upon these representations, including those representations that payments had in fact been made. Consequently, the B&CB was injured. The B&CB was required to re-solicit bids for software vendors at its inconvenience, time, and expense; the record shows that New Venue knew that the B&CB expected vendors to be paid within three days of receipt by New Venue of payment for software. Moreover, the record shows that New Venue knew that payments were not being made within three business days. In some cases, payments were received by New Venue and orders were not even placed, although New Venue told ITMO, the PPUs, and the software resellers no such situation had occurred. The record shows that the amounts that were not remitted to software vendors were material. The record shows that New Venue allowed PPUs to continue to place orders for software and pay for that software, all while falsely indicating that orders had been placed. New Venue's clear intention was for the B&CB to continue to act on its ignorant belief that New Venue was acting in accordance with the contract terms. The B&CB is allowed to rely upon a contractor's assertions as a party to the contract. All of this was to the detriment and injury of B&CB.

Damages

The primary purpose of this contract was to maintain information about the software inventory and make it available to each PPU as it applies to that PPU, and to ITMO as it applies to a specific PPU or the State as a whole.

New Venue processed approximately $28,393,436.01 in net sales through the SAM and was contractually entitled to 2% or $567,868.72, as a fee for performing the primary purpose of the contract.

Section 11-35-4320 of the Code of Laws of South Carolina allows the CPO to award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law. While the contract does not specifically address "disgorgement" or "damages," the South Carolina Supreme Court has held that:

> Exemplary or punitive damages go to plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others...Punitive damages have now come, however, to be generally, though not universally, regarded, not only as a punishment for wrong, but as vindication of private right.

Smith v. Widener, 397 SC 468, 724 SE 2d 188 (2012). There are also the Mitchell guideposts to consider: (1) the reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm to the plaintiff and the amount of the punitive damage award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. See, Mitchell v. Fortis, 385 SC 570, 686 SE 2d 176 (2009).

Not only did New Venue breach the contract in its performance, it failed to meet the primary objective of the contract for which it was paid. Because neither ITMO nor the PPUs ever received the ability to track or monitor software licenses, they received no benefit from New Venue's performance of this contract and New Venue is not entitled to the fee it received.

New Venue testified that the cost of ownership was $715,550.00 (Exhibit 12, P. 76, Record P. 161). This is a reasonable estimate of the B&CB's cost to replicate the information that New Venue did not deliver.

The B&CB was damaged in the amount of $36,308.74 by New Venue's failure to remit administrative fees owed to the B&CB.

The record reflects that B&CB conducted audits of agencies of similar size that cost the B&CB an average of $14,250.33. Based on this average audit cost, the B&CB incurred an excess audit cost of $124,776.53. The B&CB is also entitled to recover its excess audit costs.

New Venue remains indebted to the resellers in approximately the amount of $2,700,000.00, which was paid to it by PPUs and never forwarded to the resellers even though the contract required such payments to be forwarded to the software vendor within three days of receipt by New Venue.

New Venue is indebted to various PPUs for at least $88,208.85 for invoices paid by the PPUs for orders never forwarded to the software vendors (Exhibit 454, P. 1, Record P. 25665).

In summary I find:

1. New Venue is directed to return the $567,868.72 to the B&CB for remittance to the PPUs.
2. The B&CB is awarded $873,302.50 in actual damages.
3. New Venue is directed to make payment to such resellers for all software paid for by PPUs to New Venue which was to be forwarded to resellers and was not.
4. New Venue is directed to repay various PPUs all amounts paid by PPUs to New Venue for software orders paid for to New Venue but never placed by New Venue with software vendors.

For the Information Technology Management Office

Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: http://procurement.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2043 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 26, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201

_____ _____
Name of Requestor Address

_____ _____
City State Zip Business Phone

---

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

_____
_____
_____

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

_____ _____
Notary Public of South Carolina Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

_____
Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

EXHIBIT
B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

In Re: Determination of Probable Cause to Suspend New Venue Technologies, Inc., New Venue Technologies II, LLC, NewVenue Technologies, Terris Riley LLC, Terris Riley, and Jacque Riley

BEFORE THE CHIEF PROCUREMENT OFFICER
DECISION

CASE NO.: 2014-204

POSTING DATE: July 30, 2014

MAILING DATE: July 30, 2014

The South Carolina Consolidated Procurement Code (the "Code") authorizes the appropriate chief procurement officer to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. S.C. Code Ann. § 11-35-4220. On October 8, 2013, the Information Technology Management Office ("ITMO") advised the Chief Procurement Officer ("CPO") that actions by New Venue Technology, Inc. ("New Venue") alleged in a contract controversy filed with the CPO on September 30, 2013, if proved, constitute cause for debarment under S.C. Code Ann. § 11-35-4220 (2011). Those actions include, but are not limited to, (1) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; (2) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; and (3) other acts so serious and compelling as to affect responsibility as a state contractor or subcontractor. By letter dated October 8, 2013, ITMO also requested the suspension of New Venue from consideration for award of contracts or subcontracts during an investigation whether such debarment be appropriate.

Section 11-35-4220(1) Authorizes the appropriate chief procurement officer to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment.

> (2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to:
>
> (d) violation of contract provisions, as set forth below, of a character regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:
>
> (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
>
> (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment;
>
> (f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor,

including debarment by another governmental entity for any cause listed in this subsection.

Background

New Venue was awarded a state term contract for a Software Acquisition Manager (SAM) (Solicitation No. 5400001873) to provide and maintain a real-time, web-based, vendor hosted system and to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. No funds were appropriated for this project so offerors were asked to propose a self-funded model to pay for this service.

The Budget and Control Board ("Board" or "State") filed a request for contract resolution alleging multiple breaches of the SAM state term contract by New Venue Technologies, Inc. Shortly thereafter, the State petitioned the CPO to suspend and debar New Venue from consideration of contract award. The State subsequently withdrew its contract controversy resolution request, but left the suspension / debarment petition in place. Subsequently, New Venue requested resolution of a contract controversy alleging breach of contract by the State. The Board denied New Venue's allegations of breach of contract and filed counter claims. The CPO held an administrative review of both sets of allegations from May 19, through May 29, 2014. The CPO took nine days of testimony and accepted 465 exhibits comprising more than 25,000 pages of evidence into the record. The CPO issued a decision in Case 2014-206 In Re: Request for Resolution of Contract Controversy by New Venue Technologies, Inc. Counterclaim by South Carolina Budget and Control Board, on July 18, 2014 which is incorporated herein by reference.

