

CAUSE NO. 2011-70575

IRMA AZUARA,

Plaintiff,

V.

FIRST SOURCE ELECTRICAL, LLC,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

61ST JUDICIAL DISTRICT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Mark J. Oberti
State Bar No. 00789951
OBERTI SULLIVAN LLP
723 Main Street, Suite 340
Houston, Texas 77002
(713) 401-3555 – Telephone
(713) 401-3547 – Facsimile
mark@osattorneys.com – E-mail

ATTORNEYS FOR DEFENDANT
FIRST SOURCE ELECTRICAL, LLC

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IRMA AZUARA,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
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FIRST SOURCE ELECTRICAL, LLC,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant First Source Electrical, LLC (“First Source”) files its motion its for summary judgment, showing in support as follows:

I. INTRODUCTION

Plaintiff Irma Azuara (“Azuara”) was First Source’s Senior Vice President and Controller. She was terminated on March 29, 2011.¹ On November 21, 2011, Azuara filed this lawsuit, alleging: (1) three claims for breach of contract; (2) a claim for quantum meruit; and (3) a claim for breach of the duty of good faith and fair dealing.² As set forth below, based on the undisputed material facts, Azuara’s claims fail as a matter of law.

First, Azuara brings a breach of contract claim for severance pay, which fails because First Source terminated her employment for “cause,” as defined in her Employment Agreement, and therefor owed her no severance.³ Specifically, it is undisputed that First Source had failed to achieve a net positive cash flow: (1) for two consecutive calendar quarters; and; (2) for the last full calendar year of Azuara’s employment – both of which were express grounds for “cause” to

¹ Azuara Dep., Ex. A at 34.

² Azuara’s Original Petition at ¶¶ 5.1-9.1.

³ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3.

terminate Azuara under the Employment Agreement.⁴ Additionally, Azuara's admitted malperformance in not making an important accounting adjustment caused First Source to be in breach of its First Capital Loan, which was yet another express ground for termination for "cause" under the Employment Agreement.⁵ And, Azuara's failure to make the large accounting adjustment, which she admitted that she should have made – but did not – is yet another separate and independent basis for termination for "cause."⁶ Because Azuara was terminated for "cause," she was owed no severance.

Second, Azuara also brings a breach of contract claim for repayment of \$100,000.00 she had spent to purchase "Class A" Unit Shares as an investment in First Source. This claim fails because, under the controlling agreement, she has no right to the return of the \$100,000.00. Even Azuara admits that she can think of no legal basis for asserting such a claim.⁷

Third, Azuara brings a third breach of contract claim for the value of "Class B" unit shares First Source gave to her, but even she admits that claim fails because those unvested shares were forfeited upon her termination, pursuant to the express terms of the Restricted Award Agreement.⁸

Finally, Azuara's claims for quantum meruit, and breach of the duty of good faith and fair dealing fail for a host of fundamental legal reasons, set out below, and admitted to by Azuara herself in her deposition.⁹ Accordingly, First Source is entitled to a final summary judgment.

⁴ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3.

⁵ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3.

⁶ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3(1).

⁷ Azuara Dep., Ex. A at 130-34.

⁸ Azuara Dep., Ex. A at 65.

⁹ Azuara Dep., Ex. A at 134-36.

II. BACKGROUND FACTS

A. Azuara Joined First Source As A Start Up Operation In February 2008

First Source was founded in February 2008, when a team of employees left Key Electrical Supply to start a new company, First Source.¹⁰ First Source is a small company, employing approximately forty individuals, which supplies and distributes commercial, multi-family, residential and low-voltage electrical supplies to electrical contractors.¹¹

First Source's majority owner, investing nearly \$7,000,000 in First Source, is White Oak Partners, Inc., a private equity firm located in Columbus, Ohio.¹² Michael Menzer is the founder and Chief Executive Officer of White Oak Partners.¹³ Michele Souder served as Senior Partner of Investment Management at White Oak Partners.¹⁴ Her primary duties were to manage the due diligence and acquisition activities for the firm and to provide oversight to White Oak investments.¹⁵

Azuara was the Vice President and Controller of Key Electrical Supply.¹⁶ On February 7, 2008, Azuara and First Source entered an Employment Agreement, in which she accepted the position of Senior Vice President and Controller, with a base salary at \$138,298.00 per year.¹⁷ The Employment Agreement also provided for two years pay if Azuara was terminated without

¹⁰ Azuara Dep., Ex. A, at 40.

¹¹ Azuara Dep., Ex. A, at 95-96; *see also* deLoache Aff., Ex. B, at ¶ 2.

¹² Azuara Dep., Ex. A, at 42-43.

¹³ Azuara Dep., Ex. A, at 43-44.

¹⁴ Souder Aff., Ex. C, at ¶ 2.

¹⁵ Souder Aff., Ex. C, at ¶ 2.

¹⁶ Azuara Dep., Ex. A, at 46-47.

¹⁷ Employment Agreement (Feb. 2008), Ex. D; *see also* Azuara Dep., Ex. A, at 42, 46, 48.

“cause.”¹⁸ Azuara’s essential job duties were to make sure the financial reports were correct, meet financial reporting deadlines, analytical, payroll, and account management.¹⁹

As an investment, on October 1, 2008, Azuara purchased 12 “Class A” Unit Shares in First Source (for \$100,000.00), pursuant to the terms of the Amended and Restated Limited Liability Company Agreement.²⁰ Azuara understood that, under the terms of the Amended and Restated Limited Liability Company Agreement, in order to receive a return on her stock purchase, First Source had to be profitable.²¹ Azuara knew that, in fact, First Source was not ever profitable – it launched its business at the exact wrong time – right as the recession hit with full force in the fall of 2008.²²

B. After Nearly Two Years Of Poor Financial Performance, First Source Renegotiated Its Employment Agreement With Azuara

Despite the substantial seed money put in by White Oak, First Source was not performing financially.²³ Thus, in late-2009, White Oak Partners sought and secured external funding for First Source from First Capital Loan in the amount of \$2,000,000.²⁴ Menzer, the primary investor at White Oak Partners, guaranteed the loan.²⁵ In exchange for assuming the risk on the loan, White Oak Partners wanted some level of management control.²⁶ Thus, on January 1,

¹⁸ Employment Agreement (Feb. 2008), Ex. D.

¹⁹ Azuara Dep., Ex. A, at 45.

²⁰ Amended and Restated LLC Agreement (Oct. 2008), Ex. E; *see also* Azuara Dep., Ex. A, at 51.

²¹ Azuara Dep., Ex. A, at 54.

²² Azuara Dep., Ex. A, at 54.

²³ deLoache Aff., Ex. B, at ¶ 8.

²⁴ deLoache Aff., Ex. B, at ¶ 8.

²⁵ deLoache Aff., Ex. B, at ¶ 8.

²⁶ deLoache Aff., Ex. B, at ¶ 9.

2010, after approximately two years of poor financial performance during the recession, First Source renegotiated its contracts with its Executives, including Azuara.²⁷ Azuara's base salary was cut to \$112,394.14 per year, the grounds for a "cause" based termination were expanded, and the amount of severance in the case of a termination without "cause" was reduced.²⁸

On April 21, 2010, Azuara was given 2.4 "Class B" Unit Shares in First Source, pursuant to the terms of a Restricted Unit Award Agreement.²⁹ The first one-fourth of those "Class B" Unit Shares were to vest a year later, on April 21, 2011.³⁰

C. In May 2010, White Oak Learned That Azuara Failed To Make An Important Financial Adjustment For Seventeen Months – Something Azuara Herself Admits She Knew She Should Have Done, But Did Not

In May 2010, Souder and Jim Cramer, incoming Chief Financial Officer, learned of a significant problem.³¹ In late 2008 and/or early 2009, First Source had over-purchased copper wire.³² White Oak Partners recognized the swing in inventory value and actually inspected the First Source warehouse at the time.³³ White Oak Partners assessed the decline in value due to falling copper prices (*i.e.*, from \$3.00 per pound to \$1.50 per pound), and Souder asked management (specifically, Mark Jenson, the President, and Azuara, the Controller) at that time to make an accounting entry to properly reflect the adjustment in value downward of approximately \$198,936.00.³⁴ Jenson did not make the entry.³⁵ Jenson also instructed Azuara not to make the

²⁷ deLoache Aff., Ex. B, at ¶ 9; *see also* Modification of Employment Agreement (Jan. 2010), Ex. F.

²⁸ Modification of Employment Agreement (Jan. 2010), Ex. F; *see also* Azuara Dep., Ex. A, at 59-62.

²⁹ Restricted Unit Award Agreement (Apr. 2010), Ex. G; Azuara Dep., Ex. A, at 62-64.

³⁰ Restricted Unit Award Agreement (Apr. 2010), Ex. G; Azuara Dep., Ex. A, at 64-65.

³¹ Souder Aff., Ex. C, at ¶ 10; *see also* Email between Souder and Cramer, Ex. M.

³² Souder Aff., Ex. C, at ¶ 5.

³³ Souder Aff., Ex. C, at ¶ 5.

³⁴ Souder Aff., Ex. C, at ¶¶ 8, 9; *see also* Azuara Dep., Ex. A, at 72, 77.

entry, and she listened to him, rather than to Souder.³⁶ Azuara admits that she listened to Jenson, rather than make the adjustment, even though she knew that what she was doing was wrong, and painted a false financial picture of First Source to its lenders and to White Oak. As she testified:

Q: Would you agree with me that White Oak had a right to be upset when they learned that this adjustment had not been made for over a year?

A: Yes.

Q: Because by not making the adjustment for over a year, it painted a falsely inflated picture of the valuation of First Source's inventory, correct?

A: Yes.

Q: And you know, as someone who has worked in accounting and as a controller for a long time, that accuracy in financial reporting is important?

A: Yes.³⁷

By the time Souder and Cramer learned that the adjustment had not been made in May 2010, the carrying value of the inventory remained overstated and that overstatement had increased to approximately \$275,000.00.³⁸ As a result, Jenson was terminated in June 2010.³⁹ Azuara admitted that she failed to make the adjustment, but claimed she was just following Jenson's orders.⁴⁰ Azuara conceded that listening to Jenson was wrong, because she knew that she should have made the adjustment anyway:

Q: If your superior tells you to do something that you objectively know is wrong, you shouldn't do it. Correct?

³⁵ Souder Aff., Ex. C, at ¶ 9.

³⁶ Souder Aff., Ex. C, at ¶ 9; *see also* Azuara Dep., Ex. A, at 78-81, 83.

³⁷ Azuara Dep., Ex. A, at 86-87.

³⁸ Souder Aff., Ex. C, at ¶ 10; *see also* Kleshinski Aff., Ex. H, at ¶ 13; Email between Kleshinski and Cramer (May 2011) and Inventory Reconciliation Summary, Ex. N.

³⁹ Azuara Dep., Ex. A, at 84.

⁴⁰ Azuara Dep., Ex. A, at 83, 88.

Mr. Levy: Object, form.

A: Correct.

Q: And you, yourself, admitted that you knew the adjustment should have been made for over a year, correct?

A: Yes.⁴¹

D. Azuara's Admitted Failure To Make The Important Accounting Adjustment For Seventeen Months Caused First Source To Be In Breach Of Its Loan Agreement With First Capital Loan

Azuara's failure to properly make the adjustment in a timely fashion – when she knew she should have – caused First Capital Loan to find that First Source had breached its loan agreement.⁴² As a result, First Capital Loan imposed fees on First Source, which First Source then had to pay in order to obtain waivers later in 2010.⁴³ The waiver fee was \$7,500.00, and the waiver documentation fee was \$500.00.⁴⁴ In addition, because First Capital Loan learned about the failure to properly make the adjustment in a timely fashion, it then audited First Source itself, which resulted in additional audit fees of roughly \$6,000.00 per fiscal quarter.⁴⁵

E. First Source Began A Search For A Replacement For Azuara In August 2010, Ultimately Found One, And Then Terminated Azuara For "Cause"

After Jenson was terminated, Azuara began reporting to the new President of First Source, Phil deLoache.⁴⁶ Although it was known that Jenson and Azuara were complicit in concealing the write down of the copper wiring, First Source did not terminate Azuara at the

⁴¹ Azuara Dep., Ex. A at 88.

⁴² Kleshinski Aff., Ex. H, at ¶ 6.

⁴³ Kleshinski Aff., Ex. H, at ¶ 6.

⁴⁴ Kleshinski Aff., Ex. H, at ¶ 6; *see also* Email to White Oak Partners from First Capital (Sep. 2010), Ex. I.

