4(b) of the Disclosure Schedule, free and clear of any restrictions on transfer (other than restrictions under the Shareholders Agreement, the Securities Act and state securities laws), Liens, options, warrants, purchase rights or preemptive rights. Such Seller is not a party to any option, warrant, purchase right, preemptive right or other contract or commitment (other than this Agreement) that could require such Seller to sell, transfer, or otherwise dispose of such Seller's Target Shares. Except for this Agreement and the Shareholders Agreement, such Seller is not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting, transfer or other disposition of such Seller's Target Shares.

(v) *Litigation.* There are no actions, suits, proceedings or investigations pending or, to such Seller's knowledge, threatened against such Seller or any of his or its assets by or before any court or other Governmental Authority, that would adversely affect such Seller's ability to perform his or its obligations under this Agreement or related to the transactions contemplated hereby.

(b) Buyer's Representations and Warranties. Buyer represents and warrants to each Seller that the statements contained in this §3(b) are correct and complete as of the date of this Agreement.

(i) Organization of Buyer. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida.

(ii) Authorization of Transaction. Buyer has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Buyer, and the consummation by Buyer of the transactions contemplated hereby, have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their terms and conditions. Buyer need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to execute, deliver, perform, or consummate the transactions contemplated by this Agreement.

(iii) Non-contravention. Neither the execution, delivery or performance of this Agreement by Buyer, nor the consummation by it of the transactions contemplated hereby, will, with or without the giving of notice or the lapse of time or both, (A) violate any constitution, statute, law, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, court or other governmental agency to which Buyer is subject or any provision of its charter, bylaws, or other constitutive documents or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice, consent, approval or other action under or with respect to, any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject.

(iv) Brokers' Fees. Buyer has not engaged, retained, or incurred any liability or obligation to pay any fees or commissions to any broker, investment banker, finder, or agent with respect to the transactions contemplated by this Agreement.

(v) Investment. Buyer is not acquiring the Target Shares with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act, it being understood that the disposition following the Closing of the Target Shares shall at all times remain within Buyer's control.

(vi) Litigation. There are no actions, suits, proceedings or investigations pending or, to Buyer's knowledge, threatened against Buyer or any of its assets by or before any court or other Governmental Authority, that would adversely affect or delay (a) Buyer's ability to perform its obligations under this Agreement or related to the transactions contemplated hereby or (b) the consummation of the transactions contemplated by this Agreement.

4. Representations and Warranties Concerning Target. The Sellers other than Joyce Featherstone jointly and severally represent and warrant to Buyer that, except as set forth in the Disclosure Schedule, the statements contained in this §4 are correct and complete as of the date of this Agreement:

(a) Organization, Qualification, and Corporate Power; Charter Documents.

(i) Target is a corporation duly organized, validly existing, and in good standing under the laws of the State of South Carolina. Target is duly authorized to conduct business and is in good standing under the laws of each other jurisdiction where such qualification is required. Target has full corporate power and authority to carry on the business in which it is engaged and to own and use the properties owned and used by it. §4(a) of the Disclosure Schedule lists the directors and officers of Target.

(ii) Sellers have delivered to Buyer a correct and complete copy of the Articles of Incorporation, By-laws and Shareholders Agreement of Target, each as amended to date (together, the "Charter Documents"), and each of the Charter Documents is in full force and effect. Target is not in material violation of any provision of any Charter Document.

(b) *Capitalization.*

(i) The entire authorized capital stock of Target consists of 100,000 Target Shares, of which 10,000 Target Shares are issued and outstanding. All of the issued and outstanding Target Shares have been duly authorized and validly issued in compliance with all applicable federal and state securities Laws, are fully paid and non-assessable, and are held of record by the Sellers as set forth in §4(b) of the Disclosure Schedule. Other than the Shareholders Agreement, there are no outstanding or authorized options, warrants, pre-emptive rights, purchase rights, subscription rights, conversion rights, exchange rights, or other securities, contracts or commitments that could require Target to issue, sell, or otherwise cause to become outstanding any of its capital stock, or any securities or obligations convertible into, or exercisable or exchangeable for, any shares of its capital stock. There are no outstanding or authorized stock appreciation rights, phantom stock, profit participation, or similar rights with respect to Target. *Except for the Shareholders Agreement, there are no agreements, arrangements or understandings to which Target is a party with respect to the voting of any of the Target Shares or that place any restrictions of any kind (other than restrictions under applicable securities Laws) upon the transfer or other disposition of any of the Target Shares, and Target is not a party to or bound by any agreements, arrangements or understandings pursuant to which it could be required to repurchase, redeem or acquire any of the Target Shares.*

(ii) There are no bonds, debentures, notes or other indebtedness outstanding having the right to vote (or convertible into or exchangeable for, securities having the right to vote) on any matter relating to Target. Except for the Shareholders Agreement, there are no rights of first refusal or first offer, change of control or similar rights, anti-dilution protections, accelerated vesting rights or other rights that any shareholder, officer, employee or director of Target, or any other Person, would be entitled to exercise or invoke as a result of, or in connection with, the transactions contemplated by this Agreement.

(c) *Non-contravention.* Except as set forth in the Disclosure Schedule, neither the execution, delivery or performance of this Agreement by Target, nor the consummation of the transactions contemplated hereby, will, with or without the giving of notice or the lapse of time or both, (i) violate (A) any constitution, statute, law, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, court or other governmental agency to which Target is subject or (B) any provision of the Charter Documents or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice, consent, approval or other action with respect to, any agreement, contract, lease, license, instrument, or other arrangement to which Target is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets), except where the

violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice, or Lien would not have a Material Adverse Effect and provided that sale of the Target Shares will require the waiver or termination of the Shareholders Agreement. Target does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority in order for the Parties to execute, deliver, perform or consummate the transactions contemplated by this Agreement, except where the failure to give notice, to file, or to obtain any authorization, consent, or approval would not have a Material Adverse Effect.

(d) *Brokers Fees.* Target has engaged Generational Equity as a Broker. All liability and obligation to pay any fees or commissions to any broker, investment banker, finder, or agent with respect to the transactions contemplated by this Agreement will be satisfied by payment at Closing as set forth in Section 2(b).

(e) *Title to Tangible Assets.* Except as set forth on §4(e) of the Disclosure Schedule, Target has good and marketable title to, or a valid leasehold interest in, or valid contractual rights to use, all of the tangible properties and assets (real, personal and mixed) used or held for use in its business, free and clear of all Liens. Except as set forth in §4(e) of the Disclosure Schedule, the tangible properties and assets as to which Target has good and marketable title, or a valid leasehold interest, or valid contractual rights to use, constitute all of those tangible properties and assets necessary to continue to conduct Target's business after the Closing in the same manner as presently conducted. All such tangible personal properties or assets that, in the aggregate, are material to the conduct of the Business are in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted)

(f) *No Subsidiaries or Investments.* Target does not own or have any right to acquire, directly or indirectly, any outstanding capital stock of, or other equity, partnership or ownership interest in, any Person.

(g) *Financial Statements.* Attached hereto as Annex B are the following financial statements (collectively the "Financial Statements"): unaudited balance sheets and statements of income and cash flow for Target as of and for each of the fiscal years ended June 30, 2016, June 30, 2015, and June 30, 2014 for Target. The Financial Statements (which do not include any notes) have been prepared by the Target throughout the periods covered thereby and present fairly and accurately the financial condition of Target as of such dates and the results of operations and cash flow of Target for such periods.

(h) *Undisclosed Liabilities.* Except as disclosed in §4(h) of the Disclosure Schedule, Target has no Liability to any Person arising from any legally-binding contract, agreement or commitment agreed to by Target, except for (i) Liabilities reflected in the Financial Statements; (ii) Liabilities reflected in this Agreement or the Disclosure Schedule; and (iii) Liabilities that have arisen in the Ordinary Course of Business and do not result from or arise out of any breach of contract, breach of warranty, tort, infringement, or violation of Law.

(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:

(i) Target has not sold, leased, transferred, assigned or otherwise disposed of any of its assets, tangible or intangible, other than in the Ordinary Course of Business;

(ii) Target has not entered into any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) either involving more than \$2,000 or outside the Ordinary Course of Business;

(iii) no Person (including Target) has accelerated, terminated, modified, or cancelled any right or benefit under any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) to which Target is a party or by which it or any of its assets or properties is bound that involves more than \$2,000 or is otherwise required to be disclosed in §4(n) of the Disclosure Schedule;

(iv) there have not been any Liens imposed upon any of Target's assets, tangible or intangible;

(v) Target has not made any capital expenditure (or series of related capital expenditures) either (A) involving more than \$2,000 in the aggregate or (B) outside the Ordinary Course of Business;

(vi) Target has not made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions) either involving more than \$2,000 or outside the Ordinary Course of Business;

(vii) Target has not issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any Indebtedness either (A) involving more than \$2,000 in the aggregate or (B) outside the Ordinary Course of Business;

(viii) Target has not delayed or postponed the payment of accounts payable or other Liabilities outside the Ordinary Course of Business, and there has not been any material change in the time or manner of collection of, or in any other practices with respect to, Target's accounts receivable;

(ix) Target has not cancelled, compromised, waived, or released any right or claim (or series of related rights and claims) either involving more than \$2,000 or outside the Ordinary Course of Business;

(x) Target has not transferred, assigned, otherwise disposed of, or granted any license or sublicense of, any rights under or with respect to any Intellectual Property;

(xi) there has been no change made or authorized in the Charter Documents;

(xii) Target has not issued, sold, otherwise disposed of, or authorized the issuance of, any of its capital stock, or granted any options, warrants, or other securities or rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its capital stock;

(xiii) Target has not experienced any damage, destruction, or loss (whether or not covered by insurance) to its property in an amount reasonably anticipated to exceed \$25,000 for the replacement of all such damaged, destroyed or lost items;

(xiv) Target has not made any loan to, or entered into any other transaction with, any of its directors, officers, or employees outside the Ordinary Course of Business;

(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);

(xviii) Target has not made any other change in employment terms for any of its directors, officers, or employees outside the Ordinary Course of Business;

(xix) Target has not made or pledged to make any charitable or other capital contribution outside the Ordinary Course of Business;

(xx) Target has not discharged a material Liability or Lien outside the Ordinary Course of Business;

(xxi) there has not been any material change in any of Target's accounting or Tax methodologies or practices;

(xxii) Target has not acquired any material property or asset (other than acquisitions of inventory, equipment and supplies in the Ordinary Course of Business) from any Person, whether by merger, consolidation or otherwise;

(xxiii) Target has not instituted or settled any material Action, and

(xxiv) Target has not agreed or committed to any of the foregoing.

(j) *Legal Compliance.* Except as set forth in §4(j) of the Disclosure Schedule, Target has conducted and is conducting its business in compliance with all applicable Laws, except for such failures to comply as would not, individually or in the aggregate, result in a Material Adverse Effect. Except as set forth in §4(j) of the Disclosure Schedule, Target has not received written notice from any Governmental Authority to the effect that it is under investigation with respect to any possible violation of, or is charged or, to Sellers' Knowledge, threatened to be charged with any violation of, any applicable Law. Target has obtained all material governmental or other consents, licenses, permits or approvals required for the lawful conduct of its business and the ownership of Target's assets and properties, except for such failures to obtain as would not, individually or in the aggregate, result in a Material Adverse Effect, and all such consents, licenses, permits and approvals are in full force and effect.

(k) *Tax Matters.*

(i) Target has duly and timely filed all Tax Returns that it was required to file under applicable laws and regulations, and has paid all Taxes shown thereon as due and owing. All such Tax Returns were complete and accurate in all respects when filed were prepared in compliance with all applicable laws and regulations. Target is not currently the beneficiary of any extension of time within which to file to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where Target does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(ii) §4(k) of the Disclosure Schedule lists all Tax Returns filed with respect to Target for taxable periods ended on or after **July 31, 2015**, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. Sellers have delivered to Buyer correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by Target or any predecessor since **July 31, 2015** with respect to Taxes of any type.

(iii) Target has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to and Tax assessment or deficiency.

(iv) Target is not a party to any Tax allocation or sharing agreement.

(v) There are no unpaid Taxes of Target, except those that are not yet due and payable.

(vi) Target is not and has never been a member of an Affiliated Group filing a consolidated federal income Tax Return (or a group of corporations filing a consolidated, combined or unitary Tax Return under comparable provisions of state or local Tax law).

(vii) No deficiencies for Taxes with respect to Target have been claimed or proposed in writing or assessed by a Tax authority. There are no matters under discussion with any Tax authority that are likely to result in an additional liability for Taxes. There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of Target.

(viii) Except as indicated in §4(k) of the Disclosure Schedule, there are no pending or, to Sellers' Knowledge, threatened audits, assessments or other actions for or relating to any liability in respect of Taxes of Target. Except as indicated in §4(k) of the Disclosure Schedule, no power of attorney (other than powers of attorney authorizing employees of Target to act on behalf of Target) with respect to any Taxes is currently in effect with any Tax Authority.

(ix) Target has adopted the cash method for federal income tax purposes and its Tax Returns have been filed consistent with such method.

(x) Target does not have any liability for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee or successor, by contract, or otherwise.

(xi) For all applicable taxable periods, Target has withheld and remitted all Taxes required to have been withheld and remitted in connection with amounts paid or owed to any employee,

independent contractor, creditor, shareholder or other third party and all sales tax or similar tax exemption certificates, if applicable, have been obtained and are available.

(xii) Target does not have nor has it had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country.

(xiii) Target is not a "personal holding company" as defined in Section 542 of the Code (or any similar provision of state, local or foreign Law)

(xiv) Target is, and has been at all times since its formation, a "C corporation" for federal income tax purposes and at no time has it been subject to taxation as an "S Corporation" (within the meaning of Code Section 1361).

(xv) Target has not entered into any transaction identified as a "listed transaction" for purposes of Treasury Regulations Section 1.6011-4(b)(2) or 301.6111-2(b)(2).

(xvi) There is no contract, plan or arrangement, including but not limited to the provisions of this Agreement, providing for compensation for personal services provided by any employee or former employee of Target that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G or 404 or that would not reasonably be expected to be deductible pursuant to Section 162 of the Code.

(xvii) No Seller is a "foreign person" within the meaning of Code Section 1445(f)(3).

(l) *Real Estate.*

(i) §4(l) of the Disclosure Schedule sets forth and briefly describes any Real Property owned by Target and all Leased Real Property.

(ii) Target has provided Buyer with a true and complete copy of each Lease with respect to the Leased Real Property set forth in §4(l) of the Disclosure Schedule, including any amendments thereto and renewal letters in respect thereof. Each such Lease is in full force and effect and is a valid and binding agreement, enforceable in accordance with its terms, of Target and, to Sellers' Knowledge, of each other Person that is a party thereto, and Target has not received notice of any, and to the Sellers' Knowledge there is no, default (or any condition or event which, after notice or lapse of time or both, would constitute a default) thereunder except as otherwise described in §4(h) of the Disclosure Schedule.

(iii) Except as set forth on §4(l) of the Disclosure Schedule, Target has not assigned, pledged, otherwise transferred or sublet (as sublessor) any of the Leased Real Property demised by any Lease. Except as set forth on §4(l) of the Disclosure Schedule, to the Sellers' Knowledge, no landlord under any such Lease has exercised any option or right to (A) cancel or terminate such Lease or shorten the term thereof or (B) reduce or relocate the premises demised by such Lease. All brokerage commissions or finders fees payable by Target with respect to any Lease have been paid.

(m) *Intellectual Property.*

(i) Target owns and possesses, or has the right to use pursuant to a valid and enforceable written license, sublicense, agreement, or other permission, all Intellectual Property necessary for the operation of the Business as presently conducted. Each item of Intellectual Property owned or used by Target immediately prior to the Closing will be owned or available for use by Target on identical terms and conditions immediately subsequent to the Closing.

(ii) Target owns and possesses, the website www.ccplusi.com, the domain name and its contents.

(iii) Except as otherwise set forth in §4(m)(ii) of the Disclosure Schedule, during the period beginning 3 years prior to the Effective Date, none of Sellers or Target has received any written charge, complaint, claim, demand, or notice alleging that Target has infringed, misappropriated, or violated of (including any claim that Target must license or refrain from using any Intellectual Property rights of any third party), any Intellectual Property rights of third parties. To Sellers' Knowledge, the Business of Target as currently conducted does not infringe, misappropriate or otherwise violate any Intellectual Property rights of a third party. To Sellers' Knowledge, no third party has infringed upon, misappropriated, or otherwise violated any Intellectual Property rights of Target.

Except as set forth in §4(m)(v) of the Disclosure Schedule, Target employees have signed an employee intellectual property and secrecy agreement substantially in the form attached to §4(m)(v) of the Disclosure Schedule.

(n) *Contracts.*

(i) §4(n) of the Disclosure Schedule lists each of the following contracts and written agreements to which Target is a party or by which its assets are bound:

(1) contracts and agreements the performance of which will involve consideration in excess of \$25,000 annually;

(2) any employment or consulting contract or agreement with any of its current or former employees, officers or directors;

(3) any contract or agreement containing covenants that purport to limit or that effectively limit Target's freedom to conduct or compete in the Business with any Person or in any geographic area (or that restrict another Person from competing with Target), or pursuant to which Target has granted any rights on an exclusive basis to any third party;

(4) any contract or agreement relating to the acquisition or disposition by Target of any assets other than in the Ordinary Course of Business;

(5) any partnership, joint venture or profit sharing agreement;

(6) any contract or agreement evidencing or securing any Indebtedness of Target; and

(7) any other material contract or agreement that was made outside the Ordinary Course of Business.

(ii) Except as disclosed on §4(n) of the Disclosure Schedule, all contracts and agreements disclosed on §4(n) of the Disclosure Schedule are valid, binding and enforceable obligations of Target and, to Sellers' Knowledge, each of the other parties thereto, and are in full force and effect. Neither Target nor, to Sellers' Knowledge, any other party thereto, is (or with notice or lapse of time, or both, would be) in violation or breach of, or in default under, the terms of any such contract or agreement in any material respect. Target is not a party to any oral agreements or arrangements that, if such agreements or arrangements were written, would be required to be disclosed by Sellers pursuant to this §4(n).

(o) *Powers of Attorney.* Except as set forth in §4(o) of the Disclosure Schedule, there are no outstanding powers of attorney executed on behalf of Target.

(p) *Litigation.* §4(p) of the Disclosure Schedule sets forth (i) each instance in which, to Sellers' Knowledge, Target is subject to any outstanding injunction, judgment, order, decree, ruling, or charge and (ii) each Action pending or, to Sellers' Knowledge, threatened in writing against Target or any of its properties or assets in or before any court or other Governmental Authority of any federal, state, local, or foreign jurisdiction. No officer or director of Target is a defendant in any Action commenced by any stockholder of Target with respect to the performance of his or her duties as an officer or a director of Target under any applicable Law.

(q) *Employee Benefits.*

(i) §4(q) of the Disclosure Schedule lists each Employee Benefit Plan that Target maintains or to which Target or any of its employees contributes.

(1) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and complies in form and in operation in all respects with the applicable requirements of ERISA and the Code, except for such failures to comply as would not, individually or in the aggregate, have a Material Adverse Effect.

(2) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been timely made to each such Employee Benefit Plan that is an Employee Pension Benefit Plan. All premiums or other payments that are due have been paid with respect to each such Employee Benefit Plan that is an Employee Welfare Benefit Plan.

(3) Each such Employee Benefit Plan that is intended to meet the requirements of a "qualified plan" under Code §401(a) has received a determination letter or opinion letter from the Internal Revenue Service to the effect that it meets the requirements of Code §401(a) and, to the Sellers' Knowledge, no fact or event has occurred that could adversely affect the qualification of any such Employee Benefit Plan under Code §401(a) or the exempt status of any related trust.

(ii) With respect to each Employee Benefit Plan, Target has delivered or made available to Buyer complete copies of (i) such Employee Benefit Plan (or, if not written, a written summary of its material terms), including without limitation all plan documents, trust agreements, insurance contracts or other funding vehicles and all amendments thereto, (ii) all summaries and summary plan descriptions, including any summary of material modifications, (iii) if applicable, the most recent annual reports (Form 5500 series) filed with the IRS with respect to such Employee Benefit Plan, (iv) if applicable, the most recent actuarial report or other financial statement relating to such Employee Benefit Plan, (v) the most recent determination or opinion letter, if any, issued by the IRS with respect to such Employee Benefit Plan and any pending request for such a letter, (vi) if applicable, the most recent nondiscrimination tests performed under the Code (including 401(k) and 401(m) tests) for such Employee Benefit Plan, (vii) all filings made with any Governmental Authority with respect to such Employee Benefit Plan.