DISCUSSION

At the conclusion of the administrative review the CPO found that New Venue, not the Board, breached the contract. While the CPO's decision in that matter is under appeal, the evidence and testimony presented during the administrative hearing revealed actions by New Venue that were so egregious as to compel the CPO to take immediate action on the Board's petition to suspend New Venue its principal officers, and any business entities owned or operated by its principals pending the outcome of the State's investigation to determine if debarment is warranted.

The CPO relies on the following findings of the administrative review in determining that there is probable cause for debarment. New Venue failed to perform any of the primary requirements of the contract including the establishment of a real-time, web-based, vendor hosted system to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license

redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. New Venue failed to forward orders from Public Procurement Units (PPU) to the software providers within three days as required by the contract. New Venue intentionally mislead PPUs as to the status of their orders. In some cases, New Venue accepted payment from the PPUs without forwarding the order to the software providers. New Venue failed to remit payment to the software providers in accordance with the contract. New Venue intentionally mislead software providers and ITMO about the status of payments. New Venue appropriated more than $2.7 million dollars that it received from PPUs that should have been remitted to the software vendors to fund personal expenses of New Venue's owners; Terris and Jacque Riley. These personal expenses included more than $711,000.00 to a contractor for construction of the personal residence of Terris and Jacque Riley, more than $66,500.00 for the purchase of the land for that house, plans, a swimming pool and landscaping at the home totaling almost $70,000.00. Mr. and Ms. Riley took more than $600,000.00 in cash withdrawals from accounts; none of the cash was paid to any software resellers and spent nearly $200,000.00 in religious donations and consultant services. The Rileys spent more than $564,000.00 in debit card transactions on New Venue accounts.

Ms. Riley's testimony regarding New Venue's failure to remit payment to the software contractors within three(3) days of receipt of payment from the PPUs, as required by the contract, is particularly troubling:

> Q: Do you contend that you had any entitlement to the use of the 97.5 percent of the funds that you collected and were to remit to the resellers?
>
> A: I contend that I have entitlement to any revenue that comes into my company for the use of productivity in my business, for the use of moving our business forward, and especially for the use of adhering to new contract requirements that were not in place before I was awarded the contract.
>
> Q: Okay. Did you ever notify the State in any way that "I'm keeping money as part of that 97.5 percent that I'm supposed the be delivering to the vendor"?
>
> A: Well, that would mean keeping -- keeping to me -- this is what "keeping" means. "Keeping" means that I am -- I've taken some money. I've stashed some money away, and I have the intent to keep that money stashed away and never to pay anybody, never to remit anything and never to inform you of what it is I intend to do or what it is I'm trying to accomplish ever. That's what "keep" means. So, my answer to you is that, no, I did not contact the State to tell them what I'm keeping, because that's not what I did.

Mrs. Riley inflated her educational achievements claiming minors in Business Administration, Early Childhood Education, and Computer Science in addition to a bachelor's degree in English. The evidence showed that her only degree is one in English.

The corporate profile in New Venue's proposal appears to be misleading in indicating that they had "Offices (including virtual) located in MD, NC, and GA." Testimony indicated that these were not New Venue offices but businesses with which New Venue did business.

Determination

New Venue Technologies, Inc., New Venue Technologies II, LLC, NewVenue Technologies, Terris Riley, LLC, Terris Riley, and Jacque Riley are suspended from consideration for award of contracts or subcontracts pending completion of investigations conducted by the Board or any other State agency the Board's requests to assist in the investigation to determine if debarment is warranted.

For the Information Technology Management Office

Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Suspension / Debarment Appeal Notice (Revised October 2013)

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: http://procurement.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2043 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 26, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201

_____ _____
Name of Requestor Address

_____ _____
City State Zip Business Phone

---

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

_____
_____
_____

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

_____ _____
Notary Public of South Carolina Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

_____
Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

EXHIBIT
tabbies
C

Consumer Protection, Environmental, and Regulatory Law Group, LLC

Geoffrey K. Chambers
geoffrey@CPERLGroup.com
(864) 508-0899

1201 Main Street
Suite 985
Columbia, SC 29201

Mr. Michael B. Spicer
Chief Procurement Officer
Information Technology Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: Appeal of Decision Issued in Contract Controversy Case No. 2014-206

Dear Mr. Spicer:

This firm represents New Venue ("New Venue") in connection with this appeal and request for further administrative review of the Decision of the Chief Procurement Officer, Information Technology Management Office ("CPO), posted on July 18, 2014 (the "Decision") regarding contract controversies asserted by New Venue and the South Carolina Budget and Control Board. **A copy of the Decision is attached hereto as Exhibit 1.** New Venue herewith respectfully appeals and requests review of the Decision, pursuant to S.C. Code Ann. Sections 11-35-4210(6) and 4410. New Venue requests a hearing before the South Carolina Procurement Review Panel in regard to this matter. New Venue has supplied you the $250.00 filing fee made payable to the S.C. Procurement Review Panel. This request is timely filed within ten days of the posting of the Decision on July 18, 2014 as recited on the Decision.

This case involves a contract that was awarded to New Venue to perform services as a Software Acquisition Manager ("SAM"). Under the State's own language, the State clearly expressed the purpose and scope of this contract. The ***INTENDED*** scope of the contract is clear by express terms of the contract, which the state wrote, and is broader than the CPO found. A look at the actual contract words is in order:

> **It is the State's intent to solicit responses for a Software Acquisition Manager (SAM) to maintain a real-time web-based vendor hosted system for use by all Public Procurement Units.** The SAM can be defined as a software acquisition manager acting as an order fulfillment, distribution, and tracking system designed to monitor software licenses, license transfers, license redistribution, software maintenance and renewals, and warranty transactions as well as invoicing and payment from acquisition to end of life cycle.
>
> * * * *

> **It is the State's intent** to solicit responses for a Software Acquisition Manager (SAM) to maintain a real-time web-based vendor hosted **system for use by all Public Procurement Units.**
>
> * * * *
>
> **The State intends** to award a state term contract to one Offeror **for use by all State Agencies.**
>
> * * * *
>
> **It is the intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM.**
>
> * * * *
>
> **The State intends to award a state term contract to one Offeror for use by all State Agencies.** Use by cities, counties, school districts and other political subdivisions are optional under Section 11-35-4810. - Cooperative purchasing

Regardless, even the CPO found that the contract was to cover ***at least all purchases of software from software resellers under statewide term contracts***, which are, like the SAM contract, mandatory for all agencies. This, the State never did.

The contract to perform this service commenced, by its terms, on February 15, 2011, the chosen implementation date, as documented. The contract was to renew each year unless notice was given. Notice was never given.