⁴⁵ Kleshinski Aff., Ex. H, at ¶ 6; *see also* Azuara Dep., Ex. A, at 93-94.

⁴⁶ deLoache Aff., Ex. B, at ¶ 11.

same time as Jenson.⁴⁷ At that time, First Source was in a tenuous financial position and believed that firing Azuara would damage the company further for several reasons.⁴⁸ First, First Source is a small company of approximately 30 employees.⁴⁹ Azuara was part of the team that started First Source.⁵⁰ After firing Jenson, Azuara was the only remaining person that had any in-depth knowledge of the company's finances.⁵¹ Second, from a practical standpoint, Azuara was the only person who touched the day-to-day financial operations for First Source, including an Eclipse business system (distribution specialty software), ADP-payroll, bills, and bank loans.⁵² Third, in addition to Jenson, First Source lost two other employees—Mark Yokem and Eddie Goates—who were key outside/inside salesman and resigned from First Source to go back to work for Key Electrical.⁵³ Thus, despite great reservations, First Source did not fire Azuara but, instead, placed her on an extremely short leash, including assigning David Kleshinski, an accounting manager at White Oak Partners, to monitor her work in three areas: weekly borrowing base certificate (BBC); monthly financials; and cash forecasting.⁵⁴

Weekly meetings were conducted with deLoache, Azuara, Jimmy Chandler (Vice President of Purchasing) and Michael Pesek (Vice President of Operations). Kleshinski, the White Oak Partners accounting manager, participated in the meetings via teleconference.⁵⁵ In

⁴⁷ deLoache Aff., Ex. B, at ¶ 12.

⁴⁸ deLoache Aff., Ex. B, at ¶ 12.

⁴⁹ Azuara Dep., Ex. A, at 95-96.

⁵⁰ Azuara Dep., Ex. A, at 96.

⁵¹ Azuara Dep., Ex. A, at 96.

⁵² Azuara Dep., Ex. A, at 96-97.

⁵³ Azuara Dep., Ex. A, at 99-100

⁵⁴ deLoache, Ex. B, at ¶¶ 12-13; Kleshinski Aff., Ex. H, at ¶ 7; Azuara Dep., Ex. A, at 102-103.

⁵⁵ Azuara Dep., Ex. A, at 112.

addition to Kleshinski, in a short time, deLoache began observing Azuara's mistakes.⁵⁶ As an accounting manager for White Oak Partners, it is Kleshinski's responsibility to maintain completeness and accuracy of financial statements of the three companies he manages (First Source and two window companies) as well as the timeliness of all reports.⁵⁷ Kleshinski never felt confident that what he received from Azuara would be correct.⁵⁸ He had to thoroughly double check everything and ask for all back up data every month.⁵⁹ Azuara's work was replete with mistakes.⁶⁰ As this evidence demonstrates, separate and apart from Azuara's complicity in the massive write off, Azuara's poor job performance caused other problems.⁶¹

By August 2010, First Source actively began looking for a replacement for Azuara.⁶² Specifically, a headhunter was hired to begin a confidential search for a new financial officer.⁶³ Several months went by without locating an individual with the necessary qualifications—*e.g.*, knowledge of Eclipse business system.⁶⁴ In January 2011, a new headhunting firm was employed that specialized in financial placement.⁶⁵ Within a few months, a replacement named

⁵⁶ deLoache Aff., Ex. B, at ¶ 15.

⁵⁷ Kleshinski Aff., Ex. H, at ¶ 2.

⁵⁸ Kleshinski Aff., Ex. H, at ¶ 8.

⁵⁹ Kleshinski Aff., Ex. H, at ¶ 8.

⁶⁰ Kleshinski Aff., Ex. H, at ¶ 8.

⁶¹ Kleshinski Aff., Ex. H, at ¶ 8.

⁶² deLoache Aff., Ex. B, at ¶ 16; *see also* Emails Between deLoache, Cramer, and Headhunters, Ex. K.

⁶³ deLoache Aff., Ex. B, at ¶ 16; *see also* Emails Between deLoache, Cramer, and Headhunters, Ex. K.

⁶⁴ deLoache Aff., Ex. B, at ¶ 16.

⁶⁵ deLoache Aff., Ex. B, at ¶ 17; *see also* Emails Between deLoache, Cramer, and Headhunters, Ex. K.

Kristi Blaschke was hired and sent to White Oak Partners for training to be First Source's new Controller.⁶⁶

On March 29, 2011, deLoache met with Azuara and terminated her employment with First Source.⁶⁷ At the meeting, deLoache gave Azuara a letter outlining the bases for her termination and explaining that she was being terminated for "cause."⁶⁸ After an exchange of a demand letter and a response,⁶⁹ Azuara filed this lawsuit on November 21, 2011, alleging three claims for breach of contract, a quantum meruit claim, and a claim for breach of the duty of good faith and fair dealing.

III. SUMMARY JUDGMENT STANDARD

First Source seeks both a traditional and a no-evidence summary judgment. The movant for a traditional summary judgment has the burden to show that no genuine issue of material fact exists and thus he is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999). Once the movant shows he is entitled to judgment as a matter of law, the burden shifts to the non-movant to present evidence raising a fact issue to defeat the motion for summary judgment. *Haight v. Savoy Apartments*, 814 S.W.2d 849, 851 (Tex. App.—Houston [1st Dist.] 1991, writ denied).

In a no-evidence summary judgment, the movant represents that no evidence exists as to one or more essential elements of the non-movant's claims, upon which the non-movant would have the burden of proof at trial. TEX. R. CIV. P. 166a(i); *Jackson v. Fiesta Mart*, 979 S.W.2d

⁶⁶ deLoache Aff., Ex. B, at ¶ 19.

⁶⁷ deLoache Aff., Ex. B, at ¶ 18; Azuara Dep., Ex. A, at 113.

⁶⁸ deLoache Aff., Ex. B, at ¶ 18; *see also* Termination Letter to Azuara, Ex. L; Azuara Dep., Ex. A, at 113-114.

⁶⁹ Letter from Rosenberg to deLoache of May 5, 2011, Ex. O; Letter from Adkinson to Rosenberg of May 14, 2011, Ex. P.

68, 70–71 (Tex. App.–Austin 1998, no pet.). On review, the court ascertains whether the non-movant produced more than a scintilla of probative evidence to raise a genuine issue of material fact. *Id.* More than a scintilla of evidence exists if the evidence “rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.” *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003). If the evidence does no more than create a mere surmise or suspicion of fact, less than a scintilla of evidence exists. *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711–12 (Tex. 1997). Although the non-moving party is not required to marshal its proof, it must present evidence that raises a genuine fact issue on each of the challenged elements. TEX. R. CIV. P. 166a(i). The fact that a movant attaches evidence to a motion for summary judgment on both traditional and no-evidence grounds does not foreclose it from asserting that there is, in fact, no evidence with regard to a particular element. *Binur v. Jacobo*, 135 S.W.3d 646, 651 (Tex. 2004). Rather, any attached evidence should be examined to determine whether it creates a fact question. *Id.*

IV. ARGUMENT AND ANALYSIS

A. Azuara’s Three Breach Of Contract Claims

1. Law

Under Texas law, to prevail on a claim for breach of contract, the plaintiff must establish the following elements: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach. *Wright v. Christian & Smith*, 950 S.W.2d 411, 412 (Tex. App.–Houston [1st Dist.] 1997, no writ).

Azuara's Employment Agreement, and Modification of Employment Agreement, however, provide that they are governed by Delaware law.⁷⁰ Under Delaware law, to prevail, Azuara "must demonstrate: first, the existence of the contract, whether express or implied; second, the breach of an obligation imposed by that contract; and third, the resultant damage to the plaintiff." *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003). To satisfy the second prong of the breach of contract analysis, plaintiff must identify the express contract provision that was breached to avoid dismissal. *See Anderson v. Wachovia Mortgage Corp.*, 497 F. Supp. 2d 572, 581 (D. Del. 2007), *aff'd*, 621 F.3d 261 (3d Cir. 2010) (citing *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 901 A.2d 106, 116 (Del. 2006)).

2. Analysis

a. Severance Pay Claim

Azuara's Employment Agreement, and Modification of Employment Agreement provide that if First Source terminated her without "cause" then it is obligated to pay her one-year's Base Salary on a monthly basis, for a period of a year.⁷¹ That would translate to \$112,394.14.⁷² Azuara claims she is entitled to that amount based on her assertion that she was terminated without "cause." Azuara's claim is without merit.

First Source clearly had "cause" to terminate Azuara, as defined by the Azuara's Employment Agreement, and Modification of Employment Agreement.⁷³ Specifically, Azuara's Modification of Employment Agreement provides that "cause" means, among other things:

⁷⁰ Employment Agreement (Feb. 2008), Ex. D, at p. 10, ¶ 10; *see also* Modification of Employment Agreement (Jan. 2010), Ex. F, at p. 5, ¶ 9.

⁷¹ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 3-4, ¶ 4.

⁷² Azuara Dep., Ex. A, at 61; *see also* Modification of Employment Agreement (Jan. 2010), Ex. F, at p. 1, ¶ 2(a).

⁷³ Employment Agreement (Feb. 2008), Ex. D, at pp. 2-3, ¶ 4(c); *see also* Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3.

3. Termination for Cause. “. . . (1) in connection with [her] employment by the Company, an act by Executive of fraud, dishonesty, missappropriation, gross negligence, or willful misconduct; . . . (6) Executive’s failure or refusal to fully comply with a material lawful directive given to Executive by the Board or by a designee of the Board; (7) the Company’s failure to observe, breach of, or non-observance of any provision of any financing agreement by which the Company is bound, including, without limitation, the First Capital Loan; and (8) the material non-performance or underperformance of Executive in the execution and carrying out of [her] duties and responsibilities as reasonably determined by the Board in its sole and absolute discretion, prima facie evidence of which shall include, but not be limited to the failure of the Company to achieve a net positive cash flow in any two (2) calendar quarters in a given calendar year and the failure of the Company to achieve a cumulative net positive cash flow in any given calendar year.”⁷⁴

The evidence clearly reflects that Azuara’ “cause” termination was justified under several sections of the Employment Agreement. First, it is undisputed that First Source failed to achieve a net positive cash flow in all four calendar quarters of 2010, and did not achieve a cumulative net positive cash flow in 2010.⁷⁵ Azuara expressly admitted that in all four calendar quarters of 2010, First Source’s expenses exceeded its revenues and, in fact, First Source did not turn a profit during her employment with First Source.⁷⁶ This alone provides “cause” for Azuara’s termination under Section 3(8). In addition, as set forth by the Affidavits of deLoache and Kleshinski, Azuara regularly failed to perform, or underperformed, her job,⁷⁷ which bolsters the already clear basis for “cause” under Section 3(8).

⁷⁴ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3.

⁷⁵ Azuara Dep., Ex. A at 125, 129-30.

⁷⁶ Azuara Dep., Ex. A., at 124-126, 129-130.

⁷⁷ deLoache Aff., Ex. B, at ¶¶ 15-16; Kleshinski Aff., Ex. H, at ¶¶ 8-10; Emails between Kleshinski, deLoache, and Azuara regarding Errors in Azuara’s Work (Feb./Mar. 2011), Ex. J.

Second, it is undisputed that First Source breached its loan agreement with First Capital Loan in 2010, and remained in breach in 2011.⁷⁸ That is a basis for terminating Azuara's employment for "cause" under Section 3(7).⁷⁹

Third, Azuara's failure to make the accounting adjustment for well over a year constitutes a separate and independent reason for "cause" termination as it can correctly be characterized as "fraud, dishonesty, misappropriation, gross negligence, or willful misconduct."⁸⁰ Azuara acknowledged that White Oak Partners had a right to be upset at her knowing cover-up and failure to make the adjustment for well over a year.⁸¹

Although Azuara claimed to have just been following Jenson's orders, she admitted that was no real excuse.⁸² She further admitted that she knew the adjustment should have been made for over a year, and it was wrong for her not to have made it.⁸³ In sum, it is undisputed that First Source was amply justified in its termination of Azuara's employment for "cause" and, as such, Azuara's breach of contract claim for severance pay must fail.

b. Claims Based On Shares

i. *"Class A" Unit Shares*

Azuara also raises vague breach of contract claims related to Class A Unit Shares she purchased as an investment in First Source. This claim also is without merit. As set forth above, Azuara also owned 12 "Class A" Unit Shares in First Source, pursuant to the terms of the

⁷⁸ deLoache Aff., Ex. B, at ¶ 13; Kleshinski Aff., Ex. H, at ¶ 6.

⁷⁹ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3(7).