(iii) With respect to each Employee Benefit Plan, any and all tax, annual reporting and other governmental filings required by ERISA and the Code have been timely filed with the appropriate Governmental Authority and all notices and disclosures have been timely provided to participants. With respect to the Employee Benefit Plans, no event has occurred and, to Sellers' Knowledge, there exists no condition or set of circumstances in connection with which Target could reasonably be expected to be subject to any material liability (other than for routine benefit liabilities) under the terms of, or with respect to, such Employee Benefit Plans, ERISA, the Code or any other applicable law

(iv) There has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code and other than a transaction that is exempt under a statutory or administrative exemption) with respect to any Employee Benefit Plan that could result in any material liability to Target or any ERISA Affiliate. Target has not made any agreement or commitment, whether legally enforceable or not, to modify, change or terminate any Employee Benefit Plan. No Action is pending, or to Sellers' Knowledge is threatened, against or with respect to any Employee Benefit Plan, including any audit or inquiry by the Internal Revenue Service or United States Department of Labor.

(v) No Employee Benefit Plan is a Multiemployer Plan or other pension plan subject to Title IV or Part 3 of Title I of ERISA or Section 412 of the Code, and neither Target nor any ERISA Affiliate has sponsored, maintained, participated in, contributed to, or been required to participate in or contribute to a Multiemployer Plan or other pension plan subject to Title IV or Part 3 of Title I of ERISA or Section 412 of the Code. None of the assets of Target or any ERISA Affiliate is, or may reasonably be expected to become, the subject of any Lien arising under ERISA or Section 412(n) of the Code.

(vi) Except as set forth on the Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in any payment, or any acceleration or creation of rights of any Person to benefits under any Employee Benefit Plan. No amount that could be received (whether in cash, property or otherwise) as a result of or in connection with the consummation of the transactions contemplated hereby by any employee, officer, director or other service provider of Target who is a "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) could be characterized as an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code).

(vii) No Employee Benefit Plan provides post-retirement health or death benefit coverage (other than as required under Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code).

(viii) Except as set forth on the Disclosure Schedule, no Employee Benefit Plan will or may provide for the deferral of compensation subject to Section 409A of the Code, whether in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or otherwise.

(ix) Target has withheld and paid all amounts required by Law or by agreement to be withheld from wages, salaries, and other payments to employees, independent contractors and other service providers. Target has properly classified all individuals providing services to Target as employees or non-employees for all relevant purposes.

(x) Target is not nor has ever been liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments made in the Ordinary Course of Business). There are no pending claims against Target under any workers' compensation plan or policy or for long-term disability.

(r) *Environmental, Health, and Safety Matters.* Except as set forth in §4(r)(i) of the Disclosure Schedule, to Sellers' Knowledge, Target is in compliance in all material respects with all applicable Environmental, Health, and Safety Requirements.

(i) Except as set forth in §4(r)(ii) of the Disclosure Schedule, Target possesses any and all material permits, licenses, approvals and other authorizations required by Environmental, Health, and Safety Requirements for Target's operations, and is in material compliance with the terms and conditions of any such permits, licenses, approvals and other authorizations.

(ii) Except as set forth in §4(r)(iii) of the Disclosure Schedule, Target has not received any written notice, report or other information during the five (5) year period immediately preceding the Effective Date regarding any actual or alleged material violation of or Liability under Environmental, Health, and Safety Requirements, including Liability for investigatory, remedial or corrective action obligations under Environmental, Health, and Safety Requirements.

(iii) Except as set forth in §4(r)(iv) of the Disclosure Schedule, Target has not operated disposal facilities for hazardous substances, wastes or materials in a manner that has resulted in any material violation of, or that could reasonably be expected to result in any material Liability under, Environmental, Health, and Safety Requirements, including any material Liability for investigatory, remedial or corrective action obligations under Environmental, Health, and Safety Requirements.

(iv) Except as set forth in §4(r)(v) of the Disclosure Schedule, Target has not generated, manufactured, refined, recycled, transported, treated, stored, reclaimed, handled, disposed, emitted, buried, transferred, produced or processed any hazardous materials in a manner that has resulted in any material violation of Environmental, Health, and Safety Requirements or that could reasonably be expected to result in any material Liability, including Liabilities for response costs, personal injury, property damage, natural resources damages, or attorneys' fees, pursuant to any Environmental, Health and Safety Requirements or at common law.

(v) Except as set forth in §4(r)(vi) of the Disclosure Schedule, there has not been a release or threat of release by Target, or to Sellers' Knowledge any other release or threat of release, of any hazardous material at or in the vicinity of the Leased Real Property that requires reporting, investigation,

assessment, cleanup, remediation or any other type of response action pursuant to any Environmental, Health and Safety Requirement.

(vi) Except as set forth in §4(vii) of the Disclosure Schedule, during the six (6) year period immediately preceding the Effective Date, Target has not (i) received any written notice under the citizen suit provisions of any Environmental, Health and Safety Requirement; (ii) received any written request for information, notice, demand letter, administrative inquiry or formal or, to Sellers' Knowledge, informal complaint or claim under any Environmental, Health and Safety Requirement; or (iii) been subject to or, to Sellers' Knowledge, threatened with any governmental or citizen enforcement action with respect to any Environmental, Health and Safety Requirement.

(s) *Insurance.* §4(s) of the Disclosure Schedule sets forth an accurate and complete list of all insurance policies (except Employee Benefit Plan policies) maintained by Target. Each insurance policy identified on §4(s) of the Disclosure Schedule is currently in full force and effect, and all premiums due thereunder have been paid when due. Target has not received any notice of cancellation or termination under any such policy and neither Target nor, to Sellers' Knowledge, any insurer is in default under any such policy. To the extent applicable, the insurance policies listed in §4(s) of the Disclosure Schedule are in amounts and have coverages as required by the contracts to which Target is a party or as may be required by applicable Law. Except as set forth on §4(s) of the Disclosure Schedule, Target has not, at any time during the past five years, received any notice to the effect that coverage is being denied for a claim under any such policy or that a defense will be afforded with reservation of rights, or received any other notice indicating that the insurer under any such policy is not willing or able to perform its obligations thereunder; and Target has not assigned, pledged or otherwise transferred any of its rights under any such policy. There are no outstanding claims in excess of normal retentions that are not covered under any such policies. There are no performance bonds outstanding with respect to Target;

(t) *Accounts Receivable; Accounts Payable.* §4(t) of the Disclosure Schedule contains a true and complete list of all accounts receivable and accounts payable of Target as of October 13, 2017, which list also sets forth the aging of each account receivable. All accounts receivable that are reflected in the Financial Statements or in the accounting records of Target, and all accounts receivable that have arisen since the Most Recent Fiscal Month End, represent valid obligations arising from bona fide sales or services by Target in the Ordinary Course of Business. In general, 50% of a project's cost is due and payable by Target customers upon initiation of the project. To Sellers' Knowledge, there is no material contest, claim, defense or right of setoff being asserted by any customer or other Person with respect to any of Target's accounts receivable. All accounts payable that are reflected in the Financial Statements and all accounts payable that have arisen since the Most Recent Fiscal Month End represent valid obligations of Target arising from bona fide transactions in the Ordinary Course of Business. Except to the extent set forth in §4(t) of the Disclosure Schedule, to Sellers' Knowledge, no customer has indicated that its business, as reflected in the Financial Statements, will decline after the Closing Date.

(u) *Warranty.* Except as set forth on §4(u) of the Disclosure Schedule, there are no pending or, to Sellers' Knowledge, written threatened claims against Target for breach of any warranty, guaranty or representation or for indemnification, or seeking damages, including

consequential damages or liquidated damages, arising out of any alleged defect in quality, materials, workmanship, or design of the products sold by Target.

(v) *Employees; Labor.*

(i) §4(v) of the Disclosure Schedule sets forth, as of the Effective Date, (A) the names, positions and current compensation of all full-time and part-time employees of Target and (B) all contracts and agreements currently in effect with any officer, director or employee of Target. Target is in compliance with all applicable Laws relating to the employment of Target's employees, including those relating to workers' compensation, employment standards, discrimination, wages, hours and collective bargaining, except for such failures to comply as would not, individually or in the aggregate, result in a Material Adverse Effect.

(ii) No collective bargaining agreement or other agreement exists between the Target and any labor organization, no labor organization has been certified or recognized as a representative of any employee of Target and, to Sellers' Knowledge, there are no pending or threatened representation campaigns, elections or proceedings. There is no unfair labor practice charge or complaint against the Target pending before the National Labor Relations Board and, to Sellers' Knowledge, there is no labor dispute, strike, work slowdown, or work stoppage threatened or affecting Target. Target has not experienced any labor dispute, strike, work slowdown or work stoppage since July 1, 2013.

(iii) Except as set forth on §4(v) of the Disclosure Schedule, Target maintains a Form I-9 with copies of identification documents, in material compliance with applicable federal Laws, for each employee for whom such a Form I-9 must be maintained.

(w) *Related Party Transactions.* Except as disclosed on §4(w) of the Disclosure Schedule, no Seller and no Affiliate, shareholder, officer or director of Target, nor any member of such Person's immediate family, has (a) any interest in any property (whether real, personal or mixed, tangible or intangible), used by Target in the Business; (b) to Sellers' Knowledge, any interest in a Person (other than Target) that (i) has business dealings or a material financial interest in any transaction with Target or (ii) has engaged in competition with Target in any market presently served by Target, or (c) is a party to any contract with, or has any claim or right against, Target.

(x) *Disclaimer of Other Representations and Warranties.* Except as expressly set forth in §3 and this §4, Sellers make no representations or warranty, express or implied, at law or in equity, in respect of Target or any of its assets, liabilities or operations, including with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed.

5. [Reserved.]

6. *Post-Closing Covenants.* The Parties agree as follows with respect to the period following the Closing:

(a) *General.* Each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request to confirm the transfer of the Target Shares to Buyer or otherwise to carry out the

purposes of this Agreement, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under §8 below).

(b) *Litigation Support.* In the event and for so long as any Party actively is contesting or defending against any Action (other than an Action between two or more Parties or in respect of which the contesting or defending Party claims to be entitled to indemnification under §8 below) in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving Target, each of the other Parties shall cooperate with him or it and his or its counsel in the defense or contest, make available his or its personnel, and provide such testimony and access to his or its books and records as shall be necessary in connection with the defense or contest, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under §8 below).

(c) *Cash.* Sellers shall ensure that all Target cash is distributed or otherwise paid out to Sellers no later than Closing, provided that a de minimis amount shall be left in the Target payroll bank account to keep that account open. If and to the extent that any Target cash is left in the possession or under the control of Target after Closing, such cash shall remain the property of Target, and Sellers shall have no right or claim to such cash. For the avoidance of doubt, Sellers shall have no claim to any tax refund received by Target after the Closing, regardless of the taxable period to which such refund relates.

(d) *Username and Passwords.* Sellers shall cause Target to deliver to Buyer at Closing a list of all usernames and passwords (i) that are required to access, input or retrieve data to or from or otherwise use any Target company software applications (whether cloud-based SAAS applications or software on Target company systems); server, computer and telecommunications equipment, systems and networks (including voicemail, email and internet systems and equipment); any other electronic data storage media; the Target web site (www.ccplusi.com) and any electronic data stored on or transmitted to or from any of the foregoing; or (ii) that are required to access the source code owned by Target. If Buyer determines that Sellers did not provide all such usernames and passwords at Closing, upon written request of Buyer, Sellers will cooperate with and assist Buyer in obtaining any missing usernames and passwords.

(e) *[Reserved.]*

(f) *Tax Matters.*

(i) Buyer, on the one hand, and each Seller, on the other hand, shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, litigation or other Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other Proceeding. Buyer and Sellers agree (A) to retain all books and records with respect to Tax matters pertinent to Target relating to any Tax period beginning before the Closing Date until the expiration of the statute of limitations (giving effect to any waiver, extension or mitigation thereof) of the respective taxable periods, and to abide by all record retention agreements entered

into with any Tax Authority, and (B) to give the other Parties reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other parties so request, Buyer or Sellers, as the case may be, shall allow the other party to take possession of such books and records.

(g) *Information Reporting.* Upon request by Buyer, Sellers shall promptly provide Buyer with all information that Buyer or any of its Affiliates may be required to report pursuant to Code Section 6043A and all Treasury Regulations promulgated thereunder.

(h) *Settlement of Tax Claims by Sellers.* Without the prior written consent of Buyer (which consent shall not be unreasonably withheld), none of the Sellers shall settle or compromise any audit or other proceeding relating to Taxes in a manner that would adversely affect Target after the Closing Date.

(i) *Confidentiality.* Each Seller will keep confidential, and refrain from disclosing or using all or any part of the Confidential Information except (i) as necessary to perform the obligations of such Seller under this Agreement and to exercise such Seller's rights under, or otherwise enforce, this Agreement, (ii) to the extent required by applicable law or any other applicable legal requirements such as a court or government order, or (iii) as necessary or appropriate to otherwise assert the legal rights of such Seller (including without limitation in connection with any Tax matters). In the event that any Seller is requested or required pursuant to written or oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information, such Seller will notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order. If any of Sellers is compelled to disclose any Confidential Information to any tribunal, such Seller may disclose the Confidential Information to the tribunal; *provided, however*, that the disclosing Seller shall cooperate with Buyer, at the reasonable request of Buyer, if Buyer elects to attempt to obtain an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information as is required to be disclosed.

7. *Conditions to Obligation to Close.*

(a) *Conditions to Buyer's Obligation.* Buyer's obligation to purchase the Target Shares and to consummate the other transactions contemplated by this Agreement is subject to satisfaction at or prior to the Closing of the following conditions:

(i) the representations and warranties set forth in §3(a) and §4 above shall be true and correct in all material respects, except to the extent that such representations and warranties are qualified by the term "material," or contain terms such as "Material Adverse Effect" or "Material Adverse Change," in which case such representations and warranties (as so written, including the term "material" or "Material") shall be true and correct in all respects;

(ii) Sellers shall have performed and complied with all of their covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified as "material," or contain terms such as "Material Adverse Effect" or "Material Adverse Change," in which case Sellers shall have performed and complied with all of such covenants (as so written, including the term "material") in all respects through the Closing;

(iii) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect which prohibits the consummation of any of the transactions contemplated by this Agreement; and no action, suit or proceeding shall be pending by or before any court or governmental or regulatory authority which seeks to restrain, modify or prevent the consummation of the transactions contemplated hereby or which seeks damages in connection with such transactions;

(iv) Target shall not have suffered a Material Adverse Change between the Most Recent Fiscal Month End and the Closing;

(v) Sellers shall have delivered to Buyer a certificate, dated the Closing Date and signed by Seller's Representative, to the effect that each of the conditions specified above in §7(a)(ii) are satisfied in all respects;

(vi) Target shall have delivered a good standing certificate with respect to Target to Buyer;

(vii) Tim Clark and Scott Dozier shall have executed and delivered to Buyer consulting agreements in form and substance as set forth in Exhibits B-1 [Scott Dozier Consulting Agreement] and B-2 [Tim Clark Consulting Agreement] attached hereto;

(viii) Buyer shall have received the written resignations of the directors of Target, effective as of the Closing;

(ix) All Required Consents, completed in a form satisfactory to Buyer, shall have been obtained and copies thereof shall have been delivered to Buyer or its counsel;

(x) Sellers and Target shall have terminated the Shareholders Agreement;

(xi) There shall be no outstanding, known environmental issues with respect to the operations of Target or the facilities in which Target operates;

(xii) Sellers shall have executed and delivered to Target a Release Agreement in substantially the form of Exhibit B-3 hereto;

(xiii) Sellers shall have filed or caused to be filed any and all UCC termination statements and any other documents and instruments that are required to release any and all Liens on the assets of Target;

(xiv) Sellers shall have delivered to Buyer all such other documents and instruments as Buyer or its counsel may reasonably request to effect the consummation of the transactions contemplated hereby.

All actions to be taken by Sellers in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby shall be reasonably satisfactory in form and substance to Buyer. Buyer may waive any condition specified in this §7(a).

(b) *Conditions to Sellers' Obligation.* Sellers' obligation to sell, transfer, assign and deliver the Target Shares to Buyer, and to consummate the other transactions contemplated by this Agreement, is subject to satisfaction at or prior to the Closing of the following conditions:

(i) the representations and warranties set forth in §3(b) above shall be true and correct in all material respects, except to the extent that such representations and warranties are qualified by the term "material," or contains terms such as "Material Adverse Effect" or "Material Adverse Change," in which case such representations and warranties (as so written, including the term "material" or "Material") shall be true and correct in all respects;

(ii) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified as "material," in which case Buyer shall have performed and complied with all of such covenants (as so written, including the term "material") in all respects through the Closing;

(iii) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing or making illegal consummation of any of the transactions contemplated by this Agreement; and no action, suit or proceeding shall be pending by or before any court or governmental or regulatory authority which seeks to restrain, modify or prevent the consummation of the transactions contemplated hereby or which seeks damages in connection with such transactions;

(iv) Buyer shall have delivered to Sellers a certificate, dated the Closing Date and signed by a duly authorized representative of Buyer, to the effect that each of the conditions specified above in §7(b)(i) and (ii) is satisfied in all respects;

(v) Buyer shall have executed and delivered to Tim Clark and Scott Dozier, respectively, consulting agreements in form and substance as set forth in Exhibits B-1 [Scott Dozier Consulting Agreement], B-2 [Tim Clark Consulting Agreement], B-4 [William Sibley Consulting Agreement], B-5 [Robert Leviner Consulting Agreement] and B-6 [Frank Starrett Consulting Agreement] attached hereto;

(vi) All Required Consents, completed in a form satisfactory to Buyer, shall have been obtained; and

(vii) Buyer shall have delivered to Requisite Sellers all such other documents and instruments as Requisite Sellers or their counsel may reasonably request to effect the consummation of the transactions contemplated hereby.

All actions to be taken by Buyer in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby shall be reasonably satisfactory in form and substance to Requisite Sellers. Requisite Sellers may waive any condition specified in this §7(b) on behalf of all Sellers if they execute a writing so stating at or prior to the Closing.

8. *Remedies for Breaches of This Agreement.*

(a) *Survival of Representations and Warranties.* All 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 or, in the case of §4(a), §4(b), §4(c), §4(d), §4(f), and 4(k), such longer period as is specified below. All of the representations and warranties of the Parties contained in §3 above shall survive the Closing and continue in full force and effect indefinitely thereafter (subject to any applicable statutes of limitations). The representations and warranties of Sellers contained in §4(a), §4(c), §4(d), §4(f) and §4(k) shall survive the Closing until the expiration of the statutes of limitations applicable to the items contained therein, and the representations and warranties of Sellers contained in §4(b) shall survive the Closing and continue in full force and effect indefinitely thereafter (subject to any applicable statutes of limitations). The periods of survival of the representations and warranties as contemplated by this §8(a) are referred to herein as the "Survival Period." The indemnification obligations of the Parties under this §8 in respect of their respective representations and warranties shall expire as of the expiration of the applicable Survival Period; provided, however, that such expiration shall not include, extend or apply to any representation or warranty, the breach of which shall have been asserted by an indemnified party hereunder in a written notice before such expiration. The covenants and agreements of the Parties herein shall, except as expressly provided otherwise in this Agreement, survive the Closing and continue in full force and effect indefinitely thereafter (subject to any applicable statutes of limitations).

(b) *Indemnification Provisions for Buyer's Benefit.* In the event any Seller breaches any of his or its representations, warranties, covenants or agreements contained herein, and Buyer makes a written claim for indemnification against such Seller pursuant to §10(h) below within the Survival Period (if there is an applicable survival period pursuant to §8(a) above), then such Seller shall indemnify Buyer and Target from and against any and all Adverse Consequences 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 of 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; (B) notwithstanding any other provision of this Agreement, the aggregate, cumulative liability of a Seller to Buyer with respect to any breach of a representation or warranty shall not exceed the portion of the Purchase Price actually received by such Seller; and (C) in addition to and without limiting clause (B), the aggregate, cumulative liability of Sellers to Buyer shall not exceed \$2,500,000. In addition, 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.

(c) *Indemnification Provisions for Sellers' Benefit.* In the event Buyer breaches any of its representations, warranties, covenants or agreements contained herein, and provided that any Seller makes a written claim for indemnification against Buyer pursuant to §10(h) below within the Survival Period (if there is an applicable survival period pursuant to §8(a) above), then Buyer shall indemnify each Seller and their heirs, executors, successors and

assigns from and against the entirety of any Adverse Consequences suffered or incurred by such Seller that arise from or are attributable to such breach.

(d) *Matters Involving Third Parties.*

(i) If any third party shall notify any Party (the "Indemnified Party") that it is asserting a claim or demand against such Indemnified Party with respect to any matter (a "Third-Party Claim") which may give rise to a claim for indemnification against any other Party (the "Indemnifying Party") under this §8, then the Indemnified Party shall promptly (and in any event within 10 business days after receiving notice of the Third-Party Claim) notify each Indemnifying Party thereof in writing; *provided, however*, that an Indemnified Party's failure to timely provide written notice of a Third-Party Claim shall not affect the indemnification provided hereunder, except to the extent that the Indemnifying Party shall have been actually prejudiced as a result of such failure.