The State did not meet its obligation to commence full performance on February 15, 2011. During performance, and after the time for the State to have implemented the contract, in May of 2011, the State Purchasing Officer documented that the State, not New Venue, was "at fault" for not implementing on time. See Exhibit 2, attached (e-mail and reference from Debbie Lemmon, ITMO Procurement Officer, stating as follows:

> **"#4 "What are some things you wish the vendor would do differently?"**
> **None at this time.**

> **1. How smooth was your implementation? Did the system easily plug into your existing technology environment? Due to unforeseen delays on our (the State's) end, the application that NewVenue delivered is not fully implemented yet. The web solution (www.mysamcentral.com) is ready and has been fully tested. We also use it for demos during presentations. It was excellently designed and the NewVenue team exceeded our expectation.")**

See also, Exhibit 3 e-mail from Debbie Lemmon, stating: "The anticipated "Go-Live" date of February 15, 2011 will be delayed.... I apologize for the delay of this project."

Here, the duty of the State to run all software (or *at least* all statewide term contract software, as the CPO found) through the SAM was essential. This was important because New Venue was to be paid 2% of all software cost that passed through the SAM.

Through the course of two years, the State simply never was in compliance with its contractual obligation to ensure that all software purchases (or *at least* all statewide term contract software, as the CPO found) were run through the SAM. *In fact, the State did not run the first order through the SAM for six months.* After that, though a reseller was added to the SAM by the state from time to time, never did the state come even close to its obligation to run all software purchases - even those under state term contracts - through the SAM.

This failure by the State was also a big deal, because as a result of this, and other costly wrongs by the State, New Venue incurred enormous, extra-contractual charges, and at the same time, earned zero revenue. Once some resellers were added to the SAM, some revenue was realized, but New Venue was never afforded the chance to earn the entire volume of revenue to which New Venue was entitled.

The CPO's decision overlooks these crucial and clear facts -- for good reason. The CPO was made well aware of the fact that the law simply does not permit the party first in breach to recover on a claim for a subsequent breach by the other party. **The first to commit material breach of the agreement is precluded them from recovering, even if there were a subsequent breach by the other party.** *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008)("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (internal quotation marks omitted)).

There is another reason that motivated the CPO to ignore the above, crucial facts. Because in fact, it was **the CPO's conduct and failures led to the delay in the State's performance** obligations under the New Venue contract. See 3, (select e-

mails of Debbie Lemmon regarding delays Naturally, New Venue objected to the CPO being the official to hear and decide this case, as certainly he was not a disinterested or unbiased person in this context.

In this unique setting, the CPO actually had present on his behalf at the hearing more lawyers than any party - in fact, three lawyers for the CPO alone were in attendance, including two outside lawyers, contracted for this unprecedented role.

As a part of its Request for Review, New Venue incorporates by reference each and every allegation of its original Contract Controversy, **a copy of which is attached hereto as Exhibit 4**, and which is incorporated herein by reference.

To the extent that the CPO's Decision finds any facts contrary to those asserted in Exhibit 4, New Venue requests a review of those findings. To the extent the CPO's Decision makes any conclusions of law at variance from those asserted in Exhibit 4, New Venue requests a review of those conclusions of law. New Venue requests a review of every finding of fact and conclusion of law in the CPO's Decision related to the conclusion that New Venue breached its contract in any way, committed any wrongful act in any way, and New Venue requests review of the award of any remedy to any agency or subdivision of the State, including but not limited to the Budget and Control Board, and all of the four findings regarding remedies on page 31 of the CPO's Decision. New Venue also requests review of all rulings, orders and interlocutory and other decisions and determinations of the CPO in regard to the contract controversy asserted by New Venue and that asserted by the Budget and Control Board.

THE CPO WHO DECIDED THE CASE VIOLATED NEW VENUE'S DUE PROCESS RIGHTS TO A DISINTERESTED TRIBUNAL

The CPO Decision is flawed in its entirety and violated New Venue's Due Process rights as a consequence of the CPO, Michael D. Spicer, hearing and deciding the case. Mr. Spicer refused to recuse himself from the case even though he was a required witness, whose very conduct was in dispute among other things in the case, as shown only in part, above. See Exhibit 3, above. It is in fact curious that the CPO expresses uncertainty in his Decision about how the parties came to incorporate certain materials into the Record of Negotiations[1] - after all, the CPO reviewed, made notes, comments and changes to, and approved the Record of Negotiations. See, e.g. Exhibit 5, among numerous other documents. The Circuit Court in Richland County was informed of this violation, and ruled not that there was no Due Process violation, but only that any such violation of Due Process would be "cured" by the de

[1] Decision at 6: "The Record of Negotiations was executed by both parties on December 21, 2010, and includes a list of Frequently Asked Questions and Answers. There is no explanation as to why these Q and As were included, but their inclusion makes them part of the contract and reflective of the agreement of the parties. Several of these Q and As offer some insight."

novo appeal to the Panel. However, Mr. Spicer refuses to make himself available as a witness in the case, and so New Venue continues to be prejudiced by Mr. Spicer improperly hearing and deciding a case directly involving his own misconduct. Clearly, no member of the Panel would want any case they had to be heard and decided by a Judge who was actually interested in the outcome and the propriety of whose conduct was one of the things to be decided. The same is true for New Venue. While this case is de novo, New Venue does not waive its right to call all needed witnesses, including Mr. Spicer himself, on any and all issues. New Venue also asks that for the above reasons, Mr. Spicer's decision be disregarded entirely.

THE CPO'S DECISION VIOLATES PLAIN CONTRACT LANGUAGE, UNLAWFULLY MODIFIES THE CLEAR CONTRACT AS WRITTEN, AND DIRECTLY VIOLATES NUMEROUS SOUTH CAROLINA LAWS AND COURT DECISIONS.

The First Party to Breach May Not Recover In A Claim Under the Contract.

Among the other flaws as to which review is requested, the CPO's Decision is fundamentally flawed and is contrary to well-established law of South Carolina in a number of ways. The core flaw is the CPO failed to acknowledge that the State was the first to breach this contract, and as such, the State may not recovery in a claim under that contract. South Carolina law could not be more clear - the first to commit material breach of the agreement is precluded them from recovering, even if there were a subsequent breach by the other party. *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008)("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.").

The CPO Impermissibly Re-Wrote the Contract to Try to Avoid the Legal Consequence of the State's Clear Breach In Which he Played an Instrumental Part.

Here, as New Venue showed in a way that could not be ignored by a fair and impartial tribunal (including through written admissions of the State's own contract officer) the State was not only the first to breach the contract - it was never in compliance with the contract from the first day until the last day of the contract.

The CPO erred also by completely re-writing the plain language of the parties' contract. This is impermissible as a matter of law. "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions *as determined by the contract language.*" *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327,330 (1999). "[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 86,6 (Ct. App. 2002).