⁸⁰ Modification of Employment Agreement (Jan. 2010), Ex. F, at pp. 2-3, ¶ 3(1).

⁸¹ Azuara Dep., Ex. A, at 86-87.

⁸² Azuara Dep., Ex. A, at 88.

⁸³ Azuara Dep., Ex. A at 88.

Amended and Restated Limited Liability Company Agreement dated October 1, 2008.⁸⁴ Azuara purchased those shares for \$100,000.00.⁸⁵

Azuara appears to claim that she has a right to the return of her \$100,000.00 that she spent to buy the 12 “Class A” Unit Shares. The Amended and Restated Limited Liability Company Agreement provides for no such right.⁸⁶ Azuara understood that, in order to receive a return on her stock purchase, First Source had to be profitable.⁸⁷ Azuara knew that First Source was not profitable.⁸⁸ As such, the notion that Azuara is entitled to receive the full measure of her investment back is specious; hence, her breach of contract claim on this claim should be dismissed. Indeed, even Azuara herself conceded that she could think of no coherent reason why she would have a claim based on these shares, or the right to return of her \$100,000.00 investment, under the terms of the Amended and Restated Limited Liability Company Agreement dated October 1, 2008.⁸⁹ So, she never had any valid claim to the return of the \$100,000.00 initial investment.

In any event, there is no live case or controversy on this claim any more, because Azuara has now transferred her 12 “Class A” Unit Shares back to First Source for “Fair Value.” On August 30, 2012, First Source notified Azuara in writing that the Fair Value of her 12 “Class A” Unit Shares was \$2,067.00.⁹⁰ On October 10, 2012, First Source sent Azuara a check in that

⁸⁴ Amended and Restated LLC Agreement (Oct. 2008), Ex. E.

⁸⁵ Azuara Dep., Ex. A, at 51.

⁸⁶ Amended and Restated LLC Agreement (Oct. 2008), Ex. E.

⁸⁷ Azuara Dep., Ex. A, at 54.

⁸⁸ Azuara Dep., Ex. A, at 54.

⁸⁹ Azuara Dep., Ex. A at 130-34.

⁹⁰ Letter from Adkinson to Azuara of 08/30/12 at Ex. Q-1.

amount for the “Full Value” of her 12 “Class A” Unit Shares,⁹¹ Azuara cashed the check, and the check cleared First Source’s bank account on December 24, 2012.⁹² Accordingly, Azuara already transferred her 12 “Class A” Unit Shares in First Source for “Fair Value,” and there is no live case or controversy regarding those shares.

ii. “Class B” Unit Shares

Azuara also sues for breach of contract based on “Class B” Unit Shares. Azuara was also given 2.4 “Class B” Unit Shares in First Source, pursuant to the terms of a Restricted Unit Award Agreement dated April 21, 2010.⁹³ The first one-fourth of those “Class B” Unit Shares were to vest on April 21, 2011, but Azuara was terminated on March 29, 2011.⁹⁴ Pursuant to Section 5 of the Restricted Award Agreement, those shares were immediately and automatically forfeited upon her termination.⁹⁵ In her deposition, Azuara agreed that because she was terminated before her shares were vested that they were forfeited.⁹⁶ As she testified about these particular shares:

Q: So would you agree with me that since you were terminated before any of your shares under this particular agreement vested, they were forfeited, correct?

A: Yes.⁹⁷

⁹¹ Letter from Adkinson to Azuara of 10/10/12 at Ex. Q-2.

⁹² Proof that Azuara Cashed First Source’s \$2,067.00 Check, Ex. Q-3.

⁹³ Restricted Unit Award Agreement (Apr. 2010), Ex. G; Azuara Dep., Ex. A, at 62-64.

⁹⁴ Restricted Unit Award Agreement (Apr. 2010), Ex. G; Azuara Dep., Ex. A, at 62-65.

⁹⁵ Restricted Unit Award Agreement (Apr. 2010), Ex. G; Azuara Dep., Ex. A, at 62-65.

⁹⁶ Azuara Dep., Ex. A, at 65.

⁹⁷ Azuara Dep., Ex. A at 65.

Thus, her claim for them now is refuted by the plain terms of Section 5 of the Restricted Unit Award Agreement and her own sworn admission. So, in sum, all three of Azuara's breach of contract claims fail as a matter of law.

B. Quantum Meruit Claim

1. Law

Quantum meruit is an equitable remedy based on the promise implied by law to pay for beneficial services rendered and knowingly accepted. *Vortt Exploration Co., Inc. v. Chevron U.S.A., Inc.*, 787 S.W.2d 942, 944 (Tex. 1990). Under Texas law, a cause of action for quantum meruit is unavailable where, as here, the parties have entered into a contract which governs the dispute. *Id.* To recover on a claim of quantum meruit, a claimant must prove that "(1) valuable services were rendered or materials furnished; (2) for the person sought to be charged; (3) which services and materials were accepted by the person sought to be charged used and enjoyed by him; (4) under such circumstances as reasonably notified the person sought to be charged that the plaintiff in performing such services was expecting to be paid by the person sought to be charged." *Vortt Exploration Co., Inc.*, 787 S.W.2d at 944. In contending that recovery under quantum meruit is precluded, the defendant can assert the affirmative defense that there was a valid, express contract with the defendant covering the supplied services. *Id.*

2. Analysis

Azuara's quantum meruit fails for two reasons. First, Azuara's quantum meruit fails because a valid, express contract with First Source covers the issue of payment for all her services. Azuara's Employment Agreement, and Modification of Employment Agreement, expressly cover all of Azuara's compensation and benefits, and contain a merger and integration

clause that provides that there are no other agreements outside of those agreements.⁹⁸ Azuara admitted this:

Q: Is it accurate to say that the entire time you worked for First Source, you worked under the terms of a written employment contract?

A: Yes.

Q: And you didn't have any side agreements with First Source about your employment, other than what's in the written contracts, correct?

A: Correct.⁹⁹

Accordingly, by her own admission, Azuara's claim for additional compensation for her services is covered by a valid, express contract with First Source, thereby precluding her quantum meruit claim. See *Vortt Exploration Co.*, 787 S.W.2d at 944; *Jackson v. Houston Indep. Sch. Dist.*, 994 S.W.2d 396, 401 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (“In the present case, it is clear that Jackson’s employment history with HISD was governed by a series of contracts. Thus, Jackson may not avail herself of equitable relief under the doctrine of quantum meruit.”); see also *Truly v. Austin*, 744 S.W.2d 934, 936 (Tex. 1988).

Second, First Source was never reasonably notified that, in return for her work, Azuara expected to be paid anything more than what she was entitled to under the employment agreements. As Azuara admitted in her deposition:

Q: And did you ever notify First Source that you expected to be paid something more than what you were entitled to under your written employment agreements?

A: Not that I recall. That I was expected to be paid?

Q: Yeah.

A: Not that I recall.

⁹⁸ Modification of Employment Agreement (Jan. 2010), Ex. F, at p. 4, ¶ 7.

⁹⁹ Azuara Dep., Ex. A at 134.

Q: In other words, did you ever tell anyone from First Source or White Oak, “Hey, I know the employment agreement provides for me to get paid a certain amount, but I’m doing extra work. I want some extra pay for that”?

A: Oh, no. I don’t think so. Not that I recall. No.¹⁰⁰

Azuara’s testimony is fatal to her quantum meruit claim. For example, in *General Homes, Inc. v. Denison*, 625 S.W.2d 794 (Tex. App.–Houston [14th Dist.] 1981, no writ), an employee sought recovery for commissions on the sale of 22 residences that he had initiated during his employment, but that closed after he was terminated. *Id.* at 795. In *Denison*, there was a written contract that the employee would receive a straight salary during his training period, with a provision that any sales made during such training period, regardless of when they were closed, would be divided pro rata with the other salespeople on the project. *Id.* The issue was whether this provision expressly covered the employee’s sales that closed after the employee’s termination. *Id.* The employee argued that the written contract did not expressly state that he would not be paid commissions on sales closed after his termination. *Id.* at 796. The court in *Denison* held there was no evidence that the services rendered were voluntarily accepted by the employer with a reasonable expectation of its being charged for those services because the employee had actual knowledge and understanding, on the basis of the contract and the testimony, that no commissions would be paid on sales closing after termination. *Id.* In sum, as the moniker implies, Azuara cannot maintain an unjust enrichment claim where, as here, defendant’s retention of a benefit is in no way “unjust.”

¹⁰⁰ Azuara Dep., Ex. A at 134-35.

C. Breach Of Duty Of Good Faith And Fair Dealing Claim

1. Law

A claim for breach of duty of good faith and fair dealing is a tort action that arises from an underlying contract. *Cole v. Hall*, 864 S.W.2d 563, 568 (Tex. App.–Dallas 1993, writ dism'd w.o.j.) (en banc). Whether a duty exists between the parties is initially a question of law. *Cole*, 864 S.W.2d at 568. The Texas Supreme Court has specifically rejected the implication of a general duty of good faith and fair dealing in all contracts. *City of Midland v. O'Bryant*, 18 S.W.3d 209, 215 (Tex. 2000); *GTE Mobilnet of S. Tex. Ltd. Partnership v. Telecell Cellular, Inc.*, 955 S.W.2d 286, 295 (Tex. App.–Houston [1st Dist.] 1997, writ denied); *Cole*, 864 S.W.2d at 568. Indeed, the Texas Supreme Court has held that the duty of good faith and fair dealing does not arise in ordinary commercial transactions. *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contrs., Inc.*, 960 S.W.2d 41, 52 (Tex. 1998).

An actionable duty has been imposed only when there is a special relationship, such as that between an insured and his or her insurance carrier. *City of Midland*, 18 S.W.3d at 215. A special relationship has been found to exist in the insurance context because of “the parties’ unequal bargaining power and the nature of insurance contracts which would allow unscrupulous insurers to take advantage of their insureds’ misfortunes in bargaining for settlement or resolution of claims.” *Id.* (quoting *Arnold v. National County Mutual Fire Ins. Co.*, 725 S.W.2d 165, 167 (Tex. 1987)). In *City of Midland v. O'Bryant*, the Supreme Court found that the elements which render the relationship between an insurer and an insured a special one are absent in the relationship between an employer and employee. *Id.*

2. Analysis

Azuara was an employee of First Source. As mentioned, as a matter of law, the employer-employee relationship is not one in which there is a duty of good faith and fair dealing.

See, e.g., City of Midland, 18 S.W.3d at 215. Hence, Azuara cannot base this claim upon her employment relationship with First Source. Further, merely because Azuara had certain Class A and Class B shares in First Source does not mean that First Source owed her a duty of good faith and fair dealing. *See Wil-Roye Inv. Co. II v. Washington Mut. Bank, FA*, 142 S.W.3d 393, 410 (Tex. App.–El Paso 2004, no pet.) (fact that plaintiffs were shareholders in bank did not mean that the bank owed them a duty of good faith and fair dealing). Rather, Azuara would have to demonstrate that First Source had some excessive control or influence over her business dealings. *Id.* There is no evidence of such in this case. In fact, Azuara conceded that First Source had no such excessive control or influence over her business dealings. As she testified:

Q: Did you ever feel like First Source had some sort of excessive control or influence over your business dealings?

A: No.¹⁰¹

As such, based on her own testimony, First Source did not owe Azuara a duty of good faith and fair dealing.¹⁰²

V. CONCLUSION

For the foregoing reasons, Defendant First Source Electrical, LLC respectfully prays that the Court grant its motion for summary judgment, order that Plaintiff Irma Azuara take nothing by way of this suit, and for all other relief to which it is justly entitled.

¹⁰¹ Azuara Dep., Ex. A at 136.

¹⁰² Even if First Source owed Azuara a duty of good faith and fair dealing, there is no evidence that First Source violated the duty. It did not deceive or take advantage of Azuara. Nor did it somehow subordinate her interests for its greater interests based on an unfair or exploitative motivation.

Respectfully submitted,

s/ Mark J. Oberti

Mark J. Oberti

State Bar No. 00789951

OBERTI SULLIVAN LLP

723 Main Street, Suite 340

Houston, TX 77002

(713) 401-3555 – Telephone

(713) 401-3547 – Facsimile

mark@osattorneys.com – Email

ATTORNEY FOR DEFENDANT

FIRST SOURCE ELECTRICAL, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the counsel of record listed below via ProDoc's e filing service or via certified mail, return receipt requested on the 7th day of January 2013.