(ii) Any Indemnifying Party will have the right at any time to assume and thereafter conduct the defense of the Third-Party Claim with counsel of his or its choice reasonably satisfactory to the Indemnified Party; *provided, however*, that the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld or delayed) unless the judgment or proposed settlement (A) involves only the payment of money damages which are paid in full by the Indemnifying Party, and (B) does not impose any other relief (including an injunction or other equitable relief) upon the Indemnified Party.

(iii) Unless and until an Indemnifying Party assumes the defense of the Third-Party Claim as provided in §8(d)(ii) above, the Indemnified Party may defend against the Third-Party Claim in any manner he, she, or it may reasonably deem appropriate. In addition, in the event that (A) legal counsel for the Indemnified Party notifies the Indemnifying Party that there are or may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party which, if the Indemnified Party and the Indemnifying Party were to be represented by the same counsel, would constitute a conflict of interest for such counsel or prejudice prosecution of the defenses available to the Indemnified Party, or (B) the Indemnifying Party assumes the defense of a Third-Party Claim and fails to diligently prosecute such defense, then in either such case the Indemnified Party may, by notice to the Indemnifying Party, employ its own counsel and control the defense of the Third-Party Claim. The Indemnifying Party shall be liable for the reasonable fees, charges and disbursements of counsel employed by the Indemnified Party, to the extent that the same are incurred in controlling the defense of a Third-Party Claim pursuant to the foregoing provisions of this paragraph (iii). Except as otherwise provided in this paragraph (iii), should the Indemnifying Party assume the defense of a Third-Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof, but shall continue to pay for any Adverse Consequences (including any expenses of investigations) as required hereunder; *provided, however*, that the Indemnified Party shall in any event have the right to participate in such defense and to employ counsel, at its own expense, separate from counsel employed by the Indemnifying Party. Whether the Indemnifying Party or the Indemnified Party controls the defense of the Third-Party Claim, the Parties shall cooperate in the defense thereof. Such cooperation shall include the retention of records and information which are relevant to the Third-Party Claim, and making themselves (or their employees) available on a mutually convenient basis to provide information and explanation of any materials provided hereunder.

(iv) In no event will the Indemnified Party consent to the entry of any judgment on or enter into any settlement with respect to the Third-Party Claim without the prior written consent of each of the Indemnifying Parties (not to be unreasonably withheld or delayed).

(e) *Determination of Adverse Consequences.* All indemnification payments under this §8 shall be paid by the Indemnifying Party net of any Tax Benefit (as defined herein) and related insurance recovery that is actually received by the Indemnified Party. All indemnification payments under this §8 shall be deemed adjustments to the Purchase Price. "Tax Benefit" means the net decrease realized in any Indemnified Party's liability for Taxes (including, without limitation, any increases in Tax refunds and credits) as a result of the indemnification claim to which the payment relates.

(f) *Exclusive Remedy.* Buyer and Sellers acknowledge and agree that, following the Closing, except in cases of intentional fraud or intentional misconduct (it being understood that the Threshold and the Cap shall not apply to such cases) and except for specific performance or other injunctive relief as set forth in §10(s) with respect to §2(d) and §6, the foregoing indemnification provisions in this §8 shall be the exclusive remedy of Buyer and Sellers in respect of any and all claims (other than claims that a representation or warranty made by a party was deliberately made by such party with actual knowledge that the representation or warranty was materially untrue) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under applicable law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement that it may have against the other parties hereto and their Affiliates arising under or based upon any applicable law, except pursuant to the indemnification provisions set forth in this §8. Except for the specific representations and warranties expressly made by Sellers in this Agreement, Buyer specifically disclaims that it is relying upon or has relied upon any other representations or warranties that may have been made, and acknowledges and agrees that Sellers have specifically disclaimed and do hereby specifically disclaim any such other representations or warranties by any Seller, Target or any other Person.

9. [Reserved.]

10. *Miscellaneous.*

(a) *Press Releases and Public Announcements.* No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement prior to the Closing without the prior written approval of Buyer and Requisite Sellers; *provided, however,* that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly traded securities (in which case the disclosing Party will use its reasonable best efforts to advise the other Parties prior to making the disclosure).

(b) *No Third-Party Beneficiaries.* Except as set forth in §8, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

(c) *Entire Agreement.* This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(d) *Succession and Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of Buyer and Requisite Sellers; *provided, however*, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder).

(e) *Counterparts.* This Agreement may be executed in one or more counterparts (including by means of facsimile or .pdf), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(f) *Headings.* The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(g) *Notices.* All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) 1 business day after being sent for overnight delivery to the recipient by reputable overnight courier service (charges prepaid), or (iii) 4 business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Sellers: 143 West Seven Oaks Drive
Greenville, SC 29605
Attn: William Sibley
Phone: 864-386-0180
Email: billsib2@gmail.com

With a copy (which shall not constitute notice) to: Wyche, P.A.
44 East Camperdown Way
Greenville, SC 29601
Attn: Andrew Coburn
Email: acoburn@wyche.com

If to Buyer: Decide4action Inc.
4016 Messina Dr.
Lake Mary, FL 32746
Attn: Richard Bergeron

expenses) incurred by Sellers and/or Target in connection with this Agreement and the transactions contemplated hereby, provided that such expenses will be paid out of cash that would otherwise be paid to Sellers pursuant to Buyer's agreement that all Target cash will be paid or distributed to Sellers at or prior to Closing.

(m) *Construction.* The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

(n) *Incorporation of Annexes and Disclosure Schedule.* The Annexes identified in this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

(o) *Currency.* All references in this Agreement to currency shall be deemed to be references to United States Dollars and all amounts or sums of money required to be paid pursuant to this Agreement shall be paid in United States Dollars.

(p) *Transfer Taxes.* Any U.S. federal, state and local transfer, documentary, sales, use, stamp, registration and other such Taxes, and any conveyance fees or recording charges incurred by Sellers or Target in connection with the transactions contemplated by this Agreement shall be timely paid by the Party legally responsible for such Taxes. Such Party shall, at its own expense, timely file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges and, if required by applicable law, Sellers and/or Buyer shall (and Buyer shall cause its Affiliates to) join in the execution of any such Tax Returns and other documentation.

(q) *Construction.* For purposes of this Agreement: (i) the word "including" shall mean "including without limitation"; (ii) the terms "hereof", "herein", "hereunder", "hereby" and words of similar import refer to this entire Agreement; (iii) all pronouns and any variations thereof refer to the masculine, feminine or neuter, as the identity of the Person or Persons may require; and (iv) unless the context otherwise requires, words using the singular or plural number also include the plural and singular number, respectively.

(r) *Specific Performance.* The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in respect of a breach of §2(d) or §6. Accordingly, the Parties agree that they shall be entitled to an injunction, specific performance or other equitable relief with respect to breaches, threatened breaches or non-performance by the other Party(ies) of the terms and provisions of such sections, in addition to any other remedy to which such Party(ies) are entitled at law or in equity.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

BUYER:

Decide4action Inc., a Florida corporation

By: 

Name: Richard Bergeron

Title: President

SELLERS:

William A.L. Sibley, Jr.

Joyce Featherstone

James T. Clark

Frank T. Starrett, Jr.

Scott W. Dozier

Robert E. Leviner

TARGET:

Computer Control + Integration, Inc.,
a South Carolina corporation

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

BUYER:

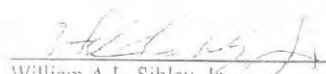
Decide4action Inc

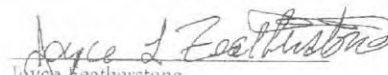
By: _____

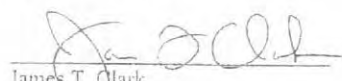
Name: Richard Bergeron

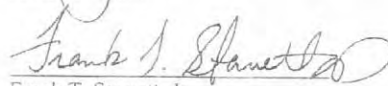
Title: President

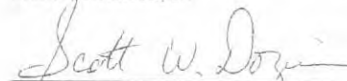
SELLERS


William A.L. Sibley, Jr.


Joyce Featherstone


James T. Clark

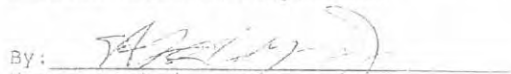

Frank T. Starrett, Jr.


Scott W. Dozier


Robert E. Leviner

TARGET:

Computer Control + Integration, Inc.,
a South Carolina corporation

By: 
Name: W.A.L. Sibley, Jr.
Title: CEO

Appendix A

1. Definitions.

"Action" means litigation, action, suit, hearing, investigation or other proceeding by or before any Governmental Authority.

"Advance" has the meaning set forth in §6(e)(ii).

"Adverse Consequences" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys' fees and expenses but excluding 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

"Affiliate" of a Person means any other Person controlling, controlled by or under common control with such Person, where "control" means the authority, directly or indirectly, to determine the management and policies of a Person, whether through ownership, by contract or otherwise.

"Affiliated Group" means any affiliated group within the meaning of Code §1504(a) or any similar group defined under a similar provision of state, local or foreign law.

"Allocable Portion" means, with respect to each Seller, the portion of the Purchase Price allocable to such Seller, as set forth on Annex A.

"Business" means the business of the development, installation and maintenance of computer software for industrial process monitoring and control systems, primarily for the food & beverage and textile industries.

"Buyer" has the meaning set forth in the preface above.

"Charter Documents" has the meaning set forth in the Agreement in §4(a)(ii).

"CC+I" has the meaning set forth in the preface above.

"Closing" has the meaning set forth in §2(c) in the Agreement.

"Closing Date" has the meaning set forth in §2(c) in the Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Competitive Activity" has the meaning set forth in §6(d)(i).

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"Confidential Information" means any and all confidential or proprietary information concerning the business and affairs of Target; provided that confidential information shall not include information that (a) is or becomes generally available to the public through lawful means and not as a result of an unauthorized disclosure by or on behalf of the Party bound by the relevant confidentiality obligation hereunder, (b) is obtained from a third party who is not under a legal duty not to keep such information confidential or (c) is required to be disclosed in connection with any legal proceeding or otherwise under applicable law, provided that in such latter case prompt notice shall be given to the other party to permit such other party to seek, at its own expense, a protective order or waive compliance with this provision.

"Disclosure Schedule" means the disclosure schedule delivered by Sellers to Buyer on the Effective Date in connection with the Sections referenced therein, as amended in the manner permitted by this Agreement.

"Employee Benefit Plan" means any "employee benefit plan" (as such term is defined in ERISA §3(3)) and any other plan, policy, program, practice, agreement, understanding or arrangement (whether written or oral) providing compensation (other than base salary or hourly pay), insurance or other employee benefits to any current or former director, officer, employee or consultant (or to any dependent or beneficiary thereof) of Target which are now, or were within the past six (6) years, maintained, sponsored or contributed to by Target or in respect of which Target has or may have any material obligation or liability, whether actual or contingent, including all incentive, bonus, profit sharing, deferred compensation, severance, vacation, holiday, cafeteria, medical, disability, or equity-based compensation plans, policies, programs, practices or arrangements.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA §3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA §3(1).

"Environmental, Health, and Safety Requirements" means all federal, state, local, and foreign statutes, regulations, and ordinances concerning public health and safety, worker health and safety, pollution, or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances, or wastes, as such requirements are enacted and in effect on or prior to the Closing Date.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"ERISA Affiliate" means each entity that is treated as a single employer with Target for purposes of Code §414.

"Financial Statements" has the meaning set forth in §4(g) in the Agreement.

"Governmental Authority" means any nation or government (including a foreign nation or government), any state, provincial, regional, local or other political subdivision thereof, any court, other entity or official exercising executive, legislative, judicial, regulatory or

administrative functions of or pertaining to government, and any arbitral tribunal, arbitrator or other non-governmental regulatory or judicial body, to the extent that the rules, regulations or orders of such body have the force of Law.

"Income Tax" means any federal, state, local, or foreign income tax measured by or imposed on net income, including any interest, penalty, or addition thereto, whether disputed or not.

"Income Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Income Taxes, including any schedule or attachment thereto.

"Indebtedness" means, with respect to any Person, (i) all indebtedness of such Person, whether or not contingent, for borrowed money (including reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured), (ii) all obligations of such Person for the deferred purchase price of property or services, other than accrued payables and trade liabilities arising in the Ordinary Course of Business, (iii) all other indebtedness of such Person evidenced by notes, bonds, debentures, capitalized leases, letters of credit or other similar instruments whether principal, interest, premium, penalties or otherwise, (iv) all interest rate and currency swaps, caps, collars and similar agreements or hedging instruments under which payments are obligated to be made by such Person, whether periodically or upon the happening of a contingency, (v) all indebtedness created or arising under any conditional sale or title retention agreement with respect to property acquired by such Person and (vi) all indebtedness of others referred to in clauses (i) through (v) above guaranteed directly or indirectly in any manner by such Person.

"Indemnified Party" has the meaning set forth in §8(d) in the Agreement.

"Intellectual Property" means all registered and unregistered intellectual property rights throughout the world, including, without limitation, all of the following items along with the right to sue and recover for past infringements or misappropriations thereof: (i) patents, patent applications, patent disclosures and any reissue, continuation, continuation-in-part, division, revision, extension or reexamination thereof; (ii) trademarks, service marks and internet domain names, together with all goodwill associated therewith; registered and unregistered copyrights (including for all computer software) and mask works; (iii) all registrations, applications and renewals for any of the foregoing; and (iv) trade secrets.

"Indemnifying Party" has the meaning set forth in §8(d) in the Agreement.

"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements (including judgments, decrees, injunctions and similar orders) having the effect of law of the United States, any foreign country or any domestic or foreign state, country, city or other political subdivision or of any Governmental Authority.

"Leased Real Property" means all leasehold or subleasehold rights to use or occupy the land, buildings, structures, improvements, fixtures, and other interests in real property that are used in Target's Business and are not owned by Target.

"Leases" means all leases, subleases, licenses, concessions and other agreements (written or oral), including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto, pursuant to which Target holds or occupies any Leased Real Property.

"Liability" means any Indebtedness, liability or obligation of whatever kind or nature (whether direct or indirect, known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

"Lien" means any mortgage, pledge, lien, security interest, adverse claim, charge, or other encumbrance, other than (a) liens for taxes not yet due and payable or for taxes that the taxpayer is contesting in good faith through appropriate proceedings and in respect of which adequate reserves have been established in the taxpayer's financial statements, (b) purchase money liens and liens securing rental payments under capital lease arrangements, in each case, in specific pieces of equipment, and (c) mechanics', carriers', landlords' or similar liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

"Material Adverse Effect" or "Material Adverse Change" means any effect, change, circumstance, development, event, occurrence or state of facts that, individually or in the aggregate, is materially adverse to the business, results of operations, condition (financial or otherwise), assets, properties or prospects of Target or the Business, or to the ability of any Party to consummate timely the transactions contemplated hereby; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect or Material Adverse Change: any adverse change, event, development, or effect arising from or relating to (1) general business or economic conditions, including such conditions related to the business of Target, unless Target is disproportionately affected compared to other companies in the same industry, (2) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories or possessions, (3) financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index), unless Target is disproportionately affected compared to other companies in the same industry, or (4) changes in the United States generally accepted accounting principles.

"Most Recent Financial Statements" has the meaning set forth in §4(g) in the Agreement.

"Most Recent Fiscal Month End" has the meaning set forth in §4(g) in the Agreement.

"Multiemployer Plan" has the meaning set forth in ERISA §3(37).

"Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency, where applicable).

"Parties" has the meaning set forth in the preface above.

"PBGC" means the Pension Benefit Guaranty Corporation.

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"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or a governmental entity (or any department, agency, or political subdivision thereof).

"Premises Lease" means that certain Lease Agreement, dated July 27, 2017, between Zeta Partnership LLC and Target, as amended.

"Purchase Price" has the meaning set forth in §2(c) in the Agreement.

"Required Consents" means all filings, consents, approvals, waivers and authorizations listed in §5(b) of the Disclosure Schedule.

"Requisite Sellers" means Sellers holding a majority of issued and outstanding Target Shares, as set forth in §4(b) of the Disclosure Schedule.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Seller" and **"Sellers"** have the meanings set forth in the preface above.

"Sellers' Knowledge" means the actual knowledge of each Seller and the knowledge each Seller would have after due inquiry (for the purposes hereof, "due inquiry" shall mean review of Target records related to the relevant matter, if any, and consultation with such employees of Target as would reasonably be expected to have knowledge of the relevant matter).

"Sellers' Representative" means William Sibley.

"Shareholders Agreement" means that certain Stockholders' Agreement dated July 28, 1988 among Target and certain Sellers, as amended to date.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"Target" has the meaning set forth in the recitals above.

"Target Share" means any share of the common stock, par value \$1.00 per share, of Target.

"Tax" or "Taxes" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

"Tax Benefit" has the meaning set forth in §8(e) in the Agreement.

"Tax Claim" has the meaning set forth in §6(e)(ii).

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Third-Party Claim" has the meaning set forth in §8(d) in the Agreement.

ANNEX A
SELLER ALLOCABLE PORTION

Seller	Closing Payment	Allocable Portion
William A.L. Sibley, Jr.	\$1,904,814.00	46.00%
Joyce Featherstone	\$731,282.94	17.66%
James T. Clark	\$545,356.53	13.17%
Frank T. Starrett, Jr.	\$545,356.53	13.17%
Scott W. Dozier	\$207,045.00	5.00%
Robert E. Leviner	\$207,045.00	5.00%
Total	\$4,140,900.00*	100.00%

*

Closing Payment	\$4,140,900
Generational Equity fee	\$ 259,100
Purchase Price	<u>\$4,400,000</u>

ANNEX B
FINANCIAL STATEMENTS

See attached.

	<u>Jun 30, 14</u>
ASSETS	
Current Assets	
Checking/Savings	
10000 - Wells Fargo #8003 Operations	3,717.88
80006 - LOC Wells Fargo Adv to cking (Line of Credit)	-39,500.00
Total Checking/Savings	-35,782.11
Accounts Receivable	
Accounts Receivable (A/R)	-3,037.00
Total Accounts Receivable	-3,037.00
Total Current Assets	-38,819.11
TOTAL ASSETS	<u>-38,819.11</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 - Accounts Payable (Unpaid or unapplied vendor bills or	-1,102.05
Total Accounts Payable	-1,102.05
Credit Cards	
0007 - Diane's CC ending in 4972 (Diane Lahti)	-524.80
Total Credit Cards	-524.80
Other Current Liabilities	
Equity LOC loan to company	60,000.00
Total Other Current Liabilities	60,000.00
Total Current Liabilities	58,373.15
Total Liabilities	58,373.15
Equity	
Residential Equity Line	19,500.00
30000 - Opening Balance Equity (Opening balances during setup post to this accou	8,602.09
32000 - Retained Earnings (Undistributed earnings of the corporation)	-6,619.55
Net Income	-119,674.80
Total Equity	-87,192.26
TOTAL LIABILITIES & EQUITY	<u>-38,819.11</u>

70060 - Company Medical Insurance	2,576.46
70070 - Individual Loan Interest	1,270.95
70080 - Individual Loan Principal	12,000.00
70090 - Credit Line Interest	5,981.68
70095 - Credit Line Principal	170,000.00
Total Expense	<u>984,339.84</u>
Net Ordinary Income	<u>-119,874.80</u>
Net Income	<u><u>-119,874.80</u></u>

	Jun 30, 15
ASSETS	
Current Assets	
Checking/Savings	
10000 - Wells Fargo #6003 Operations	200,847.95
11000 - Wells Fargo #1807 Ckg Payroll (Payroll Account)	1,048.17
30000 - LOC Wells Fargo Adv to cking (Line of Credit)	49,622.33
81400 - Wells Fargo Savings #8527 (Business High Yield Savings Account)	24,797.27
81500 - TD Bank Savings (Savings Account #5912)	100,063.85
81501 - TD Bank Checking (Checking Account)	3,001.37
Total Checking/Savings	290,641.74
Accounts Receivable	
Accounts Receivable (A/R)	-3,037.00
Total Accounts Receivable	-3,037.00
Total Current Assets	227,604.74
TOTAL ASSETS	227,604.74
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 - Accounts Payable (Unpaid or unapplied vendor bills or credits)	-1,102.05
Total Accounts Payable	-1,102.05
Other Current Liabilities	
Equity LOC loan to company	335,925.00
Total Other Current Liabilities	335,925.00
Total Current Liabilities	334,822.95
Total Liabilities	334,822.95
Equity	
Residential Equity Line	-1,486,214.95
30000 - Opening Balance Equity (Opening balances during setup post to this account. The balance of tl	9,650.26
32000 - Retained Earnings (Undistributed earnings of the corporation)	125,294.35
Net Income	1,494,640.83
Total Equity	-107,218.21
TOTAL LIABILITIES & EQUITY	227,604.74