This contract placed unambiguous obligations on the State, which the State did not meet due to mere inconvenience. However, under South Carolina law, the court must enforce an unambiguous contract according to its terms, *regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

"The judicial function of a court of law is to enforce a contract as made by the parties, and *not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous*." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) In a case such as this, neither the CPO nor the Court may re-write the parties' written contract. *See Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties). Indeed, **if a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect**. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley v. Rabon*, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976).

Where an agreement is *ambiguous*, the court then should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct. App. 1998). Even then, to discover the intention of a contract, the court must first look to its language--if the language is perfectly plain and capable of legal construction, *it alone determines the document's force and effect. Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct. App. 2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

As one can see from the many decisions cited above, in a contract case, one would expect the actual contract language to be quoted, and relied upon as to the issues in dispute. Instead, the CPO "construes" at length about what the contract "means" and "intends" and quotes nothing (or external alleged "information") to support his statements of what the contract requires on the issues that are actually in dispute.

By contrast, New Venue relies on the simple, clear and express language of the contract - language that the State itself wrote. "Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage." *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (quoting 17A C.J.S. **Contracts** § 324)

Note from the *Willoughby* decision *supra*, that a key reason the CPO errantly proceeded to "construe" the contract without first finding ambiguity is that if he stated that he found the contract to be ambiguous, he was obliged to "construe" and "interpret" it against the State, not for the State, as he lavishly did, with abandon. In this case, the language contortions applied by the biased CPO all construed language in favor of the drafter, the State. This is legal error. Other construction rules were violated as well, but the prime violation is the plain meaning rule, which prohibits construction of the plainly worded contract meaning.

First, the CPO erred as a matter of law in *"interpreting and construing"* the clear and unambiguous contract language at issue. It is well-settled that Courts must not "construe" a contract unless and until it is first determined that the contract is somehow "ambiguous." *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect). *See also Blakeley v. Rabon*, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976).

Here, New Venue has proven in a way that would have been accepted by any neutral, disinterested judge, that the contract was unambiguous in the several particulars "construed" or "interpreted" by the CPO. Before the CPO may even begin to attempt to vary that express language (at risk of plain legal error) he must first find and conclude that the contract was ambiguous. That is a legal question. Here, the CPO did not so find.

The CPO makes a number of factual findings through interpretations of the contract without citing any contract provision at all to support, and these interpretations run afoul of South Carolina law. For example, the CPO states that "the contract anticipated software purchases outside the SAM[2] and purchases through the SAM were limited to software purchased through state term contracts."[3] However, the

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[2] This finding by the CPO is a misdirection. Because some State purchases are so small they do not fall within the scope of even purchasing laws, there would of course be some *de minimis* purchases initially made outside the SAM process. This case is not about the State's failure to process the *de minimis* small purchases through the SAM. It is about the State's complete non-compliance from day one till day last. In the solicitation process, vendors wanted to know, and therefore asked in a Q/A in the RFP how these and like exemptions would be handled, and whether changes would be made to the Procurement Code to require even such small purchases of software to be made through the system, despite the small purchase exemption. The CPO's use of this to attempt to contradict the primary "intent" statements of the RFP is disingenuous, and is an attempt to re-write the contract to make it illusory entirely. Again, legally forbidden.

[3] This finding by the CPO is unsupported by any statement in the contract, and contradicts the quoted statement of the RFP/Contract's intent. The RFP provided:
"STATEWIDE TERM CONTRACT (JAN 2006)
With this solicitation, the state seeks to establish a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which

contract itself as drafted by the State is clear - all software purchases by the State were covered. *See* various Contract provisions quoted verbatim herein. A statement of construction to say the contract is limited to state term contract software violates the plain language and impermissibly contradicts the clear statement of intent - "all software" - as drafted by the State.

One of the CPO's misconstructions was that it was NOT the "**intent of the State to have participating Public Procurement Units submit all software purchase orders** through the SAM" when that was in fact the express and clear, *verbatim language of intent in the contract* - even as quoted by the CPO. The CPO ignored and modified this plain and simple fundamental statement of intent by the State by resort to impermissible, extreme and convoluted "interpretation" to the contrary of this intent. Given this clear, verbatim statement of *intent* in the contract, every "interpretation" and "construction" by the CPO that did not effectuate this intent was clear legal error. *See* numerous decision cited *supra*.

The CPO also erred in that the contract was clear and legally obliged to be *mandatory* (not elective) for all State agencies. The solicitation and resulting contract expressly state that they were for a "statewide term contract." The Consolidated Procurement Code specifically defines a statewide term contract as one that is mandatory for all state agencies. See S.C. Code Ann. § 11-35-310(35) (""Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time ***and for which it is mandatory that all governmental bodies procure their requirements during its term***. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external

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includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled "Acceptance of Offers 10% Below Price" in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts. The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. [07-7B225-1]"

audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.")

The CPO also erred by evidently finding that the State had the right to decide when it would start to comply with the contract, and how much compliance it would undertake. The CPO states that "The contract did not require the processing of any number of orders through the SAM on February 15, 2011 [note: *the agreed implementation date*], or at any time thereafter." This conclusion is "slick" and is employed by the CPO in an absurd manner, which violates the clear contract language and the clear law. The contract says its intent is for *all software* to be purchased through the SAM, not for a *"number"* of orders. While this is not "any *number*" of orders, ***it still means all orders**, not fewer than all*, whatever that *number* may be.

The contract required, at a minimum, all software purchases by all agencies to run through the SAM. It has a plain and written start date and end date. Even under the CPO's analysis, all state term contract software purchases were to be run through the SAM. When? *When the contract started.* When stop? *When the contract was over.* How many purchases? *Not some "number," but definitely ALL.*

By finding and holding as he did, that the State was under no obligation at all, and could participate when and to the extent it was convenient, the CPO impermissibly "interpreted" a clear and unambiguous contract. He also "interpreted" it in a way to render it illusory and meaningless - an interpretation approach that is simply unlawful. The law is plain - contracts are to be interpreted to give meaning to the terms thereof. *See* decisions cited *supra*.

A party, *even the State*, is bound by its contracts. Here, the CPO's decision asserts that the State can decide what parts of a contract it will honor and when. That sort of mindset has no place in this State, and has been historically reserved to petty dictators in banana republics.

All of these unlawful misinterpretations by a biased CPO are used in the Decision to "clean up" the horrendous and outrageous treatment by the State of this vendor - mistreatment that ultimately demolished a well regarded business that employed a number of South Carolina citizens, and supported South Carolina families and charities.

THE CPO IGNORED THE FACT THAT EVEN AS HE NARROWLY DESCRIBED THE STATE'S CONTRACT DUTY, THE STATE NEVER COMPLIED WITH THAT DUTY FOR TWO YEARS UNTIL IT WRONGLY TERMINATED.