Gregg M. Rosenberg
Rosenberg & Sprovach
3555 Timmons, Suite 610
Houston, TX 77027

s/ Mark J. Oberti

Mark J. Oberti

INDEX OF EXHIBITS

The following exhibits are incorporated into the preceding motion as if set out verbatim.

DESCRIPTION	EXHIBIT
Plaintiff Irma Azuara's Deposition Transcript	A
Phil deLoache Affidavit	B
Michele Souder Affidavit	C
Employment Agreement (Feb. 2008)	D
Amended and Restated LLC Agreement (Oct. 2008)	E
Modification of Employment Agreement (Jan. 2010)	F
Restricted Unit Award Agreement (Apr. 2010)	G
David Kleshinski Affidavit	H
Email to White Oak Partners from First Capital (Sep. 2010)	I
Emails between Kleshinski, deLoache, and Azuara regarding Errors in Azuara's Work (Feb./Mar. 2011)	J
Emails between deLoache, Cramer, and Headhunters	K
Termination Letter to Azuara (Mar. 2011)	L
Email between Souder and Cramer (May 2010)	M
Email between Kleshinski and Cramer (May 2010) and Inventory Reconciliation Summary	N
Letter from Rosenberg to deLoache of May 5, 2011	O
Letter from Adkinson to Rosenberg of May 14, 2011	P
Letter from Adkinson to Azuara of August 30, 2012, informing her that the "Fair Value" of her shares in First Source were worth \$2,067.00	Q-1
Letter from Adkinson to Azuara of October 10, 2012, enclosing \$2,067.00 check	Q-2
Proof that First Source's \$2,067.00 check was cashed by Irma Azuara and cleared First Source's bank account on December 24, 2012	Q-3

EXHIBIT A

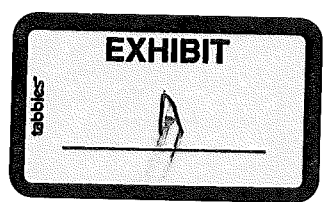
ORAL DEPOSITION OF IRMA AZUARA

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1 CAUSE NO. 211-70575 / Court: 061
2 IRMA AZUARA, : IN THE DISTRICT COURT OF
Plaintiff :
3 :
4 VS. : HARRIS COUNTY, T E X A S
5 :
6 FIRST SOURCE ELECTRICAL, :
7 LLC, :
8 Defendant : 61ST JUDICIAL DISTRICT
9 *****
10 ORAL DEPOSITION OF
11 IRMA AZUARA
12 APRIL 11, 2012
13 *****
14 IRMA AZUARA was called as a witness
15 by the Defendant, taken before Pat English-Arredondo,
16 CSR, RMR, CRR, CLR, a Certified Shorthand Reporter in
17 and for the State of Texas, reported by machine
18 shorthand, on Wednesday, the 11th day of April, 2012,
19 from 9:34 a.m. to 2:27 p.m., at the law offices of
20 Rosenberg & Sprovach, 3555 Timmons Lane, Suite 610,
21 Houston, Texas, pursuant to the Texas Rules of Civil
22 Procedure; that the Witness may read and sign said
23 deposition and sign before any Notary Public; and as
24 outlined in the provisions stated on the record or
25 attached hereto.

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1 APPEARANCES
2 COUNSEL FOR PLAINTIFF IRMA AZUARA:
3 Mr. Brian J. Levy
4 ROSENBERG & SPROVACH
5 3555 Timmons Lane, Suite 610
6 Houston, Texas 77027
7 Phone: 713.960.8300
8 Fax: 713.621.6670
9 e-mail: brian@rosenberglaw.com
10 COUNSEL FOR DEFENDANT FIRST SOURCE ELECTRICAL, LLC:
11 Mr. Mark Oberti
12 OBERTI SULLIVAN, LLP
13 723 Main, Suite 340
14 Houston, TX 77002
15 Phone: 713.401.3555
16 Fax: 713.401.3547
17 e-mail: mark@osattorneys.com
18 ALSO PRESENT:
19 Mr. Phil DeLoache
20 COURT REPORTER:
21 Ms. Pat English-Arredondo, CSR, RMR, CRR, CLR
22
23
24
25



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3 IRMA AZUARA
4 APRIL 11, 2012
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6 (Note: Large black notebook was marked in advance of
7 deposition with some exhibits not being referenced.)
8 NUMBER DESCRIPTION PAGE
9 EXHIBIT 1 First Source Employment Agreement 42
10 with Irma Azuara dated 2-7-8,
11 12 pages
12 EXHIBIT 2 Modification of Employment Agreement 56
13 dated 1-1-10 between Ms. Azuara and
14 First SOURCE Electrical, LLC, 7 pages
15 EXHIBIT 3 Amended and Restated Limited 48
16 Liability Company Agreement of First
17 SOURCE Electrical, LLC dated 10-1-08,
18 with attachments, 53 pages
19 EXHIBIT 4 Restricted Unit Award Agreement 62
20 between First SOURCE Electrical and
21 Ms. Azuara, dated 4-21-10, 6 pages
22 EXHIBIT 5 e-mail dated 5-13-10 to Jim Cramer n/m
23 and Dave Kleshinski from Michele
24 Souder; Re: FSE Copper/Aluminum Wire,
25 with attachment, total of 3 pages
26 EXHIBIT 6 e-mail dated 5-21-10 to J. Cramer n/m
27 from D. Kleshinski; Re: Revised FSE
28 Inventory Summary with Reports,
29 2 pages
30 EXHIBIT 7 First Source Electrical Inventory 68
31 Reconciliation Summary May 21, 2010,
32 21 pages
33 EXHIBIT 8 First Source Electrical Inventory n/m
34 Reconciliation Summary May 21, 2010,
35 2 pages

ORAL DEPOSITION OF IRMA AZUARA

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NUMBER	DESCRIPTION	PAGE
5 EXHIBIT 9	Chain of e-mails dated 5-27-10 among various people; Re: FSE - Inventory Issue documentation request, 3 pages	n/m
7 EXHIBIT 10	Several chains of e-mails with various dates, people, and subjects, total of 6 pages	90
9 EXHIBIT 11	Chain of e-mails dated 8-25 to 9-1-10 among various people; Re: Waiver and Amendment, 2 pages	93
11 EXHIBIT 12	First SOURCE letters dated 9-14-10 from M. Menzer to I. Azuara, M. Jenson, P. DeLoache, with attachments; Re: Notice of Additional Capital Contributions Required, 6 pages	104
15 EXHIBIT 13	chain of e-mails dated 2-1-11 between Kleshinski, DeLoache and Azuara; Re: FSE Cash Forecast_01_28_11 6Weeks.xls, 1 page	107
17 EXHIBIT 14	chain of e-mails dated 2-8-11 between DeLoache, Kleshinsky and Azuara; Re: Bbc for we 020711, 1 page	108
19 EXHIBIT 15	e-mail dated 2-9-11 to Azuara from Kleshinski; Re: Workers Comp Payments - Difference in Reported Payroll for Class Codes, with attachments, total of 4 pages	109
22 EXHIBIT 16	Chain of e-mails dated 2-9-11 among various people; Re: Year End Prepaid - Activant (Sales Tax Subscription) - Final Recommendation, 3 pages	111

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5 EXHIBIT 17	chain of e-mails dated 2-9 to 2-10-11 among various people; Re: First Soruce - December Balance Sheet Review - Item 6 - Prepaid Insurance, 2 pages	n/m
8 EXHIBIT 18	e-mail dated 2-18-11 to Azuara from Kleshinski; Re: FSE Trial Balance 123110, with attachment, 6 pages	152
10 EXHIBIT 19	e-mails dated 2-21-11 between DeLoache, Kleshinski and Azuara; Re: Copy of FSE Cash Forecast 02-18-11_rev2.xlsx, 1 pages	n/m
13 EXHIBIT 20	e-mails dated 3-18-11 between various people; RE: Documents with Date to be filled in, with attachments, total of 22 pages	113
15 EXHIBIT 21	e-mail dated 3-24-11 to Azuara from Kleshinski; Re: Chubb Amortization Should Begin in March, 2 pages	n/m
17 EXHIBIT 22	Typewritten document titled "Notes" regarding Ms. Azuara's termination meeting, 1 page	n/m
19 EXHIBIT 23	Ms. Azuara's personal e-mails post termination, 8 pages	136
21 EXHIBIT 24	Ms. Azuara's documents for unemployment benefits, 4 pages	n/m
22 EXHIBIT 25	Rosenberg & Sprovac letter dated 5-3-11 to Phil DeLoache, 2 pages	123
23 EXHIBIT 26	Kephart & Fisher letter dated 5-12-11 to Greg Rosenberg from C. Adkinson, 2 pages	124

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4 APRIL 11, 2012
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NUMBER	DESCRIPTION	PAGE
5 EXHIBIT 27	e-mail dated 5-20-11 to T. Backus and Kristi Blaschke from Kleshinski; Re: First Source Electrical - Request for Reduction in Verification Reserve, 1 page	n/m
8 EXHIBIT 28	Summary Inventory Value as of 2-28-09, 5 pages	n/m
11 EXHIBIT 29	Compilation of FSE's Financial Records, 9 pages	n/m
11 EXHIBIT 30	Plaintiff's Original Petition filed 11-21-11, 7 pages	124
13 EXHIBIT 31	Plaintiff's Response to Defendant's Request for Disclosure Pursuant to Rule 194 - TRCP dated 1-30-12 and Affidavit of E. Sprovac, 11 pages	n/m
15 EXHIBIT 32	Plaintiff's Response to Defendant's First Requests for Admissions to Plaintiff dated 3-5-12, 7 pages	n/m
17 EXHIBIT 33	Plaintiff's Response to Defendant's First Set of Interrogatories to Plaintiff dated 3-5-12, 10 pages	n/m
19 EXHIBIT 34	Plaintiff's Response to Defendant's First Request for Production dated 3-5-12, 15 pages	n/m

22 * * *

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1 THE REPORTER: We're going on the record
2 at 9:34 a.m., taking this pursuant to Texas Rules,
3 reading and signing.
4 Ma'am, will you go ahead and raise your
5 right hand to be administered the oath, please?
6 IRMA AZUARA,
7 being called as a witness, and having been first duly
8 sworn, testified as follows:
9 THE WITNESS: I do.
10 THE REPORTER: Thank you.
11 EXAMINATION
12 BY MR. OBERTI:
13 Q. Please state your name for the record, ma'am.
14 A. Irma Azuara.
15 Q. And what is your date of birth?
16 A. [REDACTED]
17 Q. So how old does that make you now?
18 A. 58. 57. 58, this year.
19 Q. And what is your current address?
20 A. 5324 Trout Line Lane, Rosenberg, Texas 77470.
21 Q. And you've given a deposition before?
22 A. Yes.
23 Q. One time or more than one time?
24 A. One time.
25 Q. And that was in relationship to a lawsuit

Pages 5 to 8

ORAL DEPOSITION OF IRMA AZUARA

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1 filed by a former employer?
 2 A. Yes.
 3 Q. And do you have a copy of that deposition
 4 transcript?
 5 A. No. Not that I recall.
 6 Q. And so you're probably familiar with the
 7 process; but just to be sure, let me go over a couple
 8 of the basic rules.
 9 First and foremost, of course, you have
 10 to tell the truth; and you've sworn to do that and you
 11 promise to do that. Correct?
 12 A. Yes.
 13 Q. Second of all, the court reporter can only
 14 transcribe what we verbalize; so I would ask you to do
 15 your best to say "yes" or "no" or that sort of thing,
 16 rather than a nod of the head or "uh-huh" or "huh-uh."
 17 A. Okay.
 18 Q. If you don't understand one of my questions,
 19 let me know. Otherwise, I will assume that you
 20 understood.
 21 A. Okay.
 22 Q. The last thing is I will do my best to try to
 23 let you finish your answer before I ask a new question.
 24 In return, I would ask you to try to let me finish my
 25 question before you begin to answer. That way the

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1 court reporter can take down a nice, clean transcript.
 2 Okay?
 3 A. Okay.
 4 Q. Where were you born?
 5 A. San Antonio, Texas.
 6 Q. And you graduated from high school?
 7 A. Yes.
 8 Q. What high school was that?
 9 A. Lamar Consolidated.
 10 Q. Here in Houston?
 11 A. Rosenberg.
 12 Q. What year was that?
 13 A. 1972.
 14 Q. What did you do after you graduated from high
 15 school?
 16 A. Worked.
 17 Q. Where did you go to work?
 18 A. Drugstore.
 19 Q. What were you doing there?
 20 A. Cashier.
 21 Q. Have you attended college after graduating
 22 from high school?
 23 A. Yes. Many years after.
 24 Q. What college did you go to?
 25 A. Houston Community.