		Jul '14 - Jun '15
Ordinary Income/Expense		
Income		
Services		
70100 · Maintenance Income		445,870.58
70200 · Project Income		1,632,147.27
Total Services		2,077,817.85
70500 · Discounts given		18.23
Total Income		2,077,836.08
Cost of Goods Sold		
50000 · *Cost of Goods Sold		
30500 · Sales-Parts		181,071.24
50000 · *Cost of Goods Sold - Other		0.00
Total 50000 · *Cost of Goods Sold		181,071.24
Total COGS		181,071.24
Gross Profit		1,896,764.84
Expense		
Payments Made		-55.53
17609 · Office Furniture/Equipment (Office Furniture/Equipment)		105.99
17610 · Equipment R&D		34,220.37
17815 · Software R&D (Software R&D)		947.15
22000 · Tax Payments		218.17
22100 · State Income Tax-EOY (State Income Tax-EOY)		4,287.00
22150 · State Qtrly Income Tax-QTR (State Qtrly Income Tax-QTR)		4,600.00
22200 · Federal Income Tax-EOY (Federal Income Tax-EOY)		18,373.00
22250 · Federal Qtrly Income Tax-QTR (Federal Qtrly Income Tax-QTR)		14,640.00
30700 · Sales - Refund		-122.00
40016 · Contract Labor		20,825.01
60010 · Salaries, Wages, Bonuses		1,002,000.00
60040 · Group105 Plan Insurance		27,562.93
60041 · Key Man Life Insurance		36,842.76
60042 · Group 125 Plan Insurance		809.14
60045 · Medical Insurance		7,226.95
60050 · Health Savings Account		22.50
60220 · Transportation Expense		29,344.81
60230 · Lodging		12,632.90
60240 · Meals and Entertainment		8,373.02
60510 · Advertising & Promotional		209.95
60530 · Stationery & Printing		236.14
60540 · Dues & Subscriptions		8,620.00
60590 · Marketing		6,844.96
60610 · Telephone		14,998.31
60650 · Postage/Shipping		4,934.84
60670 · Office Supplies		12,622.90
60680 · Office Equipment Expense		5,159.62
60790 · Other Office Expenses		3,648.15

60810 · Utilities	3,859.57
60820 · Repair & Maintenance	2,463.72
60830 · Rent or Lease	27,129.00
60910 · General Business Insurance	7,111.00
60920 · Accounting Fees	4,450.00
60940 · Consulting Fees	36,500.00
60950 · Bank Charges	9.00
60992 · Miscellaneous Taxes	62.26
70070 · Individual Loan Interest	175.97
70080 · Individual Loan Principal	2,000.00
70090 · Credit Line Interest	541.23
70095 · Credit Line Principal	29,913.35
81200 · Early Credit Card Payment	10,191.85
Total Expense	<u>1,404,426.12</u>
Net Ordinary Income	492,338.72
Other Income/Expense	
Other Income	
30600 · Sales - Refund - Income (Sales - Refund - Income)	34.16
60085 · Interest Earned	<u>267.95</u>
Total Other Income	<u>302.11</u>
Net Other Income	<u>302.11</u>
Net Income	<u><u>492,640.83</u></u>

	Jun 30, 16
ASSETS	
Current Assets	
Checking/Savings	
10000 - Wells Fargo #6003 Operations	169,375.18
11000 - Wells Fargo #1007 Ckg Payroll (Payroll Account)	1,035.34
11200 - Park Sterling Saving #2002	90,066.74
80000 - LOC Wells Fargo Adv to aking (Line of Credit)	-49,622.33
81400 - Wells Fargo Savings #8527 (Business High Yield Savings Account)	371.89
91500 - TD Bank Savings (Savings Account #5912)	233,704.95
Total Checking/Savings	444,862.17
Accounts Receivable	
Accounts Receivable (A/R)	-9,319.45
Total Accounts Receivable	-9,319.45
Total Current Assets	435,542.72
TOTAL ASSETS	435,542.72
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 - Accounts Payable (Unpaid or unapplied vendor bills or credits)	-1,846.22
Total Accounts Payable	-1,846.22
Credit Cards	
WF Visa Control Acct#5122	
WF Clark #4931	12,577.88
WF Dozier #4949	28,666.79
WF Morrow #7426	2,134.81
WF Sibley Co-2 #4923	17,372.27
WF Starrett #4980	137.79
WF Taylor #2111	4,646.85
WF Viveros #9389	265.43
WF Herrmann #7797	7,296.95
WF Visa Control Acct#5122 - Other	19,770.48
Total WF Visa Control Acct#5122	93,269.23
Total Credit Cards	93,269.23
Other Current Liabilities	
Equity LOC loan to company	313,431.00
Total Other Current Liabilities	313,431.00
Total Current Liabilities	404,864.01
Total Liabilities	404,864.01
Equity	
Residential Equity Line	-1,496,214.95
30000 - Opening Balance Equity (Opening balances during setup post to this account. The balance of this acco	9,850.26
32000 - Retained Earnings (Undistributed earnings of the corporation)	1,369,348.48
Net Income	137,426.92
Total Equity	30,208.71
TOTAL LIABILITIES & EQUITY	435,062.72

3:58 PM
05/01/17
Cash Basis

Computer Control + Integration
Profit & Loss
July 2015 through June 2016

Jul '15 - Jun '16

Ordinary Income/Expense		
Income		
Services		
70100 · Maintenance Income		531,715.58
70200 · Project Income		1,826,934.92
Total Services		2,358,650.50
Total Income		2,358,650.50
Cost of Goods Sold		
50000 · *Cost of Goods Sold		
30240 · Sales - Meals & Entertainment		15,754.50
30230 · Sales - Lodging		41,522.75
30220 · Sales - Transportation		44,444.55
30510 · Sales - Parts Repair		989.89
30800 · Sales - Shipping/Freight		1,760.74
30550 · Sales Parts Contact Labor		2,381.59
30500 · Sales-Parts		253,623.06
Total 50000 · *Cost of Goods Sold		380,457.17
Total COGS		380,457.17
Gross Profit		1,995,193.33
Expense		
17610 · Equipment R&D		1,345.83
17615 · Software R&D (Software R&D)		506.73
22000 · Tax Payments		484.85
22100 · State Income Tax-EOY (State Income Tax-EOY)		22,823.00
22150 · State Qtrly Income Tax-QTR (State Qtrly Income Tax-QTR)		27,400.00
22200 · Federal Income Tax-EOY (Federal Income Tax-EOY)		168,529.00
22250 · Federal Qtrly Income Tax-QTR (Federal Qtrly Income Tax-QTR)		183,160.00
40018 · Contract Labor		184.72
40020 · Janitorial Service		2,275.00
60000 · Employment Expense		15,820.61
60010 · Salaries, Wages, Bonuses		1,274,217.23
60040 · Group105 Plan Insurance		24,205.42
60041 · Key Man Life Insurance		36,842.76
60042 · Group 125 Plan Insurance		2,630.55
60045 · Medical Insurance		5,085.10
60050 · Health Savings Account		15.00
60220 · Transportation Expense		3,484.97
60230 · Lodging		3,587.81
60240 · Meals and Entertainment		1,411.34
60540 · Dues & Subscriptions		3,648.74
60590 · Marketing		3,859.90
60610 · Telephone		14,418.54
60650 · Postage/Shipping		2,443.80
60660 · Contributions & Gifts		100.00
60670 · Office Supplies		5,739.85

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Schedule 4(a)
Directors and Officers

Directors:

William A.L. Sibley, Jr.
James T. Clark
Scott W. Dozier

Officers:

William A.L. Sibley, Jr., Chief Executive Officer
James T. Clark, President
Scott W. Dozier, VP Sales & Marketing
Frank T. Starrett, VP Systems Engineering & Customer Support
Robert E. Leviner, VP Application Design & Customer Support

EXECUTION COPY

Schedule 4(b)
Stock Ownership

<u>Stockholder</u>	<u>Shares</u>
William A.L. Sibley, Jr.	4,600
Joyce Featherstone	1,766
James T. Clark	1,317
Frank T. Starrett, Jr.	1,317
Robert E. Leviner	500
Scott W. Dozier	500

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Schedule 4(e)
Tangible Assets

Not applicable

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Schedule 4(i)
Events Subsequent to May 17, 2017

1. Target has signed a new lease with its landlord, increasing the total space rented by Target.
2. Target has acquired additional furniture, fixtures and equipment for the additional space rented from its landlord.
3. Target paid a fiscal year-end bonus and subsequently has paid special bonuses to employees on three occasions.
4. Target commenced two new plant projects for Coca-Cola Bottling Company United in July, two new plant projects for Coca-Cola Bottling Company Consolidate in July and another plant project for United in October.

INDEMNITY ESCROW AGREEMENT

THIS INDEMNITY ESCROW AGREEMENT (this "Agreement") is made as of October 16, 2017, by and among **Decide4action Inc.**, a Florida corporation ("Buyer"), **William A.L. Sibley, Jr., Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier and Robert E. Leviner**, residents of South Carolina ("Sellers"), and **United Community Bank** ("Escrow Agent"). Capitalized terms not expressly defined in this Agreement shall have the meanings assigned to them in the Purchase Agreement (defined herein below).

WHEREAS Sellers and Buyer entered into that certain Stock Purchase Agreement dated October 13, 2017 (the "Purchase Agreement") whereby Buyer agreed to purchase the stock of **Computer Control + Integration, Inc.**, a South Carolina corporation (the "Company"), from Sellers; and

WHEREAS as an inducement for Buyer to enter into the Purchase Agreement, Sellers agreed to deposit a portion of the proceeds received by Sellers (the "Escrow Contributions") into an escrow account to be available to satisfy indemnification obligations that Sellers might have to Buyer under the Purchase Agreement.

In consideration of the agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sellers, Buyer and Escrow Agent hereby agree as follows:

1. Establishment of Escrow.

(a) As soon as reasonably practicable after the Closing, Sellers shall deliver to Escrow Agent the Escrow Contributions, paid in United States Dollars in cash by wire transfer of immediately available funds (collectively, the "Original Escrow Fund"). Escrow Agent shall acknowledge receipt thereof. The Original Escrow Fund that is initially deposited with Escrow Agent, prior to any interest thereon or proceeds therefrom, constitutes a portion of the Purchase Price.

(b) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Original Escrow Fund, together with any earnings and income thereon ("Fund Income"), pursuant to the terms and conditions hereof. The Original Escrow Fund, less all distributions of the Original Escrow Fund, held pursuant to this Agreement shall be referred to herein as the "Remaining Escrow Fund". The Remaining Escrow Fund plus any undistributed Fund Income shall be referred to as the "Escrow Fund".

2. **Investment of Funds.** Within three (3) business days after receipt of the Original Escrow Fund, the Escrow Fund shall be deposited and maintained in time deposits with or certificates of deposit of a bank, trust company or federal savings and loan association having at least \$1,000,000,000 of capital, surplus and undivided profits at the time of the investment, until disbursement of the entire Escrow Fund or termination of this Agreement pursuant to Section 4 hereof.

3. Claims and Release of Escrow Amount.

(a) General. Escrow Agent shall disburse the Escrow Fund in accordance with the terms of this Agreement. Escrow Agent shall be under no obligation to disburse funds from the Escrow Fund until (i) it receives a Joint Written Direction (defined herein below) directing it to so act, (ii) any party delivers a final, non-appealable court order (an "Order") directing Escrow Agent to act or (iii) the Escrow Agent is required to make a disbursement under the terms of this Agreement. Escrow Agent shall act solely upon this Agreement and the instructions that it receives and shall not be responsible for determining whether such instructions are in accordance with the terms of the Purchase Agreement.



(b) Joint Written Direction. Escrow Agent shall disburse all or part of the Escrow Fund at any time and from time to time, upon receipt of, and in accordance with, a Joint Written Direction, which disbursement will be paid within three (3) business days of Escrow Agent's receipt of such Joint Written Direction. Such Joint Written Direction shall contain complete payment instructions, including wiring instructions or an address to which a check shall be sent. "Joint Written Direction" shall mean a written direction executed by an authorized representative of Buyer and the Sellers' Representative, **William A.L. Sibley, Jr.**, directing Escrow Agent to disburse all or a portion of the Escrow Fund or to take or refrain from taking any other action pursuant to this Agreement. Each of Buyer and Sellers' Representative shall prepare, sign and deliver any Joint Written Direction directing the Escrow Agent to distribute the Escrow Fund, or a portion thereof, as promptly as practicable after payments are or may become due and payable pursuant to and in accordance with the terms of this Agreement and the Purchase Agreement.

(c) Disbursement Pursuant to Indemnification Claims. At any and each time before 11:59 PM Eastern Time on the first anniversary of the date of the Closing Date (the "Indemnification Escrow Release Date") that it is determined that Buyer is entitled to indemnification with respect to any indemnification claim pursuant to Section 8 of the Purchase Agreement, Buyer and Sellers' Representative shall promptly deliver to the Escrow Agent a Joint Written Direction directing the Escrow Agent to release from the Escrow Fund and pay the amount set forth in such Joint Written Direction. Such payment shall be made on or before the third (3rd) Business Day following the day on which the Escrow Agent receives such Joint Written Direction.

(d) Disbursement on the Indemnification Escrow Release Date. On the first (1st) Business Day following the Indemnification Escrow Release Date, the Escrow Agent shall release the remaining balance of the Escrow Fund, less the aggregate amount of Pending Claims (defined herein below), to Sellers. The Escrow Agent shall not distribute, and will continue to hold, the portion of the Escrow Fund equal to the aggregate amount of all pending claims, if any, against the Escrow Fund pursuant to the Purchase Agreement (the "Pending Claims"). The Escrow Agent shall only continue to hold a portion of the Escrow Fund for the Pending Claims if Buyer has provided to Escrow Agent and Sellers' Representative, no fewer than three (3) Business Days prior to the Indemnification Escrow Release Date, 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. Any such Pending Claims Amount remaining after disbursement pursuant to paragraph (c) above for resolved Pending Claims will remain in escrow until the final resolution of such Pending Claims, at which time the Pending Claims Amount will be released no later than three (3) Business Days following the earlier of (i) the date that a Joint Written Direction with respect to the remaining Escrow Fund is received by Escrow Agent or (ii) receipt by Escrow Agent of an Order directing Escrow Agent to act. Each of Buyer and Sellers' Representative shall prepare, sign and deliver any Joint Written Direction directing the Escrow Agent to distribute the Escrow Fund, or a portion thereof, as promptly as practicable after payments are or may become due and payable pursuant to and in accordance with the terms of this Agreement and the Purchase Agreement.

4. **Termination of Escrow.**

Subject to the provisions of Section 3(c) and Section 3(d), on the first (1st) Business Day after the Indemnification Escrow Release Date, this Agreement shall terminate and Escrow Agent shall pay and distribute the Escrow Fund to Sellers. This Agreement shall terminate earlier upon the disbursement of the entire Escrow Fund. Section 5(b) and Section 5(e) hereof, and any other provisions of this Agreement that by their nature should survive, shall survive notwithstanding any termination of this Agreement or the resignation of Escrow Agent.

5. **Duties of Escrow Agent.**

(a) Escrow Agent shall not be required to invest any funds held hereunder except as directed in this Agreement.

(b) Escrow Agent shall not be liable, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against Escrow Agent, the other parties hereto shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its own gross negligence or willful misconduct) in the investment or reinvestment of the Escrow Fund, or any loss of interest incident to any such delays.

(c) Escrow Agent shall be entitled to conclusively rely upon any Order, certification, demand, notice, instrument or other writing delivered to it in connection herewith without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in conclusive reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. Escrow Agent may conclusively presume that the undersigned representative of any party hereto that is an entity other than a natural person has full power and authority to instruct Escrow Agent on behalf of that party unless written notice to the contrary is delivered to Escrow Agent.

(d) Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice.

(e) Escrow Agent does not have any interest in the Escrow Fund deposited hereunder but is serving as escrow holder only and only has possession thereof. Any payments of income from the Escrow Fund shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide Escrow Agent with appropriate Internal Revenue Service Forms W-9 for tax identification number certification or non-resident alien certifications. During the term of this Agreement, Escrow Agent shall provide Buyer and Seller such information and reports concerning the Escrow Fund as either of them may reasonably request. Promptly after the termination of this Agreement or the resignation of Escrow Agent, Escrow Agent shall make an accounting of the Escrow Fund to Buyer and Sellers. The fees and expenses of Escrow Agent with respect to such reports and accountings shall be borne by Buyer and Seller as provided in **Section 5(i)** hereof.

(f) Escrow Agent makes no representation as to the validity, value, genuineness or the collectability of any security or other document or instrument held by or delivered to it.

(g) Escrow Agent shall not be called upon to advise any party as to the wisdom in selling or retaining or taking or refraining from any action with respect to any securities or other property deposited hereunder.

(h) Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Escrow Fund to any successor Escrow Agent jointly designated by Buyer and Sellers' Representative in writing, or to any court of competent jurisdiction, whereupon Escrow Agent shall be

discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of Escrow Agent will take effect on the earlier of (i) the appointment of a successor (including a court of competent jurisdiction) or (ii) the day that is 30 days after the date of delivery of its written notice of resignation to the other parties hereto. If at that time Escrow Agent has not received a designation of a successor Escrow Agent, Escrow Agent's sole responsibility after that time shall be to retain and safeguard the Escrow Fund until receipt of (i) a designation of successor Escrow Agent, (ii) a Joint Written Direction designating a successor Escrow Agent or (iii) an Order designating a successor Escrow Agent.

(i) Notwithstanding anything above to the contrary, in the event of any disagreement between the parties hereto resulting in adverse claims or demands being made in connection with the Escrow Fund or in the event that Escrow Agent is in doubt as to what action it should take hereunder, Escrow Agent shall be entitled to retain the Escrow Fund until Escrow Agent shall have received (i) an Order directing delivery of the Escrow Fund or (ii) a written agreement executed by Buyer and Sellers' Representative directing delivery of the Escrow Fund, in which event Escrow Agent shall disburse the Escrow Fund in accordance with such Order or agreement. Any Order shall be accompanied by a certificate from the presenting party to the effect that it has been advised by legal counsel that the Order is final and non-appealable. Escrow Agent shall act on such Order and legal opinion without further question.

(j) Buyer and Sellers shall pay Escrow Agent compensation (as payment in full) for the services to be rendered by Escrow Agent in accordance with Annex 1 to this Agreement. Any such compensation and reimbursement to which Escrow Agent is entitled shall be borne 50% by Buyer and 50% by Sellers.

(k) In no event shall Escrow Agent be responsible or liable for special, indirect or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether Escrow Agent has been advised of the likelihood of such loss or damage regardless of the form of action.

(l) Buyer and Sellers, jointly and severally, agree to indemnify each of Escrow Agent or any of its agents, and to hold them harmless against, any and all loss, damage, claims, liability or expense, including taxes (other than taxes based upon, measured by or determined by the income of Escrow Agent), arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Buyer or Sellers or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section, except to the extent that such loss, damage, claim, liability or expense is due to its own gross negligence or willful misconduct.

(m) In no event shall Escrow Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that Escrow Agent shall use reasonable efforts consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

6. **Limited Responsibility.**

This Agreement expressly sets forth all the duties of Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement.

7. **Fund Income; Ownership for Tax Purposes.**

All interest and other investment income earned on the Escrow Fund, net of any investment losses, shall accrue to the benefit of the Sellers. Interest and other investment income shall be paid to Sellers upon the final distribution of the Escrow Fund. Sellers and Buyer agree that, for purposes of federal and other taxes based on income, Sellers will be treated as the owners of the Escrow Fund and that Sellers will report all income, if any, that is earned on, or derived from, the Escrow Fund as their income in the taxable year or years in which such income is properly includable and pay any taxes, if any, attributable thereto.

8. **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 registered or certified mail, return receipt requested, or (c) received by the addressee, if sent by a nationally recognized overnight delivery service, in each case to the appropriate address set forth below (or to such other address as a party may designate by notice to the other parties):

If to Sellers: 143 W. Seven Oaks Dr.
Greenville, SC 29605
Attn : William Sibley

If to Buyer: Decide4action Inc.
4016 Messina Dr.
Lake Mary, FL 32746
Attn: Richard Bergeron

If to Escrow Agent: United Community Bank
306 East North St.
Greenville, SC 29601
Attn : Sharon Whitney

9. **Governing Law.**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF SOUTH CAROLINA. ANY DISPUTES HEREUNDER SHALL BE RESOLVED IN THE STATE AND FEDERAL COURTS LOCATED IN GREENVILLE COUNTY, STATE OF SOUTH CAROLINA, AND THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF SUCH STATE AND FEDERAL COURTS.

10. **Multiple Counterparts.**

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

11. **Interpretation.**

The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

12. **No Waiver.**

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party 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, and no single or partial exercise of any 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 one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c), except as provided herein, no notice to or demand on one party 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.

13. **Entire Agreement.**

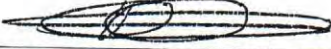
This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. This Agreement may not be amended except by written agreement executed by Buyer, Sellers and Escrow Agent.

[Signatures Follow.]