Regardless, the State did not even uphold this limited aspect of its promise (as found by the CPO) to run all state term contract software purchases through the SAM. The State violated its promise to do that from day one until the last day of the contract when the State further breached by improperly terminating the contract. Never

during the entire two year contract period were all state term contract purchases run through the SAM. Thus, the State simply *never was in compliance with the contract*, from day one until day last.

THE CPO IGNORED THE FACT THAT THE STATE HAD THE READY ABILITY TO MEET EVEN ITS NARROW CONTRACT OBLIGATION AS FOUND BY THE CPO, BUT SIMPLY DID NOT DO IT.

The CPO also erred in evidently holding that the State was under no obligation whatsoever to timely take the lawful and required steps needed to bring it into compliance with its contract duties to which it voluntarily agreed. Here, there were many options available to the State to comply, all of which New Venue can show. At a minimum, in order to meet even the limited obligation that the CPO found regarding all state term contract software purchases, all the State had to do was a "unilateral contract modification" of those state term contracts for software, under Section 11-35-310(9).

The CPO himself asserted (and *argued* at the hearing held before him) that this section of the law allows the State to make unilateral changes to state contracts without the consent of the contractor. While this changes/modification law and standard changes clause did in fact allow the State to make the very simple changes that the State needed to make to its state term contracts for software bring it into immediate compliance with its contract duties - at least to the extent that even the CPO recognized them - the State simply did not do so, in complete violation of New Venue's contract rights. Indeed, during the solicitation process, as documented in the contract, the State specifically assured vendors that it would address such changes, and that any need for such changes should not concern the vendors, as the State was to handle the conformity of the resellers to the SAM:

> Q17. Have you already received authorizations from manufacturers/vendors that will allow these indirect agreements to be set up through the SAM? Most manufacturers/vendors only allow the reseller to sell directly the customer. Adobe Education, for example, does not allow indirect relationships – have you already worked with Adobe to allow this SAM-reseller-enduser relationship?
> **A17.** Since the Purchase Order will read in care of (c/o SAM) SAM, this should not be a problem. The state will make every effort to work with manufacturers/vendors to help them understand our processes.

See Exhibit 4 at 62 (from Amendment 1 of the RFP).

Even more, once it became evident to the State that it would not do what it took to comply with its contract obligations (as all of the rest of us must do - why the State is an exception is not at all clear) the State had perfectly good and reasonable options that would have done no harm to New Venue. If it was not going to honor the contract, the State could, and should have terminated it for convenience as permitted by law and the contract. This would have required the State to pay some costs to New Venue, but it would have been better that what the State, under the direction of the CPO, chose to do - get abusive of its vendor. This alone shows that there are no equities that can favor the State. It is nothing short of a villain in this matter.

THE CPO'S CONCLUSIONS OF NEW VENUE'S ALLEGED SUBSEQUENT BREACH AND MISFEASANCE PURPOSEFULLY IGNORED THE DOCUMENTED CONTEMPORANEOUS EVIDENCE, INCLUDING EVIDENCE OF THE CPO'S OWN INVOLVEMENT IN STATE MISCONDUCT THAT RESULTED IN THE COMPLAINED OF "DEFICIENCIES."

The CPO essentially held that the contract was to track software, and that New Venue did not track the software, and so New Venue breached.[4] The problem with this conclusion, is that the State breached first *by not even providing New Venue the opportunity to track the software*. This breach by the state took place in two ways. First, as described above, by not implementing the contract fully, ever, the State made it impossible to track software - New Venue could not track software that was bought outside the SAM in contravention of New Venue's contract rights. Never was the State in compliance with its duty to do that. Never did the State even comply with the more narrow duty that the CPO found it had to run all state term contract software purchases through the SAM. By not running purchases through the SAM, the State not only deprived New Venue of needed revenue to which it was entitled (2% of the price of all software sold) it also made it impossible for New Venue to track that software. This is exactly why the first to breach rule exists. It is embarrassingly shameful for the CPO to conclude that New Venue breached by not tracking software, given that gargantuan volumes of State software was never run through the SAM at all.

The State's second way in which it "forced" the "breach" found in the CPO's Decision was that New Venue consistently bid, contracted for and demanded that the State supply or cause the software vendors to supply New Venue the very license key or "code" that is needed and used to uniquely identify and track that software. At the hearing before the CPO, New Venue supplied various *contemporaneous documents* between New Venue and the State in which New Venue expressed that this data

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[4] In making this finding, the CPO ignored the fact that when New Venue pressed repeatedly to get the agencies and vendors to supply this data so that it could be tracked, the requests were ignored. (See Exhibit 6). After asking a vendor, ITMO officials told New Venue, in writing, to "butt out."

needed to be supplied in order for tracking to be done. Only a biased and interested hearing officer could have ignored that documentary evidence. And only a biased and interested hearing officer could have decided that New Venue was in breach for not tracking software when the State refused to do its contractually required part to provide or cause to be provided the data needed to track the software. New Venue will provide to the Panel the exact pages of the record that show these contemporaneous documents.

THE CPO ERRED BY RULING THAT THE STATE HAD THE RIGHT TO FORCE NEW VENUE, WITHOUT CONSENT, TO UNDERTAKE COSTLY CHANGES IN PERFORMANCE TO MEET THE WHIMS OF EACH OF THE STATE TERM CONTRACT HOLDERS FOR SOFTWARE, INSTEAD OF THE STATE REQUIRING THE SOFTWARE SELLERS TO COMPLY WITH THE SAM CONTRACT, AS PER THE SAM CONTRACT.

The CPO seems to rule that once software term contract resellers found out that New Venue won the SAM contract, they changed their requirements and insisted on changes in the SAM that made compliance by New Venue costly, and ultimately impossible, *and that this somehow excuses the State's breach*. This is not the law.

The State undertook by contract and told proposers that it would handle the software resellers and make them comply with the SAM provisions - not the other way around. *See* Exhibit 4, above quoted Q and A from Amendment 1 to RFP. If the finding of fact by the CPO were true, it is irrelevant, but also, New Venue was never told if it. Certainly the State could have worked with New Venue at that stage to terminate for convenience, and pay New Venue appropriate costs for such termination. Perhaps the State was motivated by injudicious frugality in not wanting to pay such charges for termination, but that, too, is no excuse. New Venue was entitled to fair and true performance by the State, as promised. If the State would not, or could not do that (which is denied, as all the state had to do was a unilateral contract modification to each software reseller term contract, as discussed above) the State should have notified New Venue in the first months, and paid the cost of that termination. Rather than oppress, and bury a woman owned minority business into near bankruptcy, and to follow that course with aggressive and uncalled for attacks on the company. Sadly, all of this could have been avoided if the State had dealt with New Venue fairly and in good faith.