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1 Q. Any others?
 2 A. Southwestern Accounting Institute.
 3 Q. Any others?
 4 A. No.
 5 Q. And did you get some sort of degree from HCC?
 6 A. Yes.
 7 Q. Associate's degree?
 8 A. Yes.
 9 Q. And what year was that?
 10 A. 19 -- I want to say 1990.
 11 Q. What was the associate's degree in?
 12 A. Accounting. Business.
 13 Q. Did you attend the Southwest Accounting
 14 Institute after that?
 15 A. I believe it was before.
 16 Q. Did you get any sort of degree from that?
 17 A. Certificate.
 18 Q. A certificate of?
 19 A. Accounting.
 20 Q. Prior to going to school at HCC -- well,
 21 prior to going to school at Southwest Accounting
 22 Institute, had you worked in any capacity that involved
 23 accounting?
 24 A. Yes.
 25 Q. How many jobs had you done that in, prior to

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1 going to school at Southwest Accounting Institute? One
 2 job or more than one?
 3 A. More than one.
 4 Q. How many?
 5 A. I don't recall. Maybe, but I don't recall.
 6 Q. What are the two that you can recall?
 7 A. ABC Appliance and Metcalf & Eddy.
 8 Q. What type of business is that?
 9 A. Engineering firm.
 10 Q. And about how long did you work at
 11 ABC Appliance?
 12 A. Ten years.
 13 Q. Do you remember, roughly, what ten years
 14 those were?
 15 A. Late '80s, I believe.
 16 Q. Late '80s to late '90s? Late '70s to late
 17 '80s? Sometime in the '80s?
 18 A. Yes.
 19 Q. Were you in accounting the whole time?
 20 A. Yes.
 21 Q. Did you have a title at ABC Appliance?
 22 A. I started -- yes, yes.
 23 Q. What was your initial title?
 24 A. Accounts payable.
 25 Q. Dealing with incoming invoices and that sort

Pages 9 to 12

Sunbelt Reporting & Litigation Services

Houston Austin Bryan/College Station Corpus Christi Dallas/Fort Worth East Texas San Antonio

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1 of thing?
 2 A. Yes.
 3 Q. And did you move on to another position at
 4 ABC Appliance?
 5 A. Yes.
 6 Q. What was that?
 7 A. Controller.
 8 Q. So you got a promotion?
 9 A. Yes.
 10 Q. And who did you report to as the controller
 11 of ABC Appliance?
 12 A. Norman Kayne.
 13 Q. Who was he?
 14 A. Owner.
 15 Q. So there was no CFO above you?
 16 A. No.
 17 Q. You were the highest accounting person at
 18 ABC Appliance?
 19 A. Yes.
 20 Q. And how long did you stay in that role?
 21 A. I don't recall.
 22 Q. Roughly? Couple of years?
 23 A. Yeah. Something like that.
 24 Q. Then at Metcalf & Eddy, about how long did
 25 you work there?

Page 14

1 A. One year.
 2 Q. Was that before or after ABC Appliance?
 3 A. Before.
 4 Q. What was your job there?
 5 A. Accounts payable.
 6 Q. The whole time?
 7 A. Yes.
 8 Q. Why did you leave Metcalf & Eddy? Were you
 9 terminated, or did you quit?
 10 A. I quit.
 11 Q. To go to ABC Appliance?
 12 A. Yes.
 13 Q. And why did you leave ABC Appliance? Were
 14 you terminated, or did you quit?
 15 A. No. It was sold. ABC Appliance was sold to
 16 Crown Plumbing.
 17 Q. Once it was sold, you were terminated?
 18 A. No. I quit.
 19 Q. Oh, okay. Did you go to work somewhere after
 20 that?
 21 A. Yes.
 22 Q. Where did you go?
 23 A. T.R. Moore & Company.
 24 Q. What job did you get there?
 25 A. Staff accountant.

Page 15

1 Q. And how long did you work at T.R. Moore &
 2 Company?
 3 A. Two years.
 4 Q. Were you a staff accountant the whole time?
 5 A. Yes.
 6 Q. And who did you report to?
 7 A. Tim Moore.
 8 Q. Is Tim Moore the owner?
 9 A. Uh-huh.
 10 Q. Yes?
 11 A. Yes. Sorry.
 12 Q. That's all right.
 13 A. Yes.
 14 Q. So you were the highest ranking accounting or
 15 financial person at T.R. Moore?
 16 A. No.
 17 Q. Who would be above you? Was there a CFO?
 18 A. I don't recall. It was so long ago.
 19 There were others that had more -- I
 20 wouldn't say more important jobs, but I didn't -- well,
 21 Tim Moore is the only one that I -- like he was my
 22 supervisor.
 23 And I think everybody -- you know, he was
 24 the manager; so everybody just reported to him.
 25 Q. Who else was in the -- were you part of the

Page 16

1 accounting department?
 2 A. Yes, I was part of the accounting department,
 3 yes.
 4 Q. Was there anybody higher ranking than you in
 5 the accounting department?
 6 A. Yes, yes.
 7 Q. Who was that?
 8 A. I don't remember his name.
 9 Q. So you were at T.R. Moore for about two years
 10 as a staff accountant?
 11 A. Yes.
 12 Q. What did that job entail as a staff
 13 accountant?
 14 A. I went out to various clients. I worked from
 15 home mostly. I went out to various clients and audited
 16 their bookwork and also helped them with their
 17 bookkeeping and accounting.
 18 Q. The clients?
 19 A. Uh-huh.
 20 Q. Yes?
 21 A. Yes. Yes.
 22 Q. The job at ABC Appliance, when you were a
 23 controller, I'm assuming that was for the company's
 24 internal books.
 25 A. Correct.

Pages 13 to 16

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1 Q. Not some other client's company.
 2 A. Yes.
 3 Q. And as the controller, how would you
 4 summarize what your job responsibilities were?
 5 A. Make sure that the financials were prepared
 6 on time and analyzed and all the bookwork. I also
 7 supervised the accounts payable and accounts receivable
 8 payroll departments.
 9 Q. Essentially, as controller, you had overall
 10 responsibility for the integrity of the company's
 11 financials, make sure they are accurate. Correct?
 12 A. Yes.
 13 Q. After you left T.R. Moore & Company, where
 14 did you go to work, if anywhere?
 15 A. Key Electrical.
 16 Q. Do you remember what year that was?
 17 A. I believe 2000, I think.
 18 Q. Why did you leave T.R. Moore? Were you
 19 terminated, or did you quit?
 20 A. No, I quit.
 21 Q. To accept the job at Key?
 22 A. Yes.
 23 Q. What was the job you were initially hired at
 24 Key?
 25 A. Controller.

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1 Q. Was that the job you kept the entire time?
 2 A. Yes.
 3 Q. As I understand it, you kept the job until
 4 2008?
 5 A. Yes.
 6 Q. None of these companies were publicly traded
 7 companies, were they?
 8 A. Key Electrical was.
 9 Q. Key Electrical was a publicly traded company?
 10 A. Yes.
 11 Q. And the location for Key Electrical that you
 12 worked at was in Houston, right?
 13 A. Yes.
 14 Q. Was that the company's headquarters?
 15 A. Yes.
 16 Q. Did they have other locations?
 17 A. Yes.
 18 Q. Outside of Texas, as well?
 19 A. No.
 20 Q. Just in Texas?
 21 A. Yes.
 22 Q. How many other locations?
 23 A. One.
 24 Q. Where was that?
 25 A. Stafford.

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1 Q. So the two locations were Houston and
 2 Stafford?
 3 A. Yes.
 4 Q. You were at the Houston location, which was
 5 the headquarters?
 6 A. Yes.
 7 Q. As the controller of Key Electrical, did
 8 anybody report to you?
 9 A. Yes.
 10 Q. Who?
 11 A. Accounts payable, accounts receivable,
 12 billing.
 13 Q. About how many people reported to you?
 14 A. Four, maybe.
 15 Q. Were you ever an owner of Key Electrical?
 16 A. No.
 17 Q. Did you have responsibility for hiring and
 18 firing at Key Electrical?
 19 A. Yes.
 20 Q. Did you hire some people?
 21 A. Yes.
 22 Q. Over the years, did you fire some people?
 23 A. No, not that I can recall.
 24 Q. When you were at ABC Appliance as controller,
 25 did you supervise some other people?

Page 20

1 A. Yes.
 2 Q. About how many?
 3 A. Three.
 4 Q. At ABC Appliance, did you have responsibility
 5 for hiring and firing?
 6 A. No.
 7 Q. Have you ever fired anybody in your life?
 8 A. Not that I can recall.
 9 Q. And at Key Electrical, you worked with some
 10 of the same folks that you later on moved on to First
 11 SOURCE with. Correct?
 12 A. Yes.
 13 Q. And who were some of those people?
 14 A. Mark Jenson, Michael Pesek, Jimmy Chandler,
 15 Phil DeLoache, Ron Settle.
 16 Q. Who?
 17 A. Ron Settle.
 18 Q. Okay.
 19 A. Brian Navarro, Brian Abshire. Did I mention
 20 Michael Pesek?
 21 Q. Yes.
 22 A. Jeff Spradley. Several others. Mark Yocum,
 23 Mark Haynes, Tim Medina. I can't think of any other
 24 names right now.
 25 Q. What was Mr. Jenson's title at

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1 Key Electrical?
2 A. President.
3 Q. And Mr. Pesek?
4 A. IT manager, I believe.
5 Q. And Jimmy Chandler?
6 A. Purchasing.
7 Q. And Phil DeLoache?
8 A. I can't recall his title.
9 Q. Basically, if you know.
10 A. Sales manager, I believe.
11 Q. Ron Settle?
12 A. Outside sales.
13 Q. Brian Navarro?
14 A. Outside sales.
15 Q. Brian Abshire?
16 A. Outside sales.
17 Q. Jeff Spradley?
18 A. IT.
19 Q. Mark Yocum.
20 A. Outside sales.
21 Q. Mark Haynes?
22 A. Outside sales.
23 Q. And Tim Medina?
24 A. Inside sales.
25 Q. And who did you report to as the controller

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1 at Key Electrical?
2 A. Mark Jenson.
3 Q. The whole time you worked there?
4 A. Yes.
5 Q. Did Mr. Jenson hire you?
6 A. Yes.
7 Q. How is it that you found out about the job
8 opportunity at Key Electrical?
9 A. Mark Jenson came to me and offered me the
10 position.
11 Q. So you knew Mark Jenson prior to going to
12 work at Key?
13 A. Yes.
14 Q. And how did you know him?
15 A. Through Tim Moore. It was through Tim Moore.
16 Q. Tim? Also T.R.?
17 A. T.R. Moore, yes.
18 Q. What type of company is T.R. Moore & Company?
19 A. CPA firm.
20 Q. Did they provide services to Key Electrical?
21 A. Yes.
22 Q. So is it accurate to say that in your role as
23 staff accountant at T.R. Moore, you provided some work
24 for Key Electrical and met Mr. Jenson that way?
25 A. Yes.

Page 23

1 Q. And how long, roughly, had you known
2 Mr. Jenson prior to going to work at Key Electrical?
3 A. I don't recall.
4 Q. A couple of years?
5 A. No, I don't think it was that long.
6 Q. Maybe a year?
7 A. I want to say six months.
8 Q. So, presumably, he was impressed with your
9 work?
10 A. Yes.
11 Q. Did Key Electrical have a controller?
12 A. No.
13 Q. So you were the first controller?
14 A. No.
15 Q. They had a previous controller?
16 A. Yes.
17 Q. And what happened to that person?
18 A. He quit.
19 Q. So then after he quit, they used T.R. Moore
20 as a temporary fix for a while?
21 A. No, no.
22 Q. What did they do?
23 A. I was contract controller for Key.
24 Q. I got you. Through T.R. Moore?
25 A. Through T.R. Moore.

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1 Q. Right.
2 A. And they were hiring a controller --
3 Q. Right.
4 A. -- at the time that I was working for
5 T.R. Moore.
6 Q. Okay.
7 A. They offered me the position at the time, but
8 I turned it down.
9 Q. And you stayed at T.R. Moore?
10 A. And I stayed at T.R. Moore.
11 Q. So did they go out and hire an actual
12 controller?
13 A. Yes, yes.
14 Q. This guy?
15 A. Yes.
16 Q. How long did the guy last?
17 A. I don't know. I don't remember. I don't
18 recall.
19 Q. But eventually he quit?
20 A. Yes. Well, there were -- yes.
21 Q. And then Mr. Jenson came back to you?
22 A. Yes.
23 Q. Re-offered you to job?
24 A. Yes.
25 Q. Begged and pleaded? (Indicating).