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

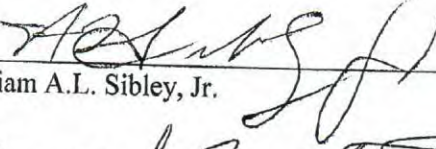
Buyer:

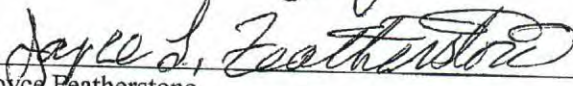
Decide4action Inc.

By: 

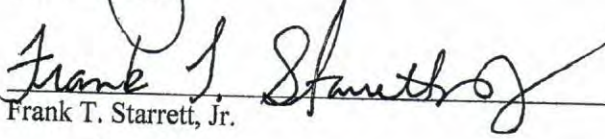
Richard Bergeron, President

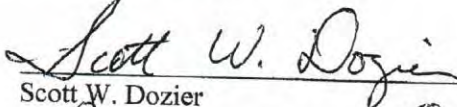
Sellers:

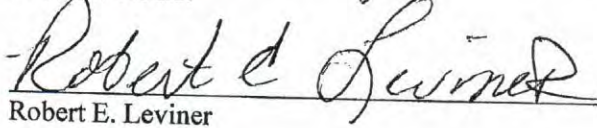

William A.L. Sibley, Jr.


Joyce Featherstone


James T. Clark


Frank T. Starrett, Jr.


Scott W. Dozier


Robert E. Leviner

Escrow Agent:

United Community Bank

By: _____

Name: _____

Title: _____

[Signature Page – Indemnity Escrow Agreement]

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

Buyer:

Decide4action Inc.

By: _____
Richard Bergeron, President

Sellers:

William A.L. Sibley, Jr.

Joyce Featherstone

James T. Clark

Frank T. Starrett, Jr.

Scott W. Dozier

Robert E. Leviner

Escrow Agent:

United Community Bank

By: Sharon Whitney
Name: Sharon Whitney
Title: SVP

[Signature Page – Indemnity Escrow Agreement]

Annex 1

Escrow Agent Fee Schedule

No amount shall be due to Escrow Agent pursuant to Section 5(j) of this Agreement. For the avoidance of doubt, this shall not affect Escrow Agent's entitlement to any amounts that may become due to Escrow Agent under any other provisions of this Agreement, including without limitation the provisions related to indemnification of Escrow Agent.

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);

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		At the time of closing		Date Changed	Difference (Annualized)	
		Salary	Bonus	Salary	Bonus		Salary	Bonus
Kimberly French	Admin	\$37,500	\$0	\$40,000	\$10,000	7/31/2017	\$2,500	\$10,000
Taylor, Joseph B.	Soft Dev	\$46,000	\$15,000	\$46,000	\$46,000	6/30/2017	\$0	\$31,000
Herrmann, Nathan D.	Soft Dev	\$63,874	\$15,000	\$63,874	\$63,874	6/30/2017	\$0	\$48,874
Viveros, Carlos A.	Soft Dev	\$75,000	\$5,000	\$75,000	\$75,000	6/30/2017	\$0	\$70,000
Clark, Ryan O.	Production	\$50,000	\$0	\$50,000	\$50,000	6/30/2017	\$0	\$50,000
Jones, Christopher L.	IT	\$45,000	\$0	\$45,000	\$45,000	6/30/2017	\$0	\$45,000
Pavatte, Justin D.	Soft Dev	\$75,000	\$0	\$75,000	\$70,000	6/30/2017	\$0	\$70,000
		\$392,374	\$35,000	\$394,874	\$359,874		\$2,500	\$324,874
								\$327,374

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**

W Y C H E

Attorneys at Law



October 30, 2018

BY FIRST CLASS MAIL

United Community Bank
Attn: Ms. Sharon Whitney
306 East North St.
Greenville, SC 29601

Re: Stock Purchase Agreement dated October 13, 2017 (the "Stock Purchase Agreement")
regarding Computer Control + Integration, Inc. (the "Company")

Dear Ms. Whitney:

We represent William A.L. Sibley, the Selling Parties Representative for himself, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, Robert E. Leviner, and Joyce Featherstone (collectively, the "Selling Shareholders"). We write to respond to the letter to you from Kimberly Thomason, Esq., dated September 19, 2018, on behalf of Decide4Action Inc. regarding the escrow you are holding as Escrow Agent in connection with its purchase of the stock of the Company pursuant to the Stock Purchase Agreement.

Decide4Action has no valid basis for a claim, as is apparent on the face of its claim and from the evidence. Specifically, Decide4Action claims that the Selling Shareholders made a large fiscal 2017 year-end bonus without disclosing it and caused non-owner employees to leave when they did not receive a similar bonus at the end of fiscal year 2018. The representations and warranties cited by Decide4Action, however, were made "[e]xcept as set forth in § 4(i) of the Disclosure Schedule." Decide4Action then cites that Disclosure Schedule, which states expressly, "Target paid a fiscal year-end bonus"

Not only was the bonus disclosed in the Disclosure Schedule, it also caused Decide4Action no damages. Specifically, Decide4Action claims 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." Enclosed please find affidavits from the non-owner employees, which make clear that it was not the failure to pay bonuses in fiscal 2018 that caused them to leave.

In sum, Decide4Action's claim against the escrow is invalid on its face and is refuted by the evidence. As such, it provides no valid basis for withholding the escrow from the Selling Shareholders.

By copy of this letter, I am requesting that Decide4Action's attorney, Kimberly Thomason, Esq., confirm to you that the escrow should be released immediately to the Selling Shareholders. If

W Y C H E
PROFESSIONAL ASSOCIATION

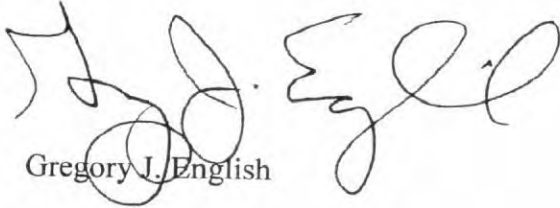
PO Box 728, Greenville, SC 29602-0728
p: 864.242.8200 | f: 864.235.8900

www.wyche.com

W Y C H E

Decide4Action fails to do so, we will hold it responsible for prejudgment interest on the escrow at the legal rate of 8.75% per annum in addition to our costs and attorneys' fees.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory J. English', with a large, stylized initial 'G'.

Gregory J. English

(864) 242-8247

genglish@wyche.com

GJE/sc

Enclosures

cc: William A.L. Sibley (by e-mail)
Kimberly Thomason, Esq. (by mail and e-mail)

bcc: James T. Clark
Frank T. Sarrett, Jr.
Scott W. Dozier
Robert E. Leviner
Joyce Featherstone

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

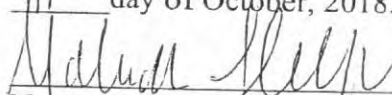
AFFIDAVIT OF JUSTIN PAVATTE

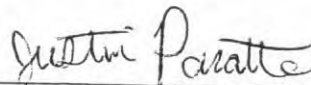
The undersigned, after being duly sworn, deposes and states as follows:

1. I have personal knowledge of the facts set forth herein, am over eighteen years of age, and am otherwise competent to give this Affidavit.
2. I was formerly employed by Computer Control + Integration, Inc. ("CCI"). While I was employed at CCI, I was never promised a bonus in addition to my salary and never viewed a bonus as an expected part of my overall compensation.
3. Although I did receive a bonus from CCI in June 2017, I understood it was discretionary and I had no reason to expect a bonus thereafter.
4. I left the employ of CCI, not because I did not receive a bonus after June 2017, but because I did not enjoy working for its new owner, Mr. Bergeron, and did not like the direction in which he was taking CCI.

FURTHER AFFIANT SAITH NOT.

SWORN to before me this
11th day of October, 2018.


Notary Public for South Carolina
My Commission Expires:


Signature
Print: Justin Pavatte
Address: 15 Vile Rd
Apt 172
Greenville, SC 29615



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AFFIDAVIT OF NATHAN HERRMANN

The undersigned, after being duly sworn, deposes and states as follows:

1. I have personal knowledge of the facts set forth herein, am over eighteen years of age, and am otherwise competent to give this Affidavit.

2. I was formerly employed by Computer Control + Integration, Inc. ("CCI"). While I was employed at CCI, I was never promised a bonus in addition to my salary and never viewed a bonus as an expected part of my overall compensation.

3. Although I did receive a bonus from CCI in June 2017, I understood it was discretionary and I had no reason to expect a bonus thereafter.

4. I left the employ of CCI, not because I did not receive a bonus after June 2017, but because I did not enjoy working for its new owner, Mr. Bergeron, and did not like the direction in which he was taking CCI. Specifically, I felt that Mr. Bergeron afforded me and other employees a complete lack of dignity, respect, or even common courtesy and created a very stressful work environment for us.

FURTHER AFFIANT SAITH NOT.

SWORN to before me this
11th day of October, 2018.

Sandra J. Randall
Notary Public for South Carolina
My Commission Expires: 9/5/23

Nathan D. Herrmann
Signature

Print:

Address:

Nathan D. Herrmann
592 Hammett Store Rd.
Lynna, SC
29365

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AFFIDAVIT OF JOSEPH B. TAYLOR

The undersigned, after being duly sworn, deposes and states as follows:

1. I have personal knowledge of the facts set forth herein, am over eighteen years of age, and am otherwise competent to give this Affidavit.
2. I was formerly employed by Computer Control + Integration, Inc. ("CCI"). While I was employed at CCI, I was never promised a bonus in addition to my salary and never viewed a bonus as an expected part of my overall compensation.
3. Although I did receive a bonus from CCI in June 2017, I understood it was discretionary and I had no reason to expect a bonus thereafter.
4. I left the employ of CCI, not because I did not receive a bonus after June 2017, but because I did not enjoy working for its new owner, Mr. Bergeron, and did not like the direction in which he was taking CCI.

FURTHER AFFIANT SAITH NOT.

SWORN to before me this
16th day of October, 2018.

Sandra J. Crandall
Notary Public for South Carolina
My Commission Expires: 9/5/23

Signature

Print:

Address:

Joseph Taylor
224 Alta Vista Dr
Liberty SC, 29157

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

December 13, 2018

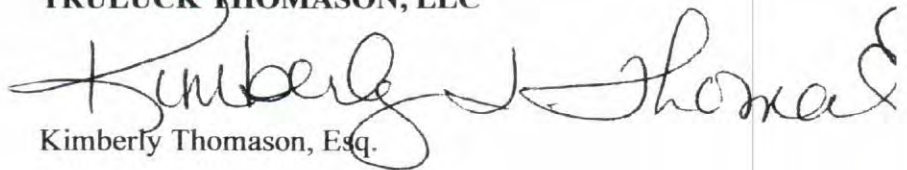
Greg English
Wyche, P.A.
44 East Camperdown Way
Greenville, SC 29601

Dear Mr. English:

This letter is to confirm that you represent only William Sibley, as a Seller of Computer Control + Integration, Inc., in the limited capacity of obtaining funds owed to Mr. Sibley in an escrow account held at United Community Bank. At this time, my client, Decide4Action, is unwilling to release any Seller with respect to their role in the misconduct alleged and maintains the escrow funds be held by United Community Bank pursuant to the Escrow Agreement until a resolution is reached by all Sellers and Decide4Action. If you have any questions in the meantime please do not hesitate to contact me.

Very Respectfully,

TRULUCK THOMASON, LLC



Kimberly Thomason, Esq.

CC: Sharon Whitney



AGREEMENT REGARDING APPLICATION OF FUNDS

This Agreement Regarding Application of Funds (this "Agreement") is made as of October 16, 2017, by and among Decide4action Inc., a Florida corporation ("Buyer") and William A.L. Sibley, Jr., Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier and Robert E. Leviner, residents of South Carolina ("Sellers"). Capitalized terms not expressly defined in this Agreement shall have the meanings assigned to them in the Purchase Agreement (defined herein below).

WHEREAS Sellers and Buyer entered into that certain Stock Purchase Agreement dated as of the date hereof (the "Purchase Agreement") whereby Buyer purchased the stock of Computer Control + Integration, Inc., a South Carolina corporation (the "Company"), from Sellers; and

WHEREAS, as an inducement for Buyer to enter into the Purchase Agreement, Sellers have agreed to enter into this Agreement with Buyer providing for a portion of the proceeds (i.e., ten percent (10%) of the Purchase Price or Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00) received by Sellers to be placed into an escrow account, subject to the terms of this Agreement, to be available to satisfy indemnification obligations that Sellers may have to Buyer under Section 8 of the Purchase Agreement ("Indemnification Obligations").

In consideration of the agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sellers and Buyer agree as follows:

1. Pursuant to the Purchase Agreement, at the Closing, Buyer shall pay Sellers the Closing Payment, with each Seller receiving a portion of the Closing Payment as set forth in Annex A of the Purchase Agreement.
2. At the Closing, Buyer and Sellers shall enter into the Indemnity Escrow Agreement set forth as Exhibit A to this Agreement (the "Escrow Agreement") with United Community Bank serving as escrow agent (the "Escrow Agent").
3. As soon as reasonably practicable after receipt of his or her portion of the Closing Payment, but in any event no later than ten (10) days subsequent to the date of this Agreement, each Seller shall deposit with the Escrow Agent into the escrow account established pursuant to the Escrow Agreement (the "Escrow Account") the amount (an "Escrow Contribution Amount") set forth for such Seller in Exhibit B to this Agreement. Without limiting the foregoing, it is expected that each Seller will send payment, or initiate electronic payment, of such Seller's Escrow Contribution Amount within 24 hours after receipt of his or her portion of the Closing Payment, or within 72 hours if a Seller is traveling and it is not reasonably feasible for such Seller to arrange for payment while traveling; provided that in any case, it is understood that a Seller's payment of the Escrow Contribution Amount may be delayed in the event of circumstances or events beyond the reasonable control of the Seller that prevent Seller from making such payment sooner, such as medical incapacity, failure of electronic systems, acts of war or civil unrest or natural disaster. A Seller's liability for any Indemnification Obligation shall be satisfied first out of the Escrow Account.
4. In the event that a Seller fails to make payment into the escrow account of such Seller's Escrow Contribution Amount, Buyer may seek injunctive or other equitable relief from a court of competent jurisdiction to obtain specific performance of this Agreement by such Seller, and Buyer shall be entitled to recover from such Seller any and all reasonable legal fees and legal costs incurred by Buyer in so enforcing this Agreement.



5. Subject to reservation of amounts necessary to satisfy pending but unresolved indemnification claims, 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. Each Seller shall be entitled to receive such Seller's Allocable Portion of such remaining amounts as provided in Annex A of the Purchase Agreement.

6. In addition, if Buyer determines that Sellers did not provide all of the usernames and passwords to be provided to Buyer pursuant to Section 6(d) of the Purchase Agreement at Closing, upon written request of Buyer, Sellers will cooperate with and assist Buyer in obtaining any missing usernames and passwords, and if Sellers fail to so cooperate and assist Buyer, Sellers will forfeit any remaining amounts in the Escrow Account.

7. This Agreement and the Purchase Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede any other prior or contemporaneous discussions, negotiations, agreements or understandings regarding such subject matter. This Agreement may be executed in counterparts, all of which together shall constitute a single agreement.

[Page ends; Signature page follows]

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

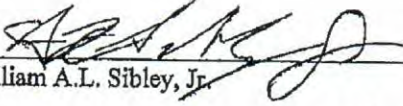
Buyer:

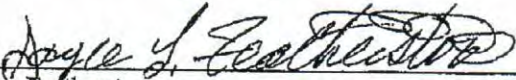
Decide4action Inc.

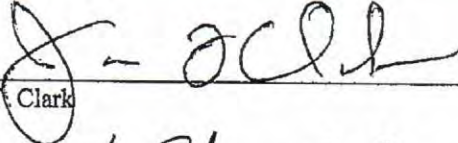
By: 

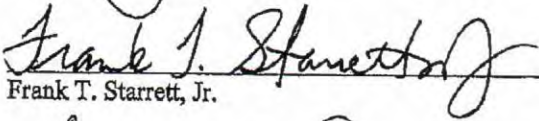
Richard Bergeron, President

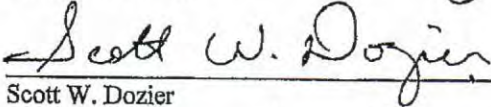
Sellers:

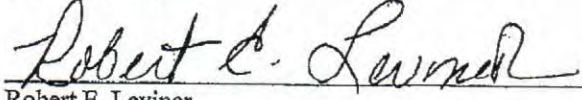

William A.L. Sibley, Jr.


Joyce Featherstone


James T. Clark


Frank T. Starrett, Jr.


Scott W. Dozier


Robert E. Leviner

[Signature Page – Agreement Regarding Application of Funds]

CONTRIBUTION AND INDEMNIFICATION AGREEMENT

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

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

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

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

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

1. Contribution

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

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



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

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

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

2. Notice and Defense of Third-Party Claims

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

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

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

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

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

3. Notices

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

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

Joyce Featherstone
109 Sanderling Dr.
Greenville, SC 29607

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

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

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

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

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

4. Waivers and Omissions

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

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

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

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

5. Exclusive Agreement and Modification

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

6. Fraud and Misrepresentation

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

7. No Third Party Beneficiaries

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

8. Governing Law; Binding Effect; Severability; Counterparts

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

9. Further Action

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

10. Role of Law Firm; Conflict of Interest

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

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

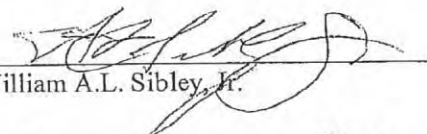
(b) has carefully read and understood the provisions of this Agreement;

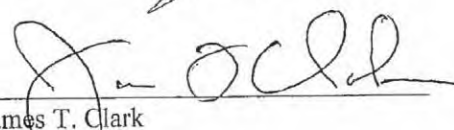
(c) has had the opportunity to seek the advice of independent legal counsel; and

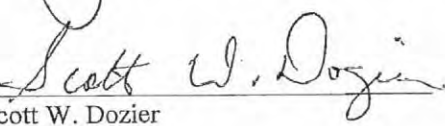
(d) is signing and making this Agreement voluntarily.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

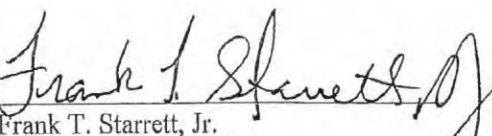
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

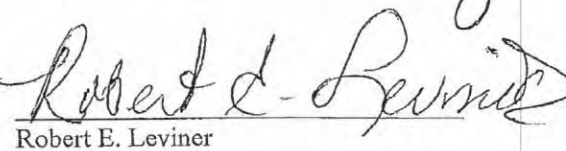

William A.L. Sibley, Jr.


James T. Clark


Scott W. Dozier


Joyce Featherstone


Frank T. Starrett, Jr.


Robert E. Leviner

[Signature Page; Contribution and Indemnification Agreement]

CONTRIBUTION AND INDEMNIFICATION AGREEMENT
SCHEDULE A

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

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

CERTIFICATE OF APPOINTMENT

IN THE MATTER OF:)

WILLIAM AUGUSTUS LONGSTREET)

CASE NUMBER: 2020ES2301711

SIBLEY JR)

(Decedent))

This is to certify that

JULIA SIBLEY-JONES

is the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ SUCCESSOR PERSONAL REPRESENTATIVE
☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the **12th day of August, 2020**, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

EXECUTED: August 12, 2020

Deborah A. Faulkner

DEBORA A. FAULKNER By: CRM
PROBATE COURT JUDGE

Do not accept a copy of this certificate without
the raised seal of the Probate Court.



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
William A.L Sibley, Jr.)
Plaintiff,)
vs.)
Decide4Action, Inc.)
Defendant.)

Decide4Action, Inc.)
Counterclaimant/Third-Party Plaintiff)
Vs.)
William A.L. Sibley, Jr.; and Joyce)
Featherstone)
Counterclaim Defendant/Third Party)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

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

**DEFENDANT'S RESPONSES
TO REQUEST TO ADMIT**

TO: GREGORY J. ENGLISH, ESQUIRE, ATTORNEY FOR PLAINTIFF AND THIRD PARTY DEFENDANT:

NOW COMES Defendant Decide4action. Inc. ("Defendant"), by and through its undersigned counsel, and for its Responses to Plaintiff's Requests for Admission, states as follows:

RESERVATION OF RIGHTS

Responding to the Requests for Admission, Defendant does not waive any objections which may be appropriate to (a) use by Defendant to answer these Requests for Admission for any purpose or (b) the materiality of any Requests for Admission to any issue in the case.

Defendant specifically reserves all rights to objections which may otherwise be available to him and further state that no response should be deemed as an admission of relevancy,



materiality or admissibility into evidence (of any particular Request for Admission or the response thereto). Defendant further reserves the right to alter or amend his Answers to be more accurate, if other information becomes available to him at a subsequent time.