In no world known to any practitioner of contract law is it an excuse or defense that one party's separate contractor's conduct can excuse that same party's performance. This is akin to "well, I'd like to pay for the Buick, but my employer did not pay me this month, so I won't." By improperly excusing the State's breach due to software seller recalcitrance, the CPO not only ignored the State's plain breach, he also failed to grant an award to New Venue of the numerous costs proved by New Venue incurred by New Venue's extraordinary efforts to comply with the numerous, unilateral changes to the contract that imposed expensive new conditions on New

Venue - all incurred while the State was not implementing per its own contract obligation.

THE CPO IMPROPERLY DETERMINED THAT THE STATE HAD THE RIGHT TO UNILATERALLY MODIFY THE NEW VENUE CONTRACT TO MAKE AN "ADMINISTRATIVE CHANGE" AS WAS DONE, WITHOUT COMPENSATION AND WITHOUT NEW VENUE'S CONSENT.

At the hearing, the CPO improperly rendered an oral conclusion - before presentation of the evidence was even complete. He asserted that the State had the right to make the unilateral modification of the New Venue contract as it did under S.C. Code Ann. Section 11-35-310 (9) and the "Changes" clause of the New Venue contract.

However, a simple look at the changes clause, the law, and the modification document itself shows that the change in question was not at all permitted. Such a change is specifically not permitted as to the change specified in the Modification document itself. On the face of it, the unilateral modification the State made near the end of the contract - intended to put a "squeeze" on New Venue - was not permitted, and was an unlawful, further breach by the State.

AFTER THE STATE DID NOT SUCCEED IN FORCING NEW VENUE TO ABANDON ITS CONTRACT, THE STATE BREACHED BY WRONGFULLY TERMINATING THE CONTRACT.

The State, not wanting to terminate for convenience and pay costs to New Venue, finally terminated the contract, though it lacked cause to do so. The CPO erred in not so finding and concluding.

THE CPO IMPROPERLY HEARD AND RELIED ON EVIDENCE ABOUT AN AUDIT, BUT REFUSED TO PERMIT NEW VENUE TO SEE THE AUDIT OR RELATED DOCUMENTS.

Reaching the apex of unfairness, the CPO refused to allow New Venue to have access to the supposed "audit" performed by or for the State in order to prepare for the case, or even during the case when the "auditor" testified, so that he could be cross examined and challenged. This too violated New Venue's Due Process rights, and points to the serious wrong that was done to New Venue by the CPO's refusal to recuse himself. [5]

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[5] Naturally, once the State chose to have a witness to testify about the "audit," the "audit" was no longer
privileged, if it were privileged to begin with. *See Floyd v. Floyd*, 365 S.C. 56 (S.C. App. 2005). *See also S.C. State Highway Dept v. Booker*, 260 S.C. 245 (1973) The Federal case of *United States v. 23-76 Acres of Land*, 32 F.R.D. 593 (D. Md., 1963) has squarely faced these

The Panel will recall that years ago, in a similar situation, not nearly so egregious, CPO Ron Moore recused himself and had Voight Shealy hear the *Unisys* case because of allegations of personal involvement in the activities by Mr. Moore in that matter. That did not happen here. New Venue demands access to the audit and associated documents.

All of the "findings" and conclusions of the CPO's decision rest on this undisclosed "audit." The audit was sought under FOIA. It is a public record. It is owned by the public, not by the Budget and Control Board, or by some State employees. These persons work for taxpayers, including New Venue. It is nothing short of shameful that the records of this public information are at once used against New Venue, and at the same time, New Venue is refused access to them. Again such government oppression is like that found in a Dictatorship, and has no place in this State. New Venue denies, challenges, and requests review of each and every fact and conclusion asserted as a part of the government's claim and the CPO's Decision on that claim. This includes all findings and conclusions of contract breach, fraud, and other alleged wrongdoing.

THE CPO'S "INTERPRETATIONS" OF THE CONTRACT VIOLATED AND RENDERED MEANINGLESS NUMEROUS CLEAR AND UNAMBIGUOUS CONTRACT CLAUSES AND IGNORED GOVERNING LAW AND PRECEDENT.

The CPO's Decision is contradicts the Contract language in a number of ways, and is "loose" in making sweeping statements about the contract and what it intended, without quoting contract provisions to support those sweeping, general statements.

This approach by the CPO violates clear and applicable South Carolina law. "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327,330 (1999). "[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 86,6 (Ct. App. 2002).

"The judicial function of a court of law is to enforce a contract as made by the parties, and *not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous*." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) In a case such as this, neither the CPO nor the Court may re-write the parties' written contract. *See Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310

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issues. In what has been called a "well-reasoned decision", the Court attacked the various defenses that have arisen in pre-trial discovery procedures. See Pre-Trial Discovery in Condemnation Proceedings: An Evaluation, 42 St. John's L. Rev., 52, 60 (1967).

S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties).

By contrast, the law requires, and New Venue believes it is important to look - as the above quoted cases clearly require - at the actual contract language that applies. Below, quoted verbatim, are just some of the numerous, actual, written and clear contract provisions that the CPO's Decision ignores and renders meaningless, all in violation of law:

Contract Provisions The CPO's Decision Ignores Or Renders Meaningless

It is the State's intent to solicit responses for a Software Acquisition Manager (SAM) to maintain a real-time web-based vendor hosted system **for use by all Public Procurement Units**. The SAM can be defined as a software acquisition manager acting as an order fulfillment, distribution, and tracking system designed to monitor software licenses, license transfers, license redistribution, software maintenance and renewals, and warranty transactions as well as invoicing and payment from acquisition to end of life cycle.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. **If the Cover Page names a Statewide Term Contract as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units** [11-35-4610(5)].

The State intends to award a state term contract to one Offeror **for use by all State Agencies.**

The South Carolina Information Technology Management Office (ITMO) is soliciting proposals for **a state term contract** for the fulfillment and tracking of software licenses and maintenance purchases, warranty information, license and maintenance expiration dates, and support services purchase and expiration dates.

It is the intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM. The SAM will maintain the following information and make it available to each Public Procurement Unit as it applies to that Public Procurement Unit, and to ITMO as it applies to a specific Public Procurement Unit or **the state as a whole**:

1. Software License Purchases
2. Software License Expiration Dates
3. Software License Renewals
4. Software Maintenance Purchases
5. Software Maintenance Expiration Dates

6. Software Support Purchases
7. Software Support Contract Expiration Dates
8. Volume Discount Transactions for Software & Maintenance

The State intends to award a state term contract to one Offeror for use by all State Agencies. Use by cities, counties, school districts and other political subdivisions are optional under Section 11-35-4810. - Cooperative purchasing. As stated earlier, Public Procurement Units purchase software from state or agency term contracts or from the retail market.