Pages 21 to 24

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1 Well, you took it this time.
2 A. Yes.
3 Q. Why did you take it the second time and not
4 the first time?
5 A. The first time, it was being bought out by
6 IES at the time; and I had been through a folding
7 before and I didn't want to go through that again.
8 Q. So what happened? The IES deal fell through?
9 A. No, IES did buy them out.
10 Q. So Key's owner was IES?
11 A. No.
12 Q. The whole time?
13 A. No.
14 Q. What happened after IES?
15 A. I don't understand your question.
16 Q. When you went to work for Key Electrical --
17 A. Yes.
18 Q. -- did IES own them?
19 A. Yes.
20 Q. At the time you left Key Electrical, did IES
21 own them?
22 A. Yes.
23 Q. And IES is publicly traded?
24 A. Yes.
25 Q. So kind of the dust from that purchase had

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1 settled, and you felt comfortable going to work there
2 now?
3 A. Yes.
4 Q. And how would you describe your overall job
5 responsibilities as the controller at Key Electrical?
6 A. I made sure the financials were correct, met
7 the deadlines for financials. Analytical, made sure
8 everything was done correctly. Also, I processed
9 payroll, cash management.
10 Q. Now, where is IES' corporate headquarters?
11 A. Houston.
12 Q. I'm assuming that IES has a controller. Do
13 you know?
14 A. I don't know.
15 Q. When you were at Key Electrical working as
16 the controller, did you have to interact with anybody
17 from IES?
18 A. Yes, yes.
19 Q. Regarding the financials of Key Electrical?
20 A. Yes.
21 Q. And who was that?
22 A. I don't recall his name.
23 Q. Do you remember what the person's title was?
24 A. No, I don't.
25 Q. Well, IES, as publicly traded company, had to

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1 issue, like, 10-K reports, correct?
2 A. I guess, yes.
3 Q. Do you know whether the financials relating
4 to Key Electrical were part of the consolidated
5 financial reporting of IES?
6 A. I don't know.
7 Q. Do you believe that it was important that the
8 financial information you provided to IES regarding
9 Key Electrical be accurate?
10 A. Yes.
11 Q. Why?
12 A. Why did I think it was important?
13 Q. Right.
14 A. I guess I just don't understand your
15 question. I mean...
16 Q. Was IES somehow relying upon the accuracy of
17 the financial information that you were providing to
18 them about Key Electrical?
19 A. Yes.
20 Q. In what way were they relying on it, if you
21 know? In other words, one way might be: "Hey, we're a
22 publicly traded company, we're going to issue a 10-K,
23 the 10-K has to provide an accurate financial snapshot
24 of not only IES but our subsidiaries, one of which is
25 Key Electrical; hence, it's important that that

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1 information be accurate."
2 It might be, "Gee, we're going to make
3 purchasing and expenditure decisions and we need to
4 know what the current accurate state of our full
5 financial status is."
6 So do you know what they were relying on
7 your financial information to do or not do?
8 A. To be accurate.
9 Q. Okay. And was it accurate?
10 A. Yes. Best of my knowledge.
11 Q. Did anyone from IES ever come back to you and
12 say, "You made some big mistake, some catastrophic
13 mistake"?
14 A. Not to me, no.
15 Q. Okay. Did you get job reviews at
16 Key Electrical during your employment, performance
17 reviews?
18 A. Not that I recall, no.
19 Q. And you reported to Mr. Jenson?
20 A. Yes.
21 Q. And he was the president?
22 A. Yes.
23 Q. And do you know what his background is
24 regarding accounting? Does he have any particular
25 background unique to accounting?

Pages 25 to 28

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1 A. I don't know.
2 Q. Do you know if he has a college degree?
3 A. I don't know.
4 Q. Did he seem to be adept with understanding
5 the financial reporting?
6 A. Yes.
7 Q. Would you have regular meetings with him
8 about the financial statements and financial
9 information regarding Key Electrical?
10 A. Yes.
11 Q. And did you and Mr. Jenson become friends?
12 A. Yes.
13 Q. And what do you mean?
14 A. I don't understand your question. What do
15 you mean "what do you mean?"
16 Q. Well, I mean, did you develop a friendship
17 outside of the workplace?
18 A. No.
19 Q. Have you ever been over to Mr. Jensen's
20 house?
21 A. Yes.
22 Q. Did you go over to his house when you were
23 working at Key Electrical?
24 A. Yes.
25 Q. For what purpose?

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1 A. Work.
2 Q. Are you married?
3 A. Yes.
4 Q. Ever go over there with your husband for
5 dinner or anything?
6 A. No.
7 Q. So you didn't go to his house for work?
8 A. Yes.
9 Q. And did he ever go to your house for any
10 reason?
11 A. No.
12 Q. And did you ever do anything socially outside
13 of work?
14 A. No.
15 Q. But you had a good working relationship?
16 A. Yes.
17 Q. And you worked with him for almost ten years?
18 A. Yes.
19 Q. And during those ten years did he ever give
20 you any sort of written discipline?
21 A. No.
22 Q. Did he give you any raises?
23 A. Yes.
24 Q. Did you typically receive an annual raise?
25 A. Yes.

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1 Q. And did you get any sort of bonuses?
2 A. Yes.
3 Q. And were they annual bonuses?
4 A. No.
5 Q. What were the bonuses tied to, if you know,
6 if anything? Under what conditions did you get a bonus
7 at Key Electrical?
8 A. I don't recall. I don't recall.
9 Q. Do you remember what the rough -- roughly,
10 the size of the largest bonus you got at Key Electrical
11 was?
12 A. 5,000, I believe.
13 Q. Do you remember, roughly, how much your
14 initial salary was when you started at Key Electrical?
15 A. 60.
16 Q. 60,000?
17 A. (Moving head up and down.)
18 Q. And as of when you left in 2008, do you
19 remember, roughly, what your salary was?
20 A. 130.
21 Q. And naturally, as the controller at
22 Key Electrical, you were considered an exempt employee
23 and you were paid a salary, not hourly. Correct?
24 A. Correct.
25 Q. What about when you were at T.R. Moore? Were

Page 32

1 you paid salary or hourly?
2 A. I don't recall.
3 Q. What about when you were the controller at
4 ABC Appliance? Were you paid a salary or hourly?
5 A. Salary.
6 Q. Have you ever filed a lawsuit before, other
7 than this one?
8 A. No.
9 Q. Do you have any other education outside of
10 high school, other than what you've already told me
11 about, which was the certificate at Southwest
12 Accounting Institute and the associate's degree in
13 accounting in business from HCC?
14 A. No.
15 Q. Have you taken any sort of special courses,
16 like continuing education sort of thing?
17 A. No.
18 Q. So did you have to have an understanding of
19 any particular laws to be the controller at
20 Key Electrical?
21 A. I don't understand the question.
22 Q. Well, how did you know how to do your job at
23 Key Electrical? Just from your education and
24 experience?
25 A. Yes.

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1 Q. Was it important -- like with lawyers
2 sometimes it's important that we keep current, read up
3 on new laws and new decisions.
4 Was there anything like that at
5 Key Electrical? Did you have to keep current on new
6 accounting methods or anything?
7 A. No.
8 Q. What is your husband's name?
9 A. Miguel.
10 Q. How long have you and Miguel been married?
11 A. 35 years this year.
12 Q. Oh, congratulations.
13 A. Thank you.
14 Q. That's rare.
15 And do you--all have any children?
16 A. Yes.
17 Q. And how many?
18 A. Two.
19 Q. How old are they?
20 A. My daughter is 32, and my son passed away in
21 '93.
22 Q. Oh, I'm sorry to hear that.
23 A. Thank you.
24 Q. And what does your husband do? Does he work?
25 A. Yes.

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1 Q. What does he do?
2 A. Delivery driver.
3 Q. Who is his employer?
4 A. Kiva Kitchen & Bath.
5 Q. And is there anybody else in your family who
6 has had a professional career in accounting?
7 A. No.
8 Q. What sort of drew you to that particular
9 career choice?
10 A. I like numbers.
11 Q. Always have?
12 A. Always have.
13 Q. Okay. Somebody has got to.
14 And since March 29th, 2011 -- that was
15 the day you were terminated at First SOURCE, correct?
16 A. Yes.
17 Q. Since then have you been employed anywhere?
18 A. Yes.
19 Q. How many places have you been employed since
20 you were terminated at First SOURCE?
21 A. Two.
22 Q. And where are they?
23 A. Contract position with Account Temps.
24 Q. Okay.
25 A. And accounting manager with Bentwater Yacht

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1 & Country Club.
2 Q. And which one came first? The Account Temps
3 position?
4 A. Yes.
5 Q. Do you remember how long, roughly, did you
6 work in that position?
7 A. From August to November.
8 Q. Of 2011?
9 A. Yes.
10 Q. And were you -- did Account Temps place you
11 somewhere?
12 A. Yes.
13 Q. Where?
14 A. Franks International.
15 Q. What do they do?
16 A. Oil and gas.
17 Q. Here in Houston?
18 A. Yes.
19 Q. And were you paid on an hourly basis, I
20 assume?
21 A. Yes.
22 Q. How much an hour?
23 A. 22.
24 Q. Did you ever work overtime?
25 A. No.

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1 Q. And was that on a particular project?
2 A. Yes.
3 Q. So the project came to an end, I assume?
4 A. Yes.
5 Q. Hence, that's why your Account Temps position
6 ended?
7 A. Correct.
8 Q. And did you work 40 hours a week?
9 A. Yes.
10 Q. And did they send you a 1099 in 2012
11 reflecting your earnings, or a W-2?
12 A. A W-2.
13 Q. Who sent you the W-2? Account Temps?
14 A. Yes.
15 Q. And then when did you work as the accounting
16 manager at Bentwater Yacht & Country Club?
17 A. January.
18 Q. Of 2012?
19 A. Yes.
20 Q. And are you still there?
21 A. Typically, yes.
22 Q. What does that mean?
23 A. I gave my notice.
24 Q. Oh, okay. When did you give your notice?
25 A. A month ago.

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1 Q. But you're still there?
2 A. Yes.
3 Q. How long is the notice period?
4 A. I am helping them out.
5 Q. Okay. Doing the right thing.
6 So why did you give your notice?
7 A. Bentwater Country Club is located in Conroe.
8 The person that was there before lives in Conroe. They
9 decided they are going to try to bring an accounting
10 manager here to Richmond, so I work there; and it just
11 didn't work out. They are rehiring, again, back in
12 Conroe.
13 Q. So did they ask you to leave or did you just
14 voluntarily quit?
15 A. No, I voluntarily quit.
16 Q. If you hadn't quit, would the job still exist
17 in Richmond?
18 A. Probably not. I'm not sure.
19 Q. All right. How did you get that job at
20 Bentwater Yacht and Country Club?
21 A. My resume' is out on Monster.com and they
22 called me.
23 Q. What were they paying you?
24 A. 25 an hour. Sorry. I was on salary. 52 a
25 year.

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1 Q. What was your title?
2 A. Accounting manager.
3 Q. Did you supervise anyone?
4 A. No.
5 Q. Was it a full-time job?
6 A. Yes.
7 Q. And so you're taking today off, obviously?
8 A. Yes.
9 Q. When is your last day expected to be?
10 A. Whenever they hire someone or I find a job.
11 Q. So you've been working full-time since
12 January, 2012?
13 A. Yes.
14 Q. -- at Bentwater Yacht and Country Club?
15 A. Yes.
16 Q. In Richmond?
17 A. Yes.
18 Q. But that job is coming to an end at an
19 undetermined time, so now you're out looking for a new
20 job?
21 A. Yes.
22 Q. And other than working at Account Temps and
23 Bentwater Yacht & Country club, have you worked
24 anywhere else since leaving First SOURCE?
25 A. No.

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1 Q. And have you received any form of income
2 since you were terminated by First SOURCE, other than
3 working at Account Temps and Bentwater Yacht & Country
4 Club?
5 A. Yes.
6 Q. What's that?
7 A. Texas Workforce Commission.
8 Q. Unemployment?
9 A. Yes.
10 Q. And how long did you receive that?
11 A. From April until January of this year.
12 Q. From April, 2011 to January, 2012?
13 A. Yes.
14 Q. Did you receive it while you were working at
15 Account Temps?
16 A. No.
17 Q. So for about three months it was suspended?
18 A. Correct.
19 Q. Do you know, can you go back on it again if
20 you need to?
21 A. I suppose so.
22 Q. Were you getting paid weekly or biweekly?
23 A. I think every two weeks, biweekly.
24 Q. Do you remember how much it was every two
25 weeks?