REQUESTS FOR ADMISSION

1. Plaintiff's Exhibit to the Deposition of Decide4action taken on September 29, 2020

("Plaintiff's Exhibit") Number 1 attached hereto is an authentic and genuine copy of the Letter of Intent dated March 10, 2017 signed by Decide4action and the selling shareholders (the "Selling Shareholders") of Computer Control + Integration, Inc. (CCI").

Response: Admit.

2. Plaintiff's Exhibit Number 2 attached hereto is an authentic and genuine copy of a summary of CCI employee salaries and bonuses as of April 28, 2017, given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

Response: Admit.

3. Plaintiff's Exhibit Number 5 attached hereto is an authentic and genuine copy of CCI Profit & Loss statement for July 2017 given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

Response: Admit.

4. Plaintiff's Exhibit Number 6 attached hereto is an authentic and genuine copy of CCI Profit & Loss statement for July 2017 given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

Response: Admit.

5. Plaintiff's Exhibit Number 7 attached hereto is an authentic and genuine copy of page 1 of the CCI tax return for the tax year ended June 30, 2017 given to Decide4action by one or

more of the Selling Shareholders before Decide4action purchased the stock of CCI.

Response: Admit.

Respectfully Submitted,
This 30th day of October, 2020.

TRULUCK THOMASON, LLC

s/Kimberly Thomason
Kimberly T. Thomason,
SC Bar No. 79179
110 Williams St.
Greenville, SC 29601
Telephone: (864) 331-1751
Facsimile: (864) 672-4007

s/Devon Puriefoy
Devon Puriefoy
SC Bar No. 79179
110 Williams St.
Greenville, SC 29601
Telephone: (864) 331-1751
Facsimile: (864) 672-4007

Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

v.

Decide4action, Inc.,
Defendant,

Decide4action, Inc.,
Counterclaimant/Third Party Plaintiff,

v.

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

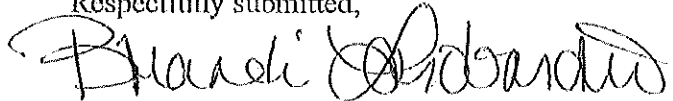
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT
C.A. FILE NO. 2019 -CP-23-02032

CERTIFICATE OF SERVICE

I, Brandi Larobardiere, certify on this date, **October 30, 2020**, I served response to Request to Admit and Interrogatories, dated **October 30, 2020**, on Gregory J. English, by mail to his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

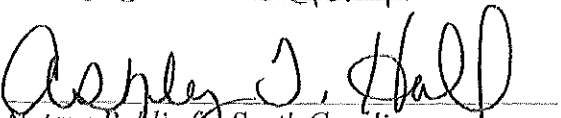
Gregory J. English
WYCHE P.A.
P.O. Box 728
Greenville, SC 29602

Respectfully submitted,

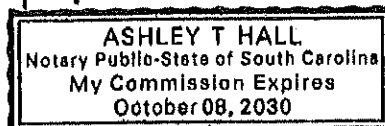


Brandi Larobardiere
Legal Assistant

Sworn to and Subscribed before me
This 30 day of October, 2020.



Notary Public for South Carolina
My commission expires: 10/8/2030.



**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 FIRST REQUESTS FOR
ADMISSION TO DEFENDANT
DECIDE4ACTION, INC.**

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

vs.

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

Counterclaim Defendant/Third Party
Defendant.

**TO: KIMBERLY THOMASON, ESQ. and DEVON PURIEFOY, ESQ., ATTORNEYS
FOR DEFENDANT DECIDE4ACTION**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Plaintiff requests that Defendant Decide4Action, Inc. ("Decide4action"), admit the following within thirty (30) days of the date hereof:

REQUESTS FOR ADMISSION

Please admit that:

1. Plaintiff's Exhibit to the Deposition of Decide4action taken on September 29, 2020 ("Plaintiff's Exhibit") Number 1 attached hereto is an authentic and genuine copy of the Letter of Intent dated March 10, 2017 signed by Decide4action and the selling shareholders (the "Selling Shareholders") of Computer Control + Integration, Inc. ("CCI").

2. Plaintiff's Exhibit Number 2 attached hereto is an authentic and genuine copy of a summary of CCI employee salaries and bonuses as of April 28, 2017, given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

3. Plaintiff's Exhibit Number 5 attached hereto is an authentic and genuine copy of a CCI Profit & Loss statement for July 2017 given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

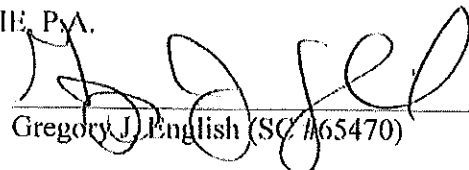
4. Plaintiff's Exhibit Number 6 attached hereto is an authentic and genuine copy of a CCI Profit & Loss statement for June 2017 given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

5. Plaintiff's Exhibit Number 7 attached hereto is an authentic and genuine copy of page 1 of the CCI tax return for the tax year ended June 30, 2017 given to Decide4action by one or more of the Selling Shareholders before Decide4action purchased the stock of CCI.

Respectfully submitted,

WYCHIE, P.A.

By:


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

September 30, 2020



decide4action Inc.
4016 Messina dr.
Lake Mary, FL
32746

Computer Control + Integration Inc.
1200 Woodruff Road Suite C-39
Greenville, SC 29607

March 10, 2017

Att'n: William Sibley

Subject: Letter of Intent to Acquire Computer Control + Integration

Dear Bill,

Decide4action Inc. is pleased to present you with the terms (the "Indicative Offer") under which it would consider the acquisition of CC+I.

1. Selling Price

- Purchase price will be USD 4,400,000 for 100% of the stock of CC+I;
- The transaction will be a stock purchase;
- The Company is Debt Free;
- 90% of the purchase price will be paid in cash at closing with the remaining 10% to be put in Escrow for 12 months with Interest for the Sellers;
- The Escrow shall have a threshold of \$25K, and maximum amount equal to Purchase Price, to submit a claim through arbitration in case of difference from the Representation and Warranties;
- Representations and Warranties to survive for 24 months;
- The offer excludes the cash at closing (for both the checking and savings accounts) and includes the balances of A/R and A/P at closing.

www.decide4action.com
contact@decide4action.com





decide4action Inc.
4016 Messina dr.
Lake Mary, FL
32746

2. Conditions of the offer

- This LOI is conditional to a due diligence over the last 3 completed years and the current Year to Date;
- The Due diligence shall demonstrate that the average EBITDA of 2015 and 2016 including the recast to be no less than 98% of the EBITDA from the financials of the Offering memorandum and of the financials submitted by Bill Sibley for year 2016;
- The Due diligence shall demonstrate that the YTD Sales to be in line to produce a 2.8M revenue at year end 2017 and an EBITDA consistent with the year 2015 and 2016;

3. Representation and warranty required by the seller

- There is no current litigation or threat of litigation;
- CC+I is in good standing with all applicable regulations;
- There is no union and no labor conflict;
- There is no lien, lease or encumbrance on any asset;
- There is no Customer that have indicated their intention of a significant decline in their future business;
- There is no material Customer warranty issue for any products already delivered;
- The Seller shall not cause any reduction of A/R or increase or A/P prior to closing by changing its current operating procedure;
- The Seller shall not cause any increase or decrease of inventory by changing its current operating procedure;
- The cash at the time of closing will be distributed to the current shareholders prior to closing, any cash not distributed prior to closing will be forfeited by the Seller;
- From the time that this LOI is submitted, the Seller shall not dispose of any asset either by selling, giving or scrapping unless submitted and approved in writing by the Buyer;
- After the signature of the LOI, the Seller shall not acquire any asset (above \$2K) unless submitted and approved in writing by the Buyer;
- There is no existing products defect;
- There is no significant inventory write off required from the value shown on the balance sheet;
- Any Environmental Issue at the current facilities existing as of the date of Closing will be the responsibility of the Seller. The Seller will provide a complete and

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unconditional release for any environment issue for the past and for 90 days after closing for the Greenville, SC facility. The Seller shall have the right to prevent the buyer from making changes to the current process at the facility if these changes would result in new environmental problems that did not exist at closing;

- The Seller will incur the cost of its broker (Buyer represents no engagement or use of broker);
- Each party will be responsible for its own Legal fees. The Buyer will prepare the Share Purchase Agreement (SPA) and associated documents;
- The facility in Greenville, SC is leased from an unrelated third party;
- There are no supply agreement between CC+I and any related party.

4. Personal

- Bill Sibley will remain at his current position for a period of 30 days after closing with the same compensation as he currently has without any bonus. In addition, during the first 12 months Bill Sibley will make himself reasonably available from time to time, free of charge, for meetings at the facility or by phone should the Buyer request his opinion on the Company, its Customers, Vendors or Employee;
- Terry Starrett and Robert Levner, will remain at their current position for a period of 12 months at their current compensation and numbers of hours. The Seller shall have the right to terminate such employment with a written notice of 30 days. If the buyer wished to retain their services for a longer period then a new agreement shall be negotiated between the parties;
- Tim Clark and Scott Dozier will stay with the company at their current role for a period of at least 5 years;
- The Salaries and benefits of Tim Clark and Scott Dozier will be the same as the current salary for the first 3 years and will be adjusted reasonably for year 4 and 5;
- 5 years non compete agreement for all Sellers;
- Tim Clark and Scott Dozier will be offered to invest in CC+I group as part of the preferential manager's share program. Tim Clark shall invest at least 6.5% (and up to 10%) of CC+I stock and Scott Dozier at least 2.5% (and up to 5%) of CC+I stock. All stock will be purchased at the same price used for Decide4action purchase.

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5. Other

- The buyer shall have 45 days after the signature of the LOI to complete the Due Diligence process;
- The Buyer shall have 90 days after the Completion of the due diligence to complete the acquisition;
- The Buyer and the Seller shall have 90 days to agree on the SPA, if within that period the SPA is not essentially agreed then this LOI shall be null and void;
- The buyer intent to obtain an SBA loan for this acquisition. The Seller will assist as required to provide any required documentation or support visit for this process;
- Should the Buyer be unable to obtain the financing for any reasons then this LOI will become null and void and no compensation nor legal fee will be due from either party;
- After he signature of this LOI and until the LOI becomes nullified by one of its deadline, the Seller shall not engage with any discussions either verbal or written regarding the sales of CC+I to another party.

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Lake Mary, FL
32746

This LOI is valid until April 9, 2017.

A handwritten signature in dark ink, appearing to read "Richard Bergeron".

Richard Bergeron
President and CEO
decide4action Inc

A handwritten signature in dark ink, appearing to read "Bill Sibley".

Bill Sibley
CEO
CC+I Inc.

A handwritten signature in dark ink, appearing to read "Tim Clark".

Tim Clark
President
CC+I Inc.

A handwritten signature in dark ink, appearing to read "Scott Dozler".

Scott Dozler
VP of Marketing
CC+I Inc.

A handwritten signature in dark ink, appearing to read "Terry Starrett".

Terry Starrett
Vice President
CC+I Inc.

A handwritten signature in dark ink, appearing to read "Robert Levner".

Robert Levner
Vice President
CC+I Inc.

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contact@decide4action.com

	CO-H Fiscal 2017 as of 4/28/2017		CO-H Fiscal 2016		CO-H Fiscal 2015		CO-H Fiscal 2014		CO-H Fiscal 2013	
	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus
OWNERS:										
Clark, James T.	\$125,000		\$150,000	\$100,000	\$150,000	\$75,000	\$106,703	\$0	\$97,811	\$0
Dozier, Scott W.	\$88,249		\$103,888	\$100,000	\$100,200	\$75,000	\$77,000	\$0	\$70,583	\$0
Leviner, Robert E. (*)	\$33,412		\$80,141	\$20,000	\$80,188	\$30,000	\$71,597	\$0	\$64,447	\$0
Sibley Jr, William A. L.	\$125,000		\$150,000	\$80,000	\$150,000	\$65,000	\$162,917	\$0	\$57,500	\$0
Stamett, Frank T.	\$76,934		\$92,321	\$45,000	\$92,321	\$45,000	\$83,921	\$0	\$76,928	\$0
Featherstone, Ernest H. (**)	\$12,000		\$24,000	\$0	\$24,000	\$0	\$24,000	\$0	\$91,667	\$0
NOTES:										
(*) Began Working Half Time										
(**) Deceased December 2016										
NON-OWNERS:										
Lahti, Diane E.							\$0	\$0	\$14,241	\$0
Morrow, Hollie A.	\$28,225		\$37,500	\$0	\$34,375	\$0	\$7,731	\$0		
Childress, William C.			\$0	\$0	\$44,275	\$0	\$7,497	\$0		
Taylor, Joseph B. Date of Hire	\$38,333		\$46,000	\$15,000	\$43,000	\$0	\$1,667	\$0		
Herrmann, Nathan D. Date of Hire — July 2015	\$52,905		\$59,382	\$15,000						
Viveros, Carlos A. Date of Hire — Mar. 2016	\$62,028		\$21,863	\$5,000						
Clark, Ryan O. Date of Hire — Oct. 2016	\$24,904									
Jones, Christopher L. Date of Hire — Oct. 2016	\$23,750									
Pavattie, Justin D. Date of Hire — Jan. 2017	\$18,333									



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08/09/17

Cash Basis

**Computer Control + Integration
Profit & Loss
July 2017**

John Clark
W. H. S. J.

Jul 17	
Ordinary Income/Expense	
Income	
Services	
70100 • Maintenance Income	63,347.67
70200 • Project Income	100,836.60
Total Services	163,983.07
70600 • Discounts given	-13.01
Total Income	163,970.06
Cost of Goods Sold	
50000 • *Cost of Goods Sold	
30240 • Sales - Meals & Entertainment	1,744.92
30230 • Sales - Lodging	2,123.26
30220 • Sales - Transportation	2,253.85
30510 • Sales - Parts Repair	1,927.00
30800 • Sales - Shipping/Freight	337.75
30500 • Sales - Parts	1,254.85
Total 50000 • *Cost of Goods Sold	9,641.62
Total COGS	9,641.62
Gross Profit	154,328.44
Expense	
40016 • Contract Labor	1,000.00
40020 • Janitorial Service	500.00
60010 • Salaries, Wages, Bonuses	76,053.63
60041 • Key Man Life Insurance	3,070.23
60045 • Medical Insurance	
70060 • Company Medical Insurance	7,360.67
60042 • Group 125 Plan Insurance	66.91
60045 • Medical Insurance - Other	428.34
Total 60045 • Medical Insurance	7,845.92
60240 • Meals and Entertainment	36.19
60640 • Dues & Subscriptions	66.93
60610 • Telephone	1,631.07
60870 • Office Supplies	130.74
60880 • Office Equipment Expense	127.10
60790 • Other Office Expenses	9.60
60810 • Utilities	1,117.92
60830 • Rent or Lease	4,060.75
60920 • Accounting Fees	7,360.00
60930 • Legal & Professional Fees	987.50
60950 • Bank Charges	240.00
Total Expense	104,827.38
Net Ordinary Income	49,601.08
Other Income/Expense	
Other Income	
90000 • Misc Income	28.00
80085 • Interest Earned	69.58
Total Other Income	97.58
Net Other Income	97.58
Net Income	49,598.64

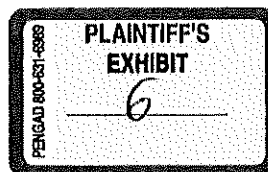


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08/08/17
Cash Basis

Computer Control + Integration
Profit & Loss
June 2017

Jim Clark
AW

	Jun 17
Ordinary Income/Expense	
Income	
Services	
70100 • Maintenance Income	77,287.49
70200 • Project Income	197,739.50
Total Services	275,026.99
70500 • Discounts given	-3.78
Total Income	275,023.21
Cost of Goods Sold	
50000 • Cost of Goods Sold	
30240 • Sales - Meals & Entertainment	1,285.36
30230 • Sales - Lodging	2,279.22
30220 • Sales - Transportation	3,986.07
30800 • Sales - Shipping/Freight	158.06
30600 • Sales - Parts	8,533.42
Total 50000 • Cost of Goods Sold	16,222.13
Total COGS	16,222.13
Gross Profit	258,801.08
Expense	
60630 • Stationery & Printing	128.86
19920 • Computer Software (Computer Software)	299.99
40016 • Contract Labor	3,335.80
40020 • Janitorial Service	250.00
60010 • Salaries, Wages, Bonus	2,408,861.76
60041 • Key Man Life Insurance	6,770.23
60045 • Medical Insurance	
60042 • Group 125 Plan Insurance	66.91
60045 • Medical Insurance - Other	7,782.53
Total 60045 • Medical Insurance	7,849.44
60220 • Transportation Expense	319.28
60520 • Conventions & Seminars	479.96
60540 • Dues & Subscriptions	744.60
60610 • Telephone	2,134.18
60640 • Computer Expense	261.60
60670 • Office Supplies	428.57
60660 • Postage/Shipping	7.96
60680 • Office Equipment Expense	728.24
60790 • Other Office Expenses	160.18
60830 • Rent or Lease	8,121.50
60950 • Bank Charges	32.00
Total Expense	2,499,900.24
Net Ordinary Income	-2,241,099.16
Other Income/Expense	
Other Income	
60090 • Dividends	8.80
60085 • Interest Earned	142.04
Total Other Income	150.84
Net Other Income	150.84
Net Income	-2,240,948.32



Form **1120**Department of the Treasury
Internal Revenue Service**U.S. Corporation Income Tax Return**

For calendar year 2016 or tax year

beginning **JULY 1, 2016**, ending **JUNE 30, 2017**

OMB No. 1545-0047

2016Information about Form 1120 and its separate instructions is at www.irs.gov/form1120.

- A Check if:**
- 1a Consolidated return (attach Form 990) ☐
- b 1041/1041-SSA consolidated return ☐
- 2 Personal holding company (attach Form 990) ☐
- 3 Foreign service corporation (see instructions) ☐
- 4 Schedule M-1 attached ☐

NAME
COMPUTER CONTROL + INTEGRATION, INC.

TYPE OR PRINT
Number, street, and room or suite no. If a P.O. box, see instructions.
1200 WOODRUFF ROAD, SUITE C39

City or town, state, or province, country, and ZIP or foreign postal code
GREENVILLE, SC 29607

B Employer identification number
[REDACTED]

C Date incorporated
06/30/1988

D Total assets (see instructions)
\$ **702,795.**

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

Income	1a Gross receipts or sales	1a	4,430,442.	10	4,430,442.
	b Returns and allowances	1b		2	625,859.
	c Balance. Subtract line 1b from line 1a			3	3,804,583.
	2 Cost of goods sold (attach Form 1125-A)			4	
	3 Gross profit. Subtract line 2 from line 1c			5	1,357.
	4 Dividends (Schedule C, line 19)		SEE STATEMENT 1	6	
	5 Interest			7	
	6 Gross rents			8	
	7 Gross royalties			9	
	8 Capital gain net income (attach Schedule D (Form 1120))			10	33,865.
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)		SEE STATEMENT 2	11	3,839,805.
10 Other income (attach statement)			12	2,550,379.	
11 Total income. Add lines 3 through 10			13	687,405.	
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (attach Form 1125-E)			14	170.
	13 Salaries and wages (less employment credits)			15	
	14 Repairs and maintenance			16	45,742.
	15 Bad debts			17	166,772.
	16 Rents			18	
	17 Taxes and licenses		SEE STATEMENT 3	19	160.
	18 Interest			20	6,366.
	19 Charitable contributions		SEE STATEMENT 4 AND SEE STATEMENT 5	21	
	20 Depreciation from Form 4562 not claimed on Form 1125-A or else. See instructions (attach Form 4562)			22	4,808.
	21 Depletion			23	
	22 Advertising			24	
23 Pension, profit-sharing, etc., plans			25		
24 Employee benefit programs			26		
25 Domestic production activities deduction (attach Form 990)			27	70,330.	
26 Other deductions (attach statement)		SEE STATEMENT 6	28	3,532,132.	
27 Total deductions. Add lines 12 through 26			29	307,673.	
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11			30	307,673.	
29a Not operating loss deduction (see instructions)	29a		31	103,243.	
b Special deductions (Schedule C, line 20)	29b		32	206,152.	
c Add lines 29a and 29b			33		
30 Taxable income. Subtract line 29c from line 28. See instructions			34	0.	
31 Total tax (Schedule J, Part I, line 11)			35	102,909.	
32 Total payments and refundable credits (Schedule J, Part II, line 21)			36	102,909.	
33 Estimated tax penalty. See instructions. Check if Form 2220 is attached					
34 Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed					
35 Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid					
36 Enter amount from line 35 you want: Credited to 2017 estimated tax					

Sign Here

Under penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ OTHER ☒ Yes ☐ No

Paid**Preparer****Use Only**

Print preparer's name
CANDACE MCMILLAN

Preparer's signature _____ Date _____

Firm's name **CHERRY BEKAERT LLP**

Firm's address **110 EAST COURT STREET, SUITE 500**

GREENVILLE, SC 29601

Check if self-employed ☐ EIN **[REDACTED]**

Phone no. **864-233-3981**

OMB 1545-0047

JWA For Paperwork Reduction Act Notice, see separate instructions.