RELATIONSHIP OF THE PARTIES (JAN 2006)
Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

THIRD PARTY BENEFICIARY (JAN 2006)
This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

PURCHASE ORDERS (JAN 2006)
Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. **No particular form is required.** An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (JAN 2006)
(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35- 1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. **These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.**

Billing/Payment Requirements
For both Public Procurement Unit and Software Manufacturer billing and payment requirements see Section III Specifications for detailed explanation.

RELATIONSHIP OF THE PARTIES (JAN 2006)
Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

CHANGES (JAN 2006)
(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:
(a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
(b) method of shipment or packing;
(c) place of delivery;
(d) description of services to be performed;
(e) time of performance (i.e., hours of the day, days of the week, etc.); or,
(f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.
(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.
(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1]

The CPO Violated Clear Governing And Applicable Legal Precedent.

Some of the many governing laws and precedents that the CPO ignored are set forth below:

S.C. Code Ann. § 11-35-310 (35) "Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.

Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008)("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (internal quotation marks omitted)).

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327,330 (1999). "[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 86,6 (Ct. App. 2002).

"The judicial function of a court of law is to enforce a contract as made by the parties, and *not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous*." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) In a case such as this, neither the CPO nor the Court may re-write the parties' written contract. *See Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties).

11-35-310(9)
Contract Modification - (9) "Contract modification" means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

SECTION 11-35-3410. Contract clauses and their administration.

(1) Contract Clauses. The board may promulgate regulations requiring the inclusion in state supplies, services, and information technology contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(a) the unilateral right of a governmental body to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance...

The CPO's refusal to apply the well established law of South Carolina, not just once, but over and over, evidences clear disregard for the law and the rights of New Venue. Without a doubt, the CPO's thumb was firmly on the scales in this case. This is exactly what New Venue sought to avoid when it asked for the appointment of a fair, impartial, neutral and disinterested hearing officer.

CONCLUSION

Based on the matters herein, as well as in the original contract controversy asserted by New Venue, New Venue asks that the Panel reverse the Decision of the CPO, and Order that the State has breached its contract with New Venue, that the State was the first to breach the contract, and that the State's breach was ongoing, and caused New Venue damages, and that as a consequence New Venue shall be awarded its damages as proven at the hearing before the Panel, and for all such further and other relief as may be permitted to New Venue by law, and that the State and its subdivisions shall take and recover nothing on their claims as required by South Carolina law.

Sincerely.

Geoffrey Chambers
CPERL Group, LLC
1201 Main Street, Suite 985
Columbia, SC 29201
Counsel for New Venue Technologies

EXHIBIT
D

STRATEGIC CONSULTING PROPOSAL

prepared for

The Dean of the College of Dental Medicine
Dr. John J. Sanders

Purpose of this Project

The Medical University of South Carolina, under the leadership of Dr. David Cole, is aggressively creating an academic healthcare community where every member of that community is included, respected, and valued. The purpose of this project is to further advance the University's initiatives towards the implementation of the upcoming Diversity & Inclusion Strategic Plan.

The goal of this project is to ensure that the Dental College, specifically, is properly aligned with the University's ultimate mission of establishing awareness, understanding, and mutual respect within the organization and community. *The intent of this project is to identify where we are already succeeding and then chart a course to take that success to the next level!* Together, we can ensure that the Dental College moves ***in harmony*** with President Cole and the entire Diversity & Inclusion team as we propel MUSC forward in this amazing journey.

Scope of Project

In discussions with key leadership, we have identified that in order to successfully implement the University's Diversity & Inclusion Strategic Plan, it is important for the Dental College to address 3 key areas (which are the targeted components for this phase):

1. ***Assess (and document) the current temperament of:***
   a) Dental College Faculty
   b) Dental College Students
   c) Dental College Employees
   d) Local Community & Business Leaders

   It's difficult to know where you're going if you're not sure where you are. The information we discover during this phase will point to key determining factors that will be necessary for charting the proper plan of action.

2. ***Strengthen & Bridge relationships with other Colleges & Universities (with an emphasis on HBCUs)***

   Opening up the path for meaningful conversations is vital for many reasons. Perhaps the most important reason is to ensure that SC students are put in the absolute best position for future success. Open communication will help to prepare the way for the University to implement the Diversity & Inclusion Strategy. This will not happen overnight, but the anticipation is building and "timing is everything"!

3. ***Establish new relationships with new stakeholders***

   This focus area is a key strategy for helping the Dental College cultivate strong and lasting relationships that will ultimately impact and increase private funding to be used towards recruitment and scholarships. We understand that this element requires a rare and unique mix of skills and relationship savvy, but with the right team assembled, this will become a reality over time.

Expectations & Deliverables

We believe the best approach may be to "test the waters" so we are proposing a short-term, low-risk engagement of 90 days. The expected deliverables for this approach are as follows:

- A consolidated report (and measurement tool) with a proposed strategy for:
  a) increasing minority student population
  b) increasing minority faculty & staff
  c) recommendations for shifting the perception overall
  d) identify areas that are already making great strides towards Diversity & Inclusion

- Enhanced alliances & relationships with other colleges & universities

- New prospects & stakeholders who are willing to partner with the Dental College for private funding

Projected Costs

We propose the following:

Start Date:	*October 1, 2014*
Total Project Hours:	*320*
Hourly Rate:	*$225.00*
Total Projected Cost:	*$72,000.00 (Divided in 3 payments of $24,000.00 each)*
Terms:	*Payment 1: Due October 1, 2014*
	Payment 2: Due November 15, 2014 (mid-point)
	Payment 3: Due December 31, 2014 (completion of phase 1)

At the completion of Phase 1, we can re-evaluate to determine if both parties are pleased with this engagement. At that time, we can decide if we will continue in a more long-term arrangement.

Additional Assumptions:

1. *On-site office space is not required, but may be beneficial to the students and faculty.*
2. *The Client is not required to provide equipment (hardware/software).*
3. *The Client will provide necessary marketing material for distribution when needed.*
4. *The Client will provide necessary access to buildings, resources, faculty, communications, etc. as needed for successful events, discussions, meetings, etc.*
5. *The Consultant will prepare monthly reports and distribute as requested/required.*
6. *State rates will prevail for travel and lodging expenses and will be invoiced separately. Additional travel requested by the Client will be negotiated/discussed on a case-by-case basis.*

A Personal Note…

Dear Dean Sanders,

I am excited about this project and the bright future that lies ahead for the College of Dental Medicine as well as the entire MUSC family. My passion is helping people relate to each other so that we can ultimately change and impact the world in which we live. My own life events & experiences have afforded me the unique ability to see life from many different perspectives. Achieving diversity & inclusion will not be easy, but then again, our true accomplishments in life are never easy. Thank you for your lifetime commitment and I am delighted to join you and do my part!