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1 A. \$800, roughly.
2 Q. Have you received any other form of income
3 since you were terminated by First SOURCE, other than
4 working at Account Temps, Bentwater Yacht & Country
5 Club, and unemployment benefits?
6 A. No.
7 Q. Now, as I understand it, First SOURCE
8 Electrical was a new company founded in February, 2008
9 when a number of employees left Key Electrical Supply
10 to start First SOURCE?
11 A. Yes.
12 Q. And do you know whose idea it was to do that?
13 A. Mark Jenson.
14 Q. How did you find out about it?
15 A. He told me.
16 Q. Did he tell you before or after he left
17 Key Electrical?
18 A. Before.
19 Q. And I'm assuming he told you because he
20 wanted you to join.
21 A. Correct.
22 Q. And what did you say?
23 A. Yes.
24 Q. Why did you say that?
25 A. Because he had a proven record of

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1 making -- having the company make money. He knew what
2 he was doing, so I trusted him.
3 Q. Okay. First SOURCE was -- sorry.
4 Key Electrical was financially profitable?
5 A. Yes.
6 Q. Under his presidency and leadership?
7 A. Yes.
8 Q. And did he tell you how much you were going
9 to be paid if you took the job with First SOURCE?
10 A. The same amount of money I was making when I
11 left.
12 Q. Now, when you were with Key Electrical, did
13 you have a written employment contract?
14 A. No.
15 Q. But you did have one when you went to work
16 for First SOURCE, correct?
17 A. Yes.
18 Q. And how did that come about? Was it offered
19 to you; or did you say, "Hey, I want a written
20 contract"?
21 A. No, it was offered to me.
22 Q. And who offered it to you?
23 A. I don't recall. I don't remember.
24 Q. Here are some deposition exhibits in this
25 book in front of you. You can show it to your lawyer,

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1 too.
2 A. Okay.
3 Q. If you look at Exhibit 1, do you recognize
4 that as your initial employment agreement with First
5 SOURCE Electrical?
6 (Marked was Azuara Exhibit No. 1.)
7 A. (Reviewing) Yes.
8 Q. (By Mr. Oberti) And having looked at it now,
9 can you recall who it was that brought this to you
10 first? Was it Mr. Jenson or somebody else?
11 A. I don't recall.
12 Q. Okay. It wasn't your idea?
13 A. No.
14 Q. Whoever brought it to you, after you got it,
15 did you seek any guidance or input from a lawyer about
16 this document?
17 A. No.
18 Q. What did you do? Did you sign it?
19 A. Yes.
20 Q. Now, when you went to work at First SOURCE,
21 which, I guess, you started there in February, 2008 --
22 A. Yes.
23 Q. -- did you know that it was owned by a
24 company called White Oak Partners, Inc.?
25 A. Yes.

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1 Q. And how did you know that?
2 A. Mark Jenson told me.
3 Q. Do you know where White Oak Partners, Inc. is
4 headquartered?
5 A. I want to say Ohio.
6 Q. Right. Have you ever been up to their
7 headquarters?
8 A. No.
9 Q. Did you understand that White Oak Partners,
10 Inc. was a private equity firm?
11 A. Yes.
12 Q. Did you know what a private equity firm is?
13 A. Yes and no.
14 Q. Okay. You understood -- is it fair to say
15 that you understood and knew White Oak Partners was a
16 majority owner of First SOURCE Electrical and,
17 therefore, was keenly interested in First SOURCE
18 Electrical making money?
19 A. Yes.
20 Q. Because they were, essentially, an investor
21 in it?
22 A. Yes.
23 Q. And did you know that Michael Menzer was the
24 founder and chief executive officer of White Oak
25 Partners?

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1 A. Yes.
2 Q. Have you ever met Michael Menzer?
3 A. Yes.
4 Q. Obviously, you never met him in Ohio because
5 you never went up there. Right?
6 A. Yes.
7 Q. You met him in Houston?
8 A. Yes.
9 Q. How many times?
10 A. I don't recall.
11 Q. More than once?
12 A. Oh, yes.
13 Q. Did you have meetings in which Mr. Menzer was
14 a participant?
15 A. Yes.
16 Q. Were some of the meetings about the financial
17 health of First SOURCE?
18 A. No.
19 Q. What were they about?
20 A. We had several meetings through
21 teleconference, and most of those meetings were just to
22 let him know how we were doing. We would have weekly
23 meetings, I believe, just to let him know: Hey, this
24 is what's going on.
25 Q. Weekly meetings personally or on the phone?

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1 A. On the phone.
 2 Q. Now, would it be fair to say that your
 3 essential job duties as the controller at First SOURCE
 4 were the same as they were at Key Electrical?
 5 A. Yes.
 6 Q. Which, as you said, was to make sure the
 7 financials were correct, meet financial reporting
 8 deadlines, analytical, payroll, and account management?
 9 A. Yes.
 10 Q. Did you know somebody named Michele Souder?
 11 A. "Souder," yes.
 12 Q. Did you know that she served as senior
 13 partner of investment management at White Oak Partners?
 14 A. No.
 15 Q. Did you know what her role was?
 16 A. No.
 17 Q. Did you realize that she was somebody with
 18 White Oak "Management"?
 19 A. Yes.
 20 Q. I mean White Oak "Partners"?
 21 A. Yes.
 22 Q. And her office is up in Ohio, too? Or did
 23 you know that?
 24 A. I didn't know.
 25 Q. You knew she wasn't here in Houston, correct?

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1 A. Correct.
 2 Q. Do you know what other companies, other than
 3 First SOURCE Electrical, that White Oak Partners, Inc.
 4 has an ownership interest in?
 5 A. No.
 6 Q. Now, this document here, which is Exhibit 1,
 7 looks like if you go to the second-to-the-last page,
 8 Page 11 there, it looks like it's signed by
 9 Mark Jenson --
 10 A. Okay.
 11 Q. -- as president and CEO of First SOURCE
 12 Electrical and, then, also signed by you. Correct?
 13 A. Yes.
 14 Q. Your starting salary here at First SOURCE
 15 Electrical, according to your contract, was -- if you
 16 look on the first page, Paragraph 3(a), \$138,298.
 17 Correct?
 18 A. Yes.
 19 Q. Was that a slight raise from what you were
 20 making at Key Electrical?
 21 A. No. I think it was the same.
 22 Q. And your title with the company was senior
 23 vice president and controller, according to this
 24 document, correct?
 25 A. Yes.

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1 Q. And what was your actual title right before,
 2 when you were at Key Electrical? Just controller?
 3 A. Vice president and controller.
 4 Q. Okay. So this added "senior" to it?
 5 A. Yes.
 6 Q. And then, under Paragraph 2 there where it
 7 says, "Duties of Executive," it says, "During the Term
 8 of Employment, the Company shall employ Executive, and
 9 Executive shall work for the Company as Senior
 10 Vice President and Controller. In such capacity,
 11 Executive shall have all of the duties and
 12 responsibilities as may be delegated from time to time
 13 by the Board of Managers of the Company or by an
 14 individual designated by the Board."
 15 Correct?
 16 A. Yes.
 17 Q. Do you know who the board of managers of the
 18 company consisted of?
 19 A. No.
 20 Q. And then, under (b) it says, "During the Term
 21 of Employment, Executive shall (i) devote all of his
 22 business time to, and use his best efforts in, carrying
 23 out Executive's duties hereunder, (ii) not engaged in
 24 any activity which would be inconsistent with such
 25 duties or with the objectives and business of the

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1 Company, and (iii), diligently perform his obligations
 2 and discharge his duties hereunder."
 3 Correct?
 4 A. Yes.
 5 Q. And did you realize that under this
 6 particular contract, if you were terminated by
 7 First SOURCE without cause, as defined in the contract,
 8 then you were entitled to two years' base pay as
 9 severance?
 10 A. Yes.
 11 Q. And that was in the contract when you got it?
 12 A. Yes.
 13 Q. Did you feel like this contract, Exhibit 1,
 14 was a good thing for you when you signed it; or did you
 15 feel like it was a bad thing?
 16 A. Neither.
 17 Q. Just kind of neutral?
 18 A. Yes.
 19 Q. Then, is it accurate that -- if you go to
 20 Exhibit No. 3, this is a document entitled "Amended and
 21 Restated Limited Liability Company Agreement of First
 22 SOURCE Electrical, LLC, a Delaware Limited Liability
 23 Company," dated October 1st, 2008. Correct?
 24 (Marked was Azuara Exhibit No. 3.)
 25 A. Yes.

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1 Q. (By Mr. Oberti) And if you go to Page 31,
2 the document is signed off on by Mark Jenson as
3 president and CEO of First SOURCE Acquisition Company,
4 LLC, and yourself and Phil DeLoache on October 1st,
5 2008. Correct?
6 A. Yes.
7 Q. And how did this document come to your
8 attention?
9 A. Mark Jenson gave it to me.
10 Q. And did you sign it as soon as you got it?
11 A. I don't recall.
12 Q. Did you show it to a lawyer or anybody first?
13 A. No, no.
14 Q. Do you have any recollection of whether or
15 not you actually read it?
16 A. Yes, I read it.
17 Q. And it's a fairly long document, correct?
18 A. Yes. I didn't understand most of it, but I
19 read it.
20 Q. A lot of it you didn't understand, though?
21 A. No.
22 Q. Did you understand at some level what this
23 document was meant to do? What was the purpose of it?
24 A. I don't know. I would have to read the
25 document.

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1 Q. I'm not asking you now. I'm saying at the
2 time Mr. Jenson comes by, shows you the document, which
3 is marked as Exhibit 3, and you sign it either then or
4 shortly thereafter, right?
5 A. Yes.
6 Q. And I'm just saying: At the time, looking
7 back at it now, can you remember, like, what you
8 thought this document was all about?
9 A. These documents -- I trusted Mark Jenson. He
10 was the one that would tell me, you know: Hey, this is
11 a good thing, you know, and I signed it.
12 And, you know, I trusted him.
13 Q. Okay. Well, did Mr. Jenson summarize for you
14 what the point of the document was?
15 A. More or less, but I don't remember what that
16 was. I don't recall. But more or less, yes.
17 I mean, he would go into detail and tell
18 me, you know: Hey, this is good. We need to sign
19 this. I mean, you don't have to sign it. You can go
20 get a lawyer, if you want; but, you know, this is more
21 or less what it says. I signed it, you know.
22 Q. And do you remember what he told you, more or
23 less --
24 A. No.
25 Q. -- what Exhibit 3 said?

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1 A. No. I don't recall.
2 Q. As you sit here now, do you know what the
3 point of the document was?
4 A. I don't recall. I would have to read it.
5 Q. Okay.
6 A. I'm sorry.
7 Q. So you haven't really read it since then?
8 A. No.
9 Q. Did you realize that as a result of this
10 document -- well, did you have to put some money up to
11 be part of this?
12 A. Yes.
13 Q. How much?
14 A. \$100,000.
15 Q. And who did you give the money to?
16 A. The company, Key Electrical.
17 Q. In the form of a check?
18 A. Yes.
19 Q. Cashier's check?
20 A. No. Regular check.
21 Q. And where did you get the hundred thousand?
22 A. I had to borrow it. I put my home up
23 for -- as collateral. I borrowed the money from the
24 bank.
25 Q. Against your home?

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1 A. Yes.
2 Q. Can you do that?
3 A. Apparently. I did.
4 Q. What bank was that?
5 A. Wells Fargo.
6 Q. Do you still owe them for that?
7 A. Yes.
8 Q. How much do you have left on the loan?
9 A. 60,000.
10 Q. Well, I'm assuming like -- was the loan for
11 100,000?
12 A. Yes.
13 Q. So you borrowed the entire amount?
14 A. Yes.
15 Q. And what I'm trying to understand is, like,
16 what was going through your mind when you're going to
17 get this 100,000 loan, like, what was the purpose of
18 this, in your mind, anyway?
19 A. In my mind? Again, I trusted Mark Jenson. I
20 knew that he made a go of Key Electrical Supply, and I
21 just had every confidence in him that he was going to
22 make a go of First SOURCE Electrical and I was going to
23 get my return on my money fairly soon, fairly quickly.
24 And he had someone there -- I don't
25 recall what his name was -- and he showed us a

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1 spreadsheet and said, you know: You're going to get a
2 return on your money.
3 And I did it.
4 Q. Okay.
5 A. I wish I didn't, but I did.
6 Q. Did someone tell you -- like, were you buying
7 stock in the company? Were you just putting some money
8 in? What was the vehicle that you were investing in?
9 A. I believe it was stock.
10 Q. Does it sound right to you that, according to
11 this document, you were purchasing with your \$100,000
12 12 Class A unit shares in First SOURCE?
13 A. Yes.
14 Q. Did you recognize, though, that regardless of
15 what anybody said, since you signed this document,
16 Exhibit 3, that this is really the document that
17 governed your rights?
18 A. Yes.
19 Q. You never got any part of that money back so
20 far, correct?
21 A. No, no.
22 Q. Have you subsequently talked to Mark Jenson
23 and told him: Hey, you know, I trusted you. I put up
24 \$100,000 that I had to go take out a loan for. What's
25 going on?