Form 1120 (2016)



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.

CERTIFICATE OF SERVICE

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,

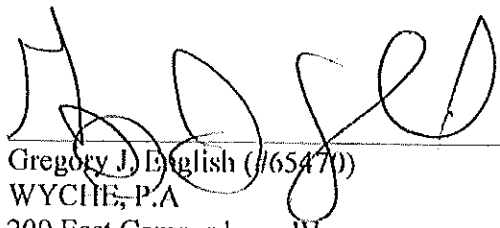
vs.

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

Counterclaim Defendant/Third Party
Defendant.

The undersigned hereby certifies that he caused the within and foregoing **PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT DECIDE4ACTION** in the above case to be served upon Defendant by hand delivery, addressed as follows:

Kimberly Thomason, Esq.
Devon Puriefoy, Esq.
Truluck Thomason, LLC
1011 East Washington Street
Greenville, SC 29601



Gregory J. English (#65470)
WYCHE, P.A.

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

Dated: September 30, 2020

APPOINTMENT OF SELLING PARTIES REPRESENTATIVE

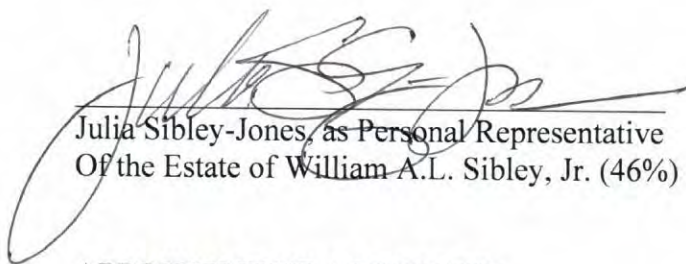
This Appointment of Selling Parties Representative is made this 20th day of July, 2021.

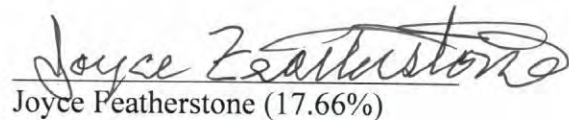
WHEREAS, the undersigned are the majority of the Ownership Percentage under that certain Contribution and Indemnification Agreement dated October 16, 2017 (the "Contribution Agreement"), between and among William A.L. Sibley, Jr., Joyce Featherstone, James T. Clark, Frank T. Starrett, Jr., Scott W. Dozier, and Robert E. Leviner (collectively, the "Sellers"); and

WHEREAS, the undersigned desire to appoint Julia Sibley-Jones as Selling Parties Representative under the Contribution Agreement;

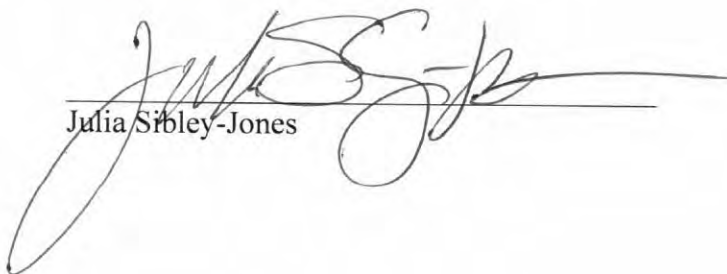
NOW THEREFORE, the undersigned hereby appoint Julia Sibley-Jones as Selling Parties Representative under the Contribution Agreement, and Julia Sibley-Jones hereby accepts such appointment.

WE AGREE:


Julia Sibley-Jones, as Personal Representative
Of the Estate of William A.L. Sibley, Jr. (46%)


Joyce Featherstone (17.66%)

APPOINTMENT ACCEPTED:


Julia Sibley-Jones



UNITED COMMUNITY BANK(405)
306 EAST NORTH STREET
GREENVILLE SC 29601

000 00065 03
ACCOUNT:
DOCUMENTS:

PAGE: 1
07/16/2021

TELEPHONE: 800-822-2651



WILLIAM A SIBLEY JR
UCB ESCROW AGENT
306 EAST NORTH ST
GREENVILLE SC 29601

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Keep tabs on your debit card purchases with Card Controls.
Fight fraud, control spending and review transactions all within the
palm of your hand. To learn more, visit ucbi.com/card-controls today.

PERSONAL IMMA ACCOUNT

MINIMUM BALANCE	443,831.73	LAST STATEMENT 06/15/21	443,831.73
AVG AVAILABLE BALANCE	443,831.73	1 CREDITS	37.70
AVERAGE BALANCE	443,831.73	DEBITS	.00
		THIS STATEMENT 07/16/21	443,869.43

DESCRIPTION	OTHER CREDITS	DATE	AMOUNT
INTEREST AT .1000 %		07/16	37.70

AVERAGE LEDGER BALANCE:	443,831.73	INTEREST EARNED:	37.70
AVERAGE AVAILABLE BALANCE:	443,831.73	DAYS IN PERIOD:	31
INTEREST PAID THIS PERIOD:	37.70	ANNUAL PERCENTAGE YIELD EARNED:	.10%
INTEREST PAID 2021:	406.56		

ITEMIZATION OF OVERDRAFT AND RETURNED ITEM FEES

	TOTAL FOR THIS PERIOD	TOTAL YEAR TO DATE
* TOTAL OVERDRAFT FEES:	\$.00	\$.00
* TOTAL RETURNED ITEM FEES:	\$.00	\$.00

*** CONTINUED ***



Demand Deposit [REDACTED] - **WILLIAM A SIBLEY JR**

	Relationship	Date of Birth	Phone Number	Tax Identification
+ WILLIAM A SIBLEY JR	Owner	*** ** / ****	*****	SSN ***-**-****
+ UCB ESCROW AGENT	Owner		*****	EIN **-*****
306 EAST NORTH ST GREENVILLE SC 29601				

Additional Relationships

Tax Name: WILLIAM A SIBLEY JR

See Mailing Information

Summary

Memo Ledger Balance:	\$443,869.43	Last Deposit Oct 19, 2017:	\$22,000.00
Memo Available Balance:	\$443,869.43	Date Opened:	Oct 11, 2017
Current Ledger Balance:	\$443,869.43		
Current Available Balance:	\$443,869.43		
Interest Balance:	\$10.94		
Current Statement Rate:	0.1000%		
Overdraft Limit:	\$0.00		
ATM/POS Overdraft Balance:	\$0.00		

Projected Float and Holds

Projected Date	Float	Reg CC Check Available Float	Reg CC Cash Available Float	Expiring Holds
Jul 26, 2021 Monday				
Jul 27, 2021 Tuesday				
Jul 28, 2021 Wednesday				
Jul 29, 2021 Thursday				
Jul 30, 2021 Friday				
Jul 31, 2021 Saturday				
Aug 01, 2021 Sunday				
Aug 02, 2021 Monday				
Aug 03, 2021 Tuesday				
Aug 04, 2021 Wednesday				

Interest

Current Accrued Interest:	\$10.94	Deposit Rate Index:	[79] UNITED MONEY MARKET
Date Accrued Through:	Jul 25, 2021	Rate Adjuster Option:	Rate Adjuster Is Not Expressed as a Percentage Variance Simple
Current Effective Rate:	0.1000%	Compounding Code:	
Days Into This Period:	9	Interest Cycle:	[41] 11th Business Day
Previous Accrued Interest:	\$7.30	Interest Reporting Code:	Reportable
Last Interest Jul 16, 2021:	\$37.70	Withholding Code:	No Withholding
Balance Last Interest:	\$443,869.43		

Rate

Date	Balance Type	Rate Structure	Rate	Tier Amount	Rate

Date	Balance Type	Rate Structure	Rate	Tier Amount	Rate
Jul 17, 2021	Available	[1] Tiered Rate	0.0500%	\$10,000.00	0.0500%
				\$50,000.00	0.0500%
				\$100,000.00	0.1000%
				\$250,000.00	0.1000%
				\$500,000.00	0.1000%
				\$1,000,000.00	0.1000%

Service Charge

Date Last Service Charge:	Jul 16, 2021	Service Charge Cycle:	[41] 11th Business Day
Average Ledger Balance:	\$443,869.43	DDA Credit Back Identification:	0
Average Available Balance:	\$443,869.43	Waiver Service Charge Code:	[0]
Days Into This Period:	9	Waiver Sales Tax:	Assess Sales Tax
Date Minimum Balance:	Jul 19, 2021		
Minimum Balance:	\$443,869.43		
Amount of Cash In:	\$0.00		
Amount of Cash Out:	\$0.00		

Charge

ATM Charge Option:	Charge	Dormant Charge Code:	0
EIM Charge Option:	Charge	Waiver Overdraft Charge Code:	[0]
Other Charge Option:	Charge	Waiver Overdraft Interest Code:	[0]
Other Non-Taxable Charge Option:	Charge	Waiver FDIC Insurance Charge Code:	[0]
Fee Charge Option:	Charge	Waiver Sales Tax:	Assess Sales Tax
BPM Charge Code:	0		
EIM NSF Force Override:	EIM NSF Specifications		
EIM Charge Back Notice Detail:	One Notice - Current Balance		
EIM Exception Code:	0		

Subject: Re: QB Data Backup

From: "Bill Sibley" <bill@ccplusi.com>

Sent: 5/3/2017 9:17:45 AM

To: "Tim Clark" <timc@ccplusi.com>; "rbergeron@lucendacomponents.com" <rbergeron@lucendacomponents.com>;

CC: "'Don Sawyer'" <dsawyer@generational.com>; "Scott Dozier" <scottd@ccplusi.com>; "'Dan Calton'" <dan@caltoncpa.com>;

Richard,
We will begin working on this right away.
Thanks,
Bill Sibley

From: Richard Bergeron <rbergeron@lucendacomponents.com>

Sent: Tuesday, May 2, 2017 12:37:53 PM

To: Tim Clark

Cc: 'Don Sawyer'; Bill Sibley; Scott Dozier; 'Dan Calton'

Subject: RE: QB Data Backup

Tim, can we get the Owner's salaries per person for the following year:

2017 (9 first month)

2016

2015

2014

2013

We need this to see what it the amount of salary that Was not recasted so we can see if the salary was market competitive. For year 2016 I need it per your scenario 1 (Most conservative).

This is quite urgent. I have included Dan Calton which is doing the Due Diligence, please keep him CC.

BTW I have not received ANY documents yet including the QB file.

Regards,

Richard Bergeron
Lucenda Components Inc.
4016 Messina Dr.





ary, FL, 32746
(321) 230-6331
rbergeron@lucendacomponents.com

The inform
confidential

this communication and all accompanying documents from Lucenda Components Inc. may be
privileged, and is intended only for the use of the recipient(s) named above. If you are not the intended
recipient you are hereby notified that any review, disclosure, copying, distribution or the taking of any action in reliance on the contents
of this transmitted information is strictly prohibited. If you have received this communication in error, please return it to the sender
immediately and destroy the original message or accompanying materials and any copy thereof. If you have any questions
concerning this message, please contact the sender.

From: Tim Clark [<mailto:timc@ccplusi.com>]
Sent: Monday, May 1, 2017 7:16 PM
To: rbergeron@lucendacomponents.com
Cc: Don Sawyer; Bill Sibley; Scott Dozier
Subject: Re: QB Data Backup

Richard - I can email the file directly to you if you'd like.

Thanks,

Tim Clark
CC+I, Inc.
(864) 458-7587 x105 Office
(864) 979-6794. Mobile

Sent From My iPhone

On May 1, 2017, at 4:58 PM, Richard Bergeron <rbergeron@lucendacomponents.com> wrote:

Don, I assume you will send me a link to the dataroom?

<image002.jpg>Richard Bergeron
Lucenda Components Inc.
4016 Messina Dr.
Lake Mary, FL, 32746
Phone: (321) 230-6331
rbergeron@lucendacomponents.com

The information contained in this communication and all accompanying documents from Lucenda Components Inc.
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are not the intended recipient you are hereby notified that any review, disclosure, copying, distribution or the taking of
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communication in error, please return it to the sender immediately and destroy the original message or
accompanying materials and any copy thereof. If you have any questions concerning this message, please contact
the sender.

From: Tim Clark [<mailto:timc@ccplusi.com>]
Sent: Monday, May 1, 2017 4:15 PM
To: rbergeron@lucendacomponents.com
Cc: Don Sawyer; Bill Sibley; Scott Dozier
Subject: QB Data Backup

Hi Richard,

Kimberly uploaded the QuickBooks data backup this afternoon. She said that she did not think that it is password protected, but if it is use :

OkmIjnUhb1362*

Please let me know if you are able to work with it.

Thanks,

Tim Clark

CC+I, Inc.

(864) 458-7587 x105 Office

(864) 979-6794. Mobile



Virus-free. www.avast.com

Subject: Requested Payroll History
From: "Bill Sibley" <bill@ccplusi.com>
Sent: 5/7/2017 7:19:55 PM
To: "Richard Bergeron" <rbergeron@lucendacomponents.com>;
CC: "Don Sawyer" <dsawyer@generational.com>; "Tim Clark" <timc@ccplusi.com>; "Scott Dozier" <scottd@ccplusi.com>; "Dan Calton" <dan@caltoncpa.com>;

Attachments: Owners Salaries 1.xlsx

Richard,
I hope this gives you the detail data you need.
Thanks,
Bill Sibley

	CC-H Fiscal 2017 as of 4/28/2017		CC-H Fiscal 2016		CC-H Fiscal 2015		CC-H Fiscal 2014		CC-H Fiscal 2013	
	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus	Annual Salary	Bonus
OWNERS:										
Clark, James T.	\$125,000		\$150,000	\$100,000	\$150,000	\$75,000	\$106,703	\$0	\$97,811	\$0
Dozier, Scott W.	\$86,249		\$103,888	\$100,000	\$100,200	\$75,000	\$77,000	\$0	\$70,583	\$0
Leviner, Robert E.	\$33,412	(*)	\$60,141	\$20,000	\$80,188	\$30,000	\$71,597	\$0	\$64,447	\$0
Sibley Jr, William A. L.	\$125,000		\$150,000	\$80,000	\$150,000	\$65,000	\$162,917	\$0	\$57,500	\$0
Starrett, Frank T.	\$76,934		\$92,321	\$45,000	\$92,321	\$45,000	\$83,921	\$0	\$76,928	\$0
Featherstone, Ernest H.	\$12,000	(**)	\$24,000	\$0	\$24,000	\$0	\$24,000	\$0	\$91,667	\$0

NOTES:

(*) Began Working Half Time

(**) Deceased December 2016

NON-OWNERS:

Lahti, Diane E.										
Morrow, Hollie A.	\$28,225		\$37,500	\$0	\$34,375	\$0	\$7,731	\$0	\$14,241	\$0
Childress, William C.			\$0	\$0	\$44,275	\$0	\$7,497	\$0		
Taylor, Joseph B.	\$38,333		\$46,000	\$15,000	\$43,000	\$0	\$1,667	\$0		
Date of Hire										
Hermann, Nathan D.	\$52,905		\$59,382	\$15,000						
Date of Hire --- July 2015										
Viveros, Carlos A.	\$62,028		\$21,863	\$5,000						
Date of Hire --- Mar. 2016										
Clark, Ryan O.	\$24,904									
Date of Hire --- Oct. 2016										
Jones, Christopher L.	\$23,750									
Date of Hire --- Oct. 2016										
Pavatte, Justin D.	\$18,333									
Date of Hire --- Jan. 2017										

Terms of Employment Amendment

June 26, 2017

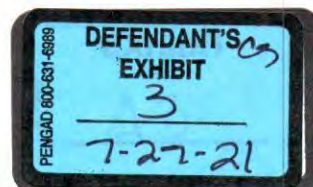
Justin Pavatte

Annual salary to start = \$70,000

Justin began employment with CC+I in February 2017 at an annual salary rate of \$70,000 with the understanding that in 6 months there would be a mutual evaluation. If both parties approved, the employment would continue and Justin's salary rate would be increased to \$75,000 annually. On or about July 31, 2017, Justin will receive a review and the evaluation will determine whether an increase of his annual salary rate will be \$75,000.

In addition to this possible salary increase in August, on June 30, 2017 Justin will receive a bonus this year equal to his present annual salary — namely, \$70,000. CC+I has been dramatically blessed with profitable business during our just completed fiscal year — ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by our CC+I team of associates. The company directors — Bill, Tim and Scott — thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you — a really good associate — while at the same time we challenge each of us to actively work to achieve a "repeat" performance this coming fiscal year.

Unless you inform Bill by Tuesday noon (June 27th) to ask our payroll service to make a change in your income tax withholding, we will assume you will be happy for them to use the regular rate they are now using as shown on your W-4 form. Also, please remember that you can change your income tax withholding rate at any and every payroll event (monthly).



CC+I Bonus Results for Fiscal 2017

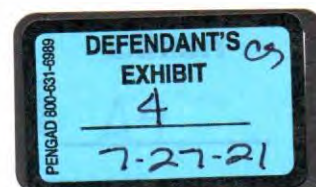
June 26, 2017

Ryan Clark

Annual salary = \$50,000

It is with great pleasure that we announce that on June 30, 2017 Ryan will receive a bonus this year equal to his present annual salary --- namely, \$50,000. CC+I has been dramatically blessed with profitable business during our just completed fiscal year --- ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by our CC+I team of associates. The company directors --- Bill, Tim and Scott --- thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you --- a really good associate --- while at the same time we challenge each of us to actively work to achieve a "repeat" performance this coming fiscal year.

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CC+I Bonus Results for Fiscal 2017

June 26, 2017

Christopher Jones

Annual salary = \$45,000

It is with great pleasure that we announce that on June 30, 2017 Chris will receive a bonus this year equal to his present annual salary --- namely, \$45,000. CC+I has been dramatically blessed with profitable business during our just completed fiscal year --- ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by our CC+I team of associates. The company directors --- Bill, Tim and Scott --- thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you --- a really good associate --- while at the same time we challenge each of us to actively work to achieve a "repeat" performance this coming fiscal year.

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CC+I Bonus Results for Fiscal 2017

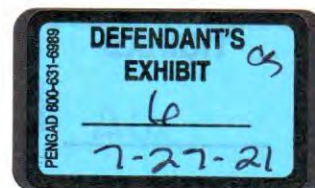
June 26, 2017

Carlos Viveros

Annual salary = \$75,000

It is with great pleasure that we announce that on June 30, 2017 Carlos will receive a bonus this year equal to his present annual salary --- namely, \$75,000. CC+I has been dramatically blessed with profitable business during our just completed fiscal year --- ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by our CC+I team of associates. The company directors --- Bill, Tim and Scott --- thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you --- a really good associate --- while at the same time we challenge each of us to actively work to achieve a "repeat" performance this coming fiscal year.

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CC+I Bonus Results for Fiscal 2017

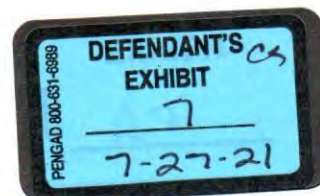
June 26, 2017

Joseph Taylor

Annual salary = \$46,000

It is with great pleasure that we announce that on June 30, 2017 Joseph will receive a bonus this year equal to his present annual salary --- namely, \$46,000. CC+I has been dramatically blessed with profitable business during our just completed fiscal year --- ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by our CC+I team of associates. The company directors --- Bill, Tim and Scott --- thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you --- a really good associate --- while at the same time we challenge each of us to actively work to achieve a "repeat" performance this coming fiscal year.

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CC+I Bonus Results for Fiscal 2017

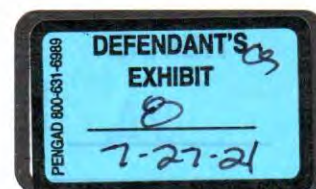
June 26, 2017

Nathan Herrmann

Annual salary = \$63,874

It is with great pleasure that we announce that on June 30, 2017 Nathan will receive a bonus this year equal to his present annual salary --- namely, \$63,874. CC+I has been dramatically blessed with profitable business during our just completed fiscal year --- ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by our CC+I team of associates. The company directors --- Bill, Tim and Scott --- thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you --- a really good associate --- while at the same time we challenge each of us to actively work to achieve a "repeat" performance this coming fiscal year.

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Terms of Employment

June 22, 2017

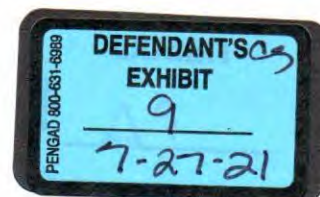
Kimberly French

Annual salary to start = \$37,500

Kimberly began employment with a temp agency at an annual salary rate of \$37,500. She was hired as a permanent employee by CC+I on May 15, 2017 at that same salary rate. As of July 1, 2017, Kimberly will receive an increase so that her annual salary rate will be \$40,000. In addition to this salary increase, Kimberly will receive a \$10,000 bonus on June 30, 2017. CC+I has been dramatically blessed with profitable business during our just completed fiscal year --- ending June 30, 2017. This bonus is in response to this very profitable year and the outstanding work put forth by the CC+I team of associates. The company directors --- Bill, Tim and Scott --- thank you for the extra effort you have contributed to make our year so successful. The amount of the bonus varies from year-to-year depending on company profitability and the effort put forth by each associate. We are happy to share the results of a really good year with you --- a really good associate.