Kindest regards,

Terris S. Riley

Terris S. Riley | Strategist
Phone: (803) 429-0924
Fax : (800) 992-3727
Email : triley@newvenuetech.com

Michael H. Montgomery

From: LaTrace, Michael E. <latrace@musc.edu>
Sent: 12/18/2014 2:34 PM
To: Stamp, Velma G.; Sanders, John J.
Subject: FW: Following Up

Michael LaTrace, CRA
Chief Financial Officer
Medical University of South Carolina
James B. Edwards College of Dental Medicine
173 Ashley Avenue
Basic Science Building
Suite 437
Charleston, S.C. 29425
MSC 507
Office: 843-792-1659
Cell : 843-412-4245

From: <LaTrace>, Michael LaTrace <latrace@musc.edu>
Date: Thursday, December 18, 2014 at 2:15 PM
To: Michael LaTrace <latrace@musc.edu>
Subject: Fwd: Following Up

Begin forwarded message:

> **From:** "Sanders, John J." <sanderjj@musc.edu>
> **Date:** October 20, 2014 at 3:48:53 PM EDT
> **To:** "LaTrace, Michael E." <latrace@musc.edu>
> **Subject: FW: Following Up**
>
> FYI
>
> ---
>
> **From:** "Terris S. Riley" <triley@newvenuetech.com>
> **Date:** Monday, October 20, 2014 at 1:52 PM
> **To:** Jack Sanders <sanderjj@musc.edu>
> **Cc:** Mark Sweatman <sweatmmc@musc.edu>
> **Subject:** Re: Following Up
>
> Well, Dean Sanders, that contract was based on a projected start date of Oct 1. Now that October is pretty much over, these hours would be lowered by 1/3 (at least) bringing the contract amount to an estimated $38-44K.

If were were able to agree to a start date of Nov 1, would we then be able to engage? Please let me know your thoughts on this possible arrangement.

Thanks,
Terris

Terris. S. Riley
NewVenue Technologies, Inc.
www.newvenuetech.com
ph 803.386.1036

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Please consider the environment before printing this e-mail.

From: "Sanders, John J." <sanderjj@musc.edu>
Date: Monday, October 20, 2014 at 1:37 PM
To: Terris Riley <triley@newvenuetech.com>
Cc: Mark Sweatman <sweatmmc@musc.edu>
Subject: Re: Following Up

Terris.
I have looked at the contract. Because it is over 50K I have been informed that it needs higher level approval including and most importantly Board of Trustees approval. It will be on the December agenda.
We were not in time for the prefile for the October meeting.
Please. Keep in touch.
JJS

John J. Sanders, D.D.S.
Professor and Dean
James B. Edwards College of Dental Medicine
Medical University of South Carolina
173 Ashley Avenue, MSC 507
Charleston, SC 29425
Ph: (843) 792-3811
Fax: (843) 792-1376

From: "Terris S. Riley" <triley@newvenuetech.com>
Date: Monday, October 20, 2014 at 1:16 PM
To: Jack Sanders <sanderjj@musc.edu>

Cc: Mark Sweatman <sweatmmc@musc.edu>
Subject: Following Up

Hi Dr. Sanders-

I hope you enjoyed the beautiful weather this weekend!

I was checking in to see if you've had the opportunity to review the proposal I sent you a few weeks ago. Please let me know your thoughts when you have a moment.

Thank you, Dr. Sanders—I look forward to hearing back from you.

Have a great afternoon,
terris

Terris. S. Riley
NewVenue Technologies, Inc.
www.newvenuetech.com
ph 803.386.1036

****

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Please consider the environment before printing this e-mail.

Michael H. Montgomery

From: LaTrace, Michael E. <latrace@musc.edu>
Sent: 12/18/2014 2:33 PM
To: Stamp, Velma G.
Cc: Sanders, John J.
Subject: FW: MUSC Dental Medicine Contract.

3 of 5

Michael LaTrace, CRA
Chief Financial Officer
Medical University of South Carolina
James B. Edwards College of Dental Medicine
173 Ashley Avenue
Basic Science Building
Suite 437
Charleston, S.C. 29425
MSC 507
Office: 843-792-1659
Cell : 843-412-4245

From: <O'Brien>, Laine O'Brien <obrieme@musc.edu>
Date: Thursday, December 18, 2014 at 2:15 PM
To: Michael LaTrace <latrace@musc.edu>
Subject: Fwd: MUSC Dental Medicine Contract.

Begin forwarded message:

> **From:** <triley@newvenuetech.com>
> **Date:** November 4, 2014 at 10:43:12 AM EST
> **To:** <obrieme@musc.edu>
> **Cc:** <triley@newvenuetech.com>
> **Subject: Re: MUSC Dental Medicine Contract.**
>
> Hi Laine!
>
> I don't know how this message was routed to my spam folder but please forgive my delayed response!
>
> I am on the road this morning but I (or our bookkeeper, Martha) will get our paperwork completed and back to you today.
>
> I will also try calling you again shortly to follow up as well.
>
> I hope you're having a fantastic day!
>
> Terris

-------- Original Message --------
Subject: MUSC Dental Medicine Contract.
From: "O'Brien, Laine" <obrieme@musc.edu>
Date: Oct 31, 2014 10:36 AM
To: "triley@newvenuetech.com" <triley@newvenuetech.com>
CC:

Ms. Riley, I'm working with procurement to set up the contract for payment however, we are unable to locate you or New Venue as a vendor in our system please complete the attached forms and return. Many thanks and have a wonderful weekend.

Laine O'Brien
Accountant & RCM Specialist
Medical University of South Carolina
James B. Edwards College of Dental Medicine
173 Ashley Avenue, MSC507
Basic Science Building 440
Charleston, S.C. 29425
Office: 843-792-7216
Cell : 843-412-4116

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-40- 7403

Branch Banking and Trust Company
Plaintiff(s)

v.

New Venue Technologies, Inc. and Terris S. Riley
Defendant(s)

Submitted By: Paul H. Hoefer
Address: Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC 29202

SC Bar #: 77506
Telephone #: (803) 779-8900
Fax #: (803) 771-9411
E-mail: phoefer@robinsonlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

2014 DEC 1 PM 3:
RICHLAND CO. CLERK OF COURT
FILED

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint.
- ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☒ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** December 1, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.