Additionally, CC+I will pay one half of Kimberly's monthly medical insurance premium. Kimberly will pay the other half of the monthly premium by having it withheld from her monthly payroll direct deposit.

Kimberly is entitled to two (2) weeks of vacation during her first 12 months of employment. Since Kimberly started working May 15th, she is entitled to 62.5% of 2 weeks (10 work days) or 6.25 vacation days for the remainder of calendar year 2017. Additionally, Kimberly is entitled to the last nine (9) of the company's holidays starting with Easter 2017.



1 State of South Carolina Court of Common Pleas
 2 County of Greenville Case No: 2019-CP-23-02032
 3

4 William A.L. Sibley, Jr.,
 5 Plaintiff(s),

6 -VS-

7 Decide4action, Inc.,
 8 Defendant(s).



9
 10 Decide4action, Inc.,
 11 Counterclaimant/
 12 Third Party Plaintiff,

13 Vs

14 William A.L. Sibley, Jr., and
 15 Joyce Featherstone,
 16 Counterclaim Defendant/
 17 Third Party Defendant,

18
 19 **30 (b) (6) DEPOSITION OF RICHARD BERGERON**
 20

21 Pursuant to Notice of Deposition and/or Agreement
 22 in the above-entitled case, the above deposition was
 23 taken on the 29th day of September 2020, commencing at
 24 10:00 a.m.
 25

DEPOSITIONS AND..., INC.

(864) 585-0642



1 APPEARANCES,

2

3 FOR THE PLAINTIFF:

4 **GREGORY J. ENGLISH, ESQ.**
5 Wyche, P.A.
6 200 East Camperdown Way
7 Greenville, SC 29602
8 (864)242-8200

7

8 FOR THE DEFENDANT:

9 **DEVON PURIEFOY, ESQ.**
10 Truluck Thomason, LLC
11 3 Boyce Avenue
12 Greenville, SC 29601
13 (864)331-1751

12

13 ALSO PRESENT: MS. SIBLEY-JONES
14 JOYCE FEATHERSTONE

14

15

16

17

18 DEPOSITION REPORTED BY: PAMELA F. GREEN
19 DEPOSITIONS AND..., INC.
20 (864) 585-0642

20

21

22

23

24

25

1 So it would have lowered the value of the
2 company, and I would not have proceeded with
3 the deal. I would stop right there.

4 **Q.** Now, if you look in the middle of that paragraph
5 below amount of pending claims, it says "Buyer,"
6 which is Decide4action, "alleges that as a
7 result of the payment of those undisclosed
8 bonuses, the non-owner employees elected to
9 leave the company when these were not matched by
10 the buyer," Decide4action, "in 2018."

11 Is that right?

12 **A.** Yeah.

13 **Q.** Which employees do you claim left the company
14 when Decide4action did not match the bonuses?

15 **A.** Justin Pavatte left. Joe Ryan left. Nathan
16 Herrmann left. Kimberly French was good so I
17 elected to given her a bonus anyway. That's
18 about it. So three out of five employees.

19 **Q.** Now it says that the calculation of damages is
20 included as Exhibit A. If you look at the last
21 page of Plaintiff's Exhibit 10, were these the
22 damage calculations that Decide4action gave to
23 United Community Bank?

24 **A.** Yes.

25 **Q.** It looks like you've talked before about the

1 salaries and bonuses being three hundred fifty
2 thousand dollars, but if you look in the middle
3 of the page it looks like there's a twenty-five
4 hundred dollar salary for Kimberly French,
5 right?

6 **A.** Yeah, you're right. It was not five thousand.
7 It was twenty-five hundred.

8 **Q.** Are you claiming that a twenty-five hundred
9 dollar raise to Kimberly French was outside the
10 ordinary course of business?

11 **A.** I told you I don't know. Whatever they did,
12 what's the normal article expected rates. Now,
13 I'll be honest with you. If the twenty-five
14 hundred dollars was the reason, there wouldn't
15 be a reason for us to be here. It's probably
16 outside the ordinary course of business but it's
17 not significant.

18 **Q.** And then the bonuses that you are complaining
19 about to UCB looks like they total about three
20 hundred and twenty-five thousand; is that right?

21 **A.** It looks like it's two hundred fifty-nine eighty
22 seventy-four.

23 **Q.** I'm just talking about the amount of the bonuses
24 themselves?

25 **A.** That column here is two hundred fifty-nine. The

1 total is that that wasn't an impression, that he
2 had given thirty-five. Was it right or wrong?
3 That's what he told me verbally.

4 Was I right, I don't know, but I give them
5 credit for what I thought. I thought it was
6 the honest thing to do. They give them three
7 hundred fifty-nine thousand dollars in bonuses.

8 Q. I'm trying to understand your calculation. If
9 you look back up at the top there is a
10 calculation of EBITDA, which is earnings before
11 interest, taxes, depreciation and amortization;
12 is that right?

13 A. Yes.

14 Q. It says EBITDA, CCI, was one million one hundred
15 and seventy-three thousand, and there's a
16 reference to page four.

17 Page four of what?

18 A. Page four of the sellers issue offering
19 memorandum.

20 Q. So that was a document that you looked at before
21 you issued the Letter of Intent and before the
22 Stock Purchase Agreement was signed; is that
23 right?

24 A. Yes.

25 Q. Then it looks like you divided the purchase

1 price of four point four million dollars by that
2 EBITDA and got an EBITDA multiple of three point
3 seven five; is that right?

4 **A.** No.

5 **Q.** Where did you get the multiple?

6 **A.** That's what we had agreed before --the very
7 second meeting we had, the seller represented
8 EBITDA was one million one hundred
9 seventy-three. For type and size of company
10 that we had, we agreed it was somewhere between
11 three point five and four by EBITDA. That's how
12 the purchase price was calculated. The three
13 point seven five is not coming from the purchase
14 price. The purchase price is coming from the
15 multiple.

16 **Q.** But regardless, if you divide the purchase price
17 of four point four million dollars by the EBITDA
18 number, you believe one point one seven three
19 million, that gives you gives you an EBITDA
20 multiple of three point seven five, right?

21 **A.** It does, right.

22 **Q.** And then you subtracted the twenty-five hundred
23 dollar salary and these bonuses along with
24 payroll taxes from the EBITDA to come up from
25 the one point one seven three to come up with a

1 new EBITDA number; is that right?

2 A. With a potential number, yeah.

3 Q. That was what you called actual EBITDA of eight
4 hundred and twenty-two thousand; is that right?

5 A. Yeah.

6 Q. Then you multiplied that earnings number times
7 the three point seven five multiple and came up
8 with a claim for the reduction of the company
9 value of one point three million dollars; is
10 that right?

11 A. An estimate of what a claim would be, but that's
12 not the claim. That's not a claim. This letter
13 was a request to add the escrow and the claim is
14 in the lawsuit.

15 Q. That is the claim that was made to UCB?

16 A. No, no claim was made to UCB. We cannot make a
17 claim to UCB. The only thing we can take to UCB
18 is hold the escrow, and that's what we did.

19 Q. That was the pending claim that was described to
20 UCB in order to have them hold the escrow,
21 right?

22 A. They would not hold it unless we would give them
23 an idea that this was not a twenty thousand
24 dollars claim, for instance.

25 (Plaintiff's Exhibit 11 marked.)

1 BY MR. ENGLISH:

2 Q. Let me show what we've marked as Plaintiff's
3 Exhibit 11. Have you seen this copy of my
4 letter to UCB dated October 30th, 2018?

5 A. Yes, I did.

6 Q. Did you read the affidavits from the three
7 employees that you claim had left because they
8 did not receive a bonus?

9 A. Of course I did.

10 Q. And did you read these affidavits that they left
11 the employment of CCI not because they didn't
12 receive a bonus, but because they didn't enjoy
13 working with you?

14 A. That's not what they say when they left. They
15 only say that after they were told what to write
16 by you. When they left -- Justin, he left
17 because he couldn't work with Scott Dozier.

18 Nathan Herrmann left because his wife
19 wanted to work with Kemet again.

20 Joe say that he left because he found a
21 better job somewhere else.

22 That's what they told me when they
23 resigned. I had no reason to believe they were
24 lying.

25 After we had the discussion, there was

1 discussion between the three of them and they
2 changed their story. We read those affidavits
3 as coming from you to us, and they're all the
4 same exact affidavit. I could be wrong but you
5 asked my opinion. That's my opinion.

6 Q. You did not believe these affidavits that these
7 three employees signed?

8 A. That's not what they say when they left.

9 Q. So does that mean that you didn't believe the
10 affidavits they signed?

11 BY MR. PURIEFOY:

12 Object to the form.

13 BY THE WITNESS:

14 So was it taken out of context? Was a part of
15 not liking to work with me? Absolutely, I
16 believe that. I believe they did not like to
17 work with me, and there's a lot of reasons why
18 they would not have liked to work with me.

19 Those guys were not hired for the -- they
20 advertised themselves as software designers.
21 All three of them, they really were not
22 software designers. They go from site to site
23 installing equipment. We ask them to write
24 code. Their ability was really, really low.
25 So they couldn't do the job they were supposed

1 to do.

2 Of course, when somebody asks you to do a
3 job that you can't do because the sales were
4 really low, then of course they didn't like
5 working with me because I asked them to do a
6 job they couldn't do. Of course they didn't
7 like it.

8 Did they leave because of that, I don't
9 know. Is what they told me? No. So which one
10 is it? I'm not the one to make the decision
11 here.

12 Q. It sounds like it was good for CCI that these
13 employees left because they couldn't do the job
14 you wanted them to do, right?

15 A. You're telling me that because the employees
16 that were there were no good and were paid twice
17 what they should have been to begin with. It's
18 not good. You basically have somebody that
19 doesn't have the assets that he's supposed to
20 have.

21 Now, if you sell a brand new car and it
22 turned out to be an old car that doesn't work
23 and you had to get rid of it, it is good to get
24 rid of it, but it is not good that the value of
25 company wasn't what it was, I had to rebuild

1 from scratch. That's why we had two years that
2 was really, really tough, that our survival was
3 in question.

4 I don't know if it was by design that they
5 couldn't do the job. They had to get a job
6 done. They found people quickly that could do
7 that. Then the real job they were supposed to,
8 they just weren't capable of doing it.

9 Q. Let me show you what we're marking as
10 Plaintiff's Exhibit 12.

11 (Plaintiff's Exhibit 12 marked.)

12 BY MR. ENGLISH:

13 Q. Is it true that despite my letter and the
14 employee affidavits that Decide4action refused
15 to allow UCB to release the escrow to the
16 shareholders?

17 A. Now, December 13, at that time there was a
18 lawsuit.

19 Q. It was not until 2019.

20 A. Yeah. We choose not to do it until that whole
21 issue was resolved.

22 Q. So is Decide4action claiming different damages
23 in this case than it notified the escrow agent
24 of?

25 A. Yes.

1 Q. What damages is Decide4action claiming in this
2 case?

3 A. In my opinion I don't think they've fully made
4 determination of damages. The first portion of
5 the damages was a lower value claims you're not
6 showing that, but we did to make our claim.
7 There's a report prepared with the new numbers
8 by Patton Associates. The only way to value a
9 company is with an expert. Those people looked
10 at the company with the number provided by the
11 seller, and they valued after with the number
12 that should have been provided by the seller. A
13 big portion of the difference in value is the
14 difference in value between the two reports
15 which you have received as part of disclosure I
16 believe.

17 Q. So you're saying that the Decide4action's
18 damages is the value determined by Patton &
19 Associates?

20 A. The loss of value.

21 Q. The loss of value based on Patton & Associates
22 different calculations?

23 BY MR. PURIEFOY:

24 Object to the form. You can answer.
25

1 BY THE WITNESS:

2 Yes, it's part of the claim. I'm not a lawyer.
3 I think there's some others that would go over
4 and beyond that, but that's a big portion of
5 the claim.

6 (Plaintiff's Exhibit 13 marked.)

7 BY MR. ENGLISH:

8 Q. Is this the new Patton & Associates' report that
9 you were referencing that we marked as Exhibit
10 13?

11 A. Yes, it is.

12 Q. If you'll look on the first page of Plaintiff's
13 Exhibit 13, the third full paragraph. This is a
14 letter to you dated December 27, 2018; is that
15 right?

16 A. September.

17 Q. September 27, 2018?

18 A. Yes.

19 Q. So you had this before I sent the letter on
20 behalf of the selling shareholders to United
21 Community Bank?

22 A. I believe so.

23 Q. Did you ever provide this report to UCB?

24 A. No.

25 Q. If you look at the third paragraph of this

1 letter, and this is written by Kurt Tobin at
2 Patton & Associates?

3 **A.** Yeah.

4 **Q.** Mr. Tobin writes in the third paragraph "We have
5 taken your representation of significant
6 increase in payroll cost due to
7 misrepresentation by the sellers of CCI and have
8 integrated these assumed increases to payroll
9 cost into our analysis. We were not engaged to
10 prepare due diligence."

11 You didn't have Patton & Associates
12 actually do any due diligence, did you?

13 **A.** Well, that's hard to tell the definition of due
14 diligence because are they part of due
15 diligence, or are they not. According to the
16 SPA I think they are part of the due diligence,
17 but I don't know.

18 **Q.** Mr. Tobin says "We were not engaged to prepare
19 due diligence," right?

20 **A.** That's what he says, but his report was part of
21 due diligence. So I don't know.

22 **Q.** Now where he says "We have taken your
23 representation of significant increase in
24 payroll cost," what was your representation of
25 significant increase in payroll cost?

1 **A.** It was the three hundred fifty-nine thousand
2 dollars in bonuses and the twenty-five hundred.
3 The direct numbers.

4 **Q.** So you gave Patton & Associates the three
5 hundred and fifty-nine thousand dollar bonus
6 number plus the twenty-five hundred dollars pay
7 raise to Ms. French?

8 **A.** Yes.

9 **Q.** Now, before your --

10 **A.** I don't think I give them the twenty-five
11 hundred dollars. I'll have to take a look.

12 **Q.** Now, I compared the two Patton reports and I'll
13 ask you to do the same. If you'll look back at
14 Plaintiff's Exhibit 4 and compare it with
15 Plaintiff's Exhibit 13, it looks like to me the
16 change occurs on page 28?

17 **A.** Maybe.

18 **Q.** It shows whereas the first Patton report,
19 Plaintiff's Exhibit 4, shows a margin of
20 twenty-seven point seven percent. The new
21 Patton report shows a margin of twenty point
22 four percent which reduces net cash flow from
23 eight hundred and fifty-three thousand to six
24 hundred and twenty-seven thousand; is that
25 right?

1 **A.** That's one of the changes.

2 **Q.** Is that the change on which the Patton valuation
3 is based upon?

4 **A.** I don't know. They have like three or four
5 different methods in there.

6 **Q.** They just relied on the income method, right?

7 **A.** I don't know.

8 **Q.** Now, you'll see that Patton & Associates' new
9 report, Plaintiff's Exhibit 13, has the year
10 ending March of 2018 but CCI's year ends June of
11 2000 (sic), correct, instead of March?

12 **A.** In the original report.

13 **Q.** No, in the new report?

14 **A.** It says March.

15 **Q.** But that should be June, right?

16 **A.** I don' know. I don't think -- you're assuming
17 an error from their part. I don't think that is
18 one. This is a thirty-page report and you're
19 trying to read it as if you and I knew how to
20 read it. There's a reason why we hire those
21 people to do that work for us because we don't
22 understand it. I'm not going to start picking
23 and choosing which one I believe.

24 **Q.** You don't have an opinion on what the right
25 number is?

1 BY MR. PURIEFOY:

2 Object to the form.

3 BY THE WITNESS:

4 I don't have an exact opinion, no.

5 BY MR. ENGLISH:

6 Q. This calculation of value in the Patton report
7 that you're relying on for damages claimed in
8 this lawsuit begins with the year ending for CCI
9 in 2018, right?

10 A. Huh?

11 Q. If you look on page 28 on the new Patton report,
12 Plaintiff's Exhibit 13, page 28?

13 A. Okay.

14 Q. The bonuses that you're complaining about were
15 paid in 2017, right?

16 A. Yes.

17 Q. You did not pay for those same bonuses in 2018
18 after you bought the company, did you?

19 A. No, I did not.

20 Q. And in fact three of those employees left during
21 2018, right?

22 A. Yeah, '18.

23 Q. So you had Patton Associates do a calculation
24 based on an assumption that three hundred and
25 sixty thousand dollars would be paid in bonuses

1 in 2018 even though they were not, correct?

2 **A.** No, I don't think so. I don't think so. You
3 have to read the whole report to see what they
4 considered. I got a professional to do the
5 valuation to know what the difference.

6 **Q.** Did you provide Patton & Associates for their
7 new report the actual numbers for CCI's fiscal
8 year ending June 30, 2018?

9 **A.** I don't think so. All I ever provided them was
10 the difference in bonuses.

11 **Q.** What was CCI's actual revenue and profit margin
12 in 2018?

13 **A.** I don't know that off the top of my head.

14 **Q.** So you don't know whether Patton & Associates'
15 new report is based on accurate calculations?

16 BY MR. PURIEFOY:

17 Object to the form.

18 BY THE WITNESS:

19 I'm sure it is. You're asking for
20 interpretation of a thirty-five-page report.
21 You asked me detail about how they calculate
22 everything without access to numbers or
23 anything. Of course I cannot make a valid
24 opinion about that. It is based on actual
25 reliable figure, but I don't remember offhand

1 exactly what it is.

2 Q. This may be a good time for the lunch break.
3 (Lunch break was taken.)

4 BY MR. ENGLISH:

5 Q. Mr. Bergeron, we're back on the record.

6 Did you discuss your testimony during the
7 break.

8 A. No.

9 Q. I want you to compare again Plaintiff's 4 which
10 is the Patton & Associates Valuation and before
11 you say you learned of the bonuses, and
12 Plaintiff's Exhibit 13 which is the one we
13 obtained on September 27, 2018.

14 On page 28 of both, that is the chart
15 below that says Calculation of Value.

16 A. Okay.

17 Q. If you look at the projected net cash flow, it
18 looks like beginning in 2018 and for each year
19 thereafter cash flow is projected to be several
20 hundred thousand dollars lower; is that right?

21 A. Yeah.

22 Q. Is that because you told Patton & Associates to
23 assume that you would have to pay those bonuses
24 every year in the future?

25 A. No. That's because in the first report, I don't

1 know where they do that but they told me they
2 did that, they had taken the amount of bonuses
3 that was paid and removed the bonus because it
4 was thought it was just only bonus. So it
5 include the value of the first bonus because
6 owner bonus was supposed to be only bonus. They
7 took them out. They couldn't do that. How it
8 works, I can't tell you that.

9 Basically the bonus owners were cleared
10 out. All the bonuses of the company was gone.
11 That was not a true situation. The numbers --
12 basically this is with the numbers without the
13 declaring the bonus. This is the number with
14 declaring the bonus.

15 Now, it's twenty-eight pages long. You
16 can pick it apart but there's a reason why they
17 didn't take my word for valuation, professional
18 valuation.

19 Now you're asking me my opinion. Yes, I
20 have a limited opinion, but that's not my
21 opinion about the valuation that counts.

22 Q. My question was, isn't it true that the new
23 valuation assumes lower cash flow every year
24 from 2018 to 2019 to 2020 on into the future?

25 A. Did you listen to what I just say? I said no to

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Jun 02 2022

CERTIFICATE OF COUNSEL

SC Court of Appeals

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

s/Howard W. Anderson III

Howard W. Anderson III

(#100329)

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. Sibley, Jr.

Respondent-Appellant,

v.

DECIDE4ACTION, INC.,

Appellant-Respondent.

Proof of Service

I hereby certify that I sent a copy of the Record on Appeal (Volumes I and II)
and this Proof of Service to the following counsel at their email addresses of record
this 2nd day of June, 2022 and mailed a copy of the same to the following:

Gregory J. English
James E. Cox, Jr.
WYCHE, P.A.
200 E. Broad St., Suite 400
PO Box 728
Greenville, SC 29602

genglish@wyche.com
jcox@wyche.com

Dated this 2nd day of June, 2022.

Respectfully submitted,

s/Devon M. Puriefoy
Devon M. Puriefoy
(#102097)

TRULUCK THOMASON, LLC
3 Boyce Ave.
Greenville, SC 29601
howard@truluckthomason.com
864-331-1751 (p)

Counsel for Decide4Action, Inc.