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1 A. No.
2 MR. LEVY: Can you wait and let him
3 finish answering the question before you answer it?
4 THE WITNESS: I'm sorry.
5 Q. (By Mr. Oberti) I guess you haven't gone
6 back and read through this document to see if you're
7 entitled to that 100 grand back or any part of it?
8 A. No.
9 Q. You worked at the company for more than two
10 years after you put up the \$100,000, correct?
11 A. Yes.
12 Q. During that time, did you go to anybody and
13 say, you know, "When am I going to get a return on my
14 investment?"
15 A. No.
16 Q. Why not?
17 A. I don't know. I just never did.
18 Q. Okay. Well, is it accurate to say that you
19 knew that in order to get a return on your investment,
20 First SOURCE had to be profitable; and you knew it
21 wasn't profitable?
22 A. Yes.
23 Q. Do you have any idea what those 12 Class A
24 unit shares are worth?
25 A. No.

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1 Q. Do you know whether you actually own those
2 12 Class A unit shares, or not, still?
3 A. No.
4 Q. You do not know?
5 A. I don't know.
6 Q. Did anyone ever tell that you somehow, as a
7 result of you being terminated, you had forfeited the
8 Class A unit shares that you purchased and are governed
9 by Exhibit 3?
10 MR. LEVY: Object to form.
11 Q. (By Mr. Oberti) Someone used the word
12 "forfeited" and said, "Oh, now that you've been
13 terminated by First SOURCE, you've forfeited your
14 shares?"
15 MR. LEVY: Object to form.
16 If I object and you still know the
17 answer to the question, you can still answer. If he
18 has a problem with the objection, we can talk about
19 that.
20 THE WITNESS: Oh. Sorry.
21 Q. (By Mr. Oberti) I should have told you about
22 that.
23 MR. LEVY: I didn't want to interrupt
24 you.
25 MR. OBERTI: I'm not one of those crazy

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1 lawyers who say, "Shut up, and don't interrupt me."
2 Q. (By Mr. Oberti) Sorry. Go ahead.
3 A. I don't recall.
4 (Marked was Azuara Exhibit No. 2.)
5 Q. (By Mr. Oberti) If you go to Exhibit 2 -- by
6 the way, if you want to take a break at any time during
7 the deposition, just let me know and we can take a
8 break.
9 MR. LEVY: How about now?
10 MR. OBERTI: You want one now?
11 MR. LEVY: We should probably do that
12 now.
13 MR. OBERTI: Okay. We will take a break
14 now.
15 (Recess taken at 10:25 a.m., resuming at
16 10:48 a.m.)
17 Q. (By Mr. Oberti) Ms. Azuara, I think we've
18 already established that as a result of the \$100,000
19 you put in pursuant to Exhibit 3, you have not received
20 any money back yet.
21 A. Correct.
22 Q. The other signatories on the document were
23 Mr. Jenson and Mr. DeLoache. Correct?
24 A. Yes.
25 Q. Do you know whether or not they have received

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1 any money back?
 2 A. I do not know.
 3 Q. Do you know how much Phil DeLoache put in?
 4 A. No, I do not.
 5 Q. He never told you?
 6 A. Not that I recall.
 7 Q. Do you know how much Mr. Jenson put?
 8 A. I don't recall.
 9 Q. If you go two pages up from -- well, the
 10 signature page is Page 31 of the document.
 11 A. Okay.
 12 Q. There you go. Then go two pages up. See
 13 where it says "Exhibit A"?
 14 A. Yes.
 15 Q. And then, under the heading "Management
 16 Investors," Mark Jenson put up \$325,000 and got 41
 17 shares, Phil DeLoache put up \$200,000 and got 25
 18 shares, and you put up \$100,000 and got 12 shares.
 19 Right?
 20 A. Yes.
 21 Q. And that's accurate, to your knowledge
 22 anyway, correct, at least your part?
 23 A. My part is, yes.
 24 Q. Now, do you still have a copy of this
 25 document somewhere?

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1 A. No.
 2 Q. Were you given a copy?
 3 A. Not that I recall.
 4 Q. So your best recollection is you just signed
 5 it and gave it back to Mark Jenson?
 6 A. Yes.
 7 Q. And never got a copy?
 8 A. Not that I recall.
 9 Q. So before today, when we've looked at it,
 10 when was the last time you saw that document?
 11 A. I never saw this (indicating). This portion
 12 of it, I never did see that. That's the first time
 13 I've seen that.
 14 Q. It's part of the document, which is
 15 Exhibit 3.
 16 A. This is the only thing I saw, right here.
 17 This is the last page I saw (indicating), that.
 18 Q. When was the last time you saw that?
 19 A. When I signed it.
 20 Q. And when you signed it, were all the pages
 21 together from Exhibit 3, do you know?
 22 A. I don't recall.
 23 Q. After you signed it, which was back in
 24 October, 2008, have you seen any part of Exhibit 3
 25 since then, before today?

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1 A. No.
 2 MR. LEVY: Can we have the record
 3 indicate that she was talking about 31, because she
 4 just said that.
 5 THE WITNESS: Sorry. Page 31.
 6 Q. (By Mr. Oberti) What about Exhibit 1, your
 7 original employment agreement with First SOURCE? Did
 8 you get a copy of that after you signed it?
 9 A. Yes.
 10 Q. And did you keep it?
 11 A. No.
 12 Q. What did you do with it? Throw it away?
 13 A. No. It's at Key Electrical, in my employee
 14 file.
 15 Q. You meant First SOURCE?
 16 A. Sorry. I meant First SOURCE, yes.
 17 Q. Did you ever ask for a copy of it?
 18 A. No.
 19 Q. And what about Exhibit No. 2, which we're
 20 going to turn to now, which is this document entitled
 21 "Modification of Employment Agreement"? And it has
 22 your signature on Page 5, correct?
 23 A. (Reviewing) Yes.
 24 Q. And you've signed it?
 25 A. Yes.

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1 Q. And it looks like it was signed effective
 2 January 1st, 2010, correct?
 3 A. Yes.
 4 Q. And did you keep a copy of this document?
 5 A. Yes.
 6 Q. Do you still have it?
 7 A. Yes.
 8 Q. And where is it at?
 9 A. At the house.
 10 Q. Who asked you to sign this document?
 11 A. Mark Jenson.
 12 Q. And do you remember what he said?
 13 A. No, I don't.
 14 Q. And did you review it with a lawyer before
 15 you signed it?
 16 A. No.
 17 Q. Do you remember how long you reviewed it
 18 before you signed it?
 19 A. No.
 20 Q. Do you remember how long you reviewed
 21 Exhibit 3 before you signed it?
 22 A. No.
 23 Q. Now, Exhibit No. 2 here that we're looking
 24 at, the Modification of Employment Agreement, it was
 25 signed, roughly, 23 months after First SOURCE was

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1 started. Correct?
2 A. Yes.
3 Q. Were you aware that during those 23 years
4 First SOURCE's financial performance was not good in
5 that it had lost money?
6 A. Yes.
7 Q. And were you aware that because of that, one
8 of the things that occurred was that your salary was
9 reduced?
10 A. Yes.
11 Q. And according to this document, it was
12 reduced to \$112,394.14. Correct?
13 A. Correct.
14 Q. And how did you become aware that that's the
15 reason it was being reduced?
16 A. Mark Jenson.
17 Q. Do you remember, roughly, what he said?
18 A. No.
19 Q. Did you understand?
20 A. Yes.
21 Q. Were you also aware that the
22 contract modification, one of the things that it did is
23 it said that if you were terminated without cause, as
24 defined in this agreement, that instead of giving two
25 years' pay, you would get one?

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1 A. Yes.
2 Q. Were you also aware that the definition of
3 "cause" for your termination was changed from the
4 original agreement to this agreement?
5 A. No.
6 Q. You didn't know that at the time?
7 A. No.
8 Q. Do you know that now?
9 A. No.
10 Q. When was the last time you read this
11 document, Exhibit No. 2?
12 A. When it was given to me.
13 Q. Back in January, 2010?
14 A. Yes.
15 Q. Did you actually read the whole thing?
16 A. At the time I think I did.
17 Q. Now, if you will go to Exhibit No. 4, this
18 reflects that on April 21, 2010, you signed a
19 Restricted Unit Award Agreement that awarded you
20 2.4 Class B unit shares in First SOURCE, correct?
21 (Marked was Azuara Exhibit No. 4.)
22 A. Yes.
23 Q. (By Mr. Oberti) Who gave you this document?
24 A. Mark Jenson.
25 Q. Did he tell you what it was about?

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1 A. I don't recall.
2 Q. Did you read it before you signed it?
3 A. Yes.
4 Q. And did you seek any guidance or advice from
5 a lawyer?
6 A. No.
7 Q. And do you know how long you had it before
8 you signed it?
9 A. I don't recall.
10 Q. Do you know who got these restricted unit
11 award shares?
12 A. No.
13 Q. Is it accurate to say to get these particular
14 Class B units, you didn't have to put up any money for
15 these, correct?
16 A. I'm sorry. I didn't understand the question.
17 Q. You see on Page 1 under Paragraph 1, it says,
18 "The Company hereby grants to Employee an award of
19 2.4 Class B Units"?
20 A. Okay.
21 Q. Did you have to pay anything to get those?
22 A. I don't know.
23 Q. Well, when you signed this agreement, the
24 Restricted Unit Award Agreement, you didn't give
25 Mark Jenson or anybody any money, did you?

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1 A. Besides the 100,000, no.
2 Q. Right. The 100,000 was way back in October,
3 2008.
4 A. Okay. So no.
5 Q. Do you see that on Page 2 under Section (b)
6 it says, "The Restricted Units subject to this
7 Agreement that have not previously been forfeited to
8 the Company as provided in this Agreement shall vest as
9 follows:"
10 And then (i) says, "On the first
11 anniversary of the date of this Agreement, one-fourth
12 of the Restricted Units originally subject to this
13 Agreement shall vest."
14 Do you see that?
15 A. Yes.
16 Q. And the first anniversary of this agreement
17 would have been April 21st, 2011. Correct?
18 A. I guess. I don't know.
19 Q. Well, if you look at the first page of the
20 agreement, it was made on April 21st, 2010. Correct?
21 A. Okay. Yes.
22 Q. So the first anniversary --
23 A. Yes.
24 Q. -- would be April 21st, 2011. Correct?
25 A. Yes.

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1 Q. And we know that as of April 21st, 2011, you
2 were no longer employed with First SOURCE, correct?
3 A. Correct.
4 Q. You had been terminated, roughly, three weeks
5 earlier?
6 A. Yes.
7 Q. And do you see on Page 3 of the agreement
8 under Paragraph 5 it says, "Forfeiture Upon Termination
9 of Employment. Except as otherwise provided herein, in
10 the event of the complete termination of the Employee's
11 employment with the Company and its Subsidiaries for
12 any reason whatsoever, then any Restricted Units that
13 have not vested as of the date of such termination of
14 employment (and any Capital Account balance allocable
15 thereto) shall be immediately and automatically
16 forfeited to the Company without notice and without
17 consideration."
18 Did I read that correctly?
19 A. Yes.
20 Q. So would you agree with me that since you
21 were terminated before any of your shares under this
22 particular agreement vested, they were forfeited,
23 correct?
24 A. Yes.
25 Q. And when you were employed at Key Electrical,

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1 were you aware that in 2002 Congress passed a law
2 called the Sarbanes-Oxley Act?
3 A. Yes.
4 Q. And did you have responsibility for "SOX," or
5 Sarbanes-Oxley, compliance at Key Electrical?
6 A. Yes.
7 Q. And what did that entail?
8 A. Audits. We had audits all the time, so they
9 would come in to audit the financials and the books
10 from time to time.
11 Q. And when you were at Key Electrical, did you
12 have any responsibilities relating to tax?
13 A. No.
14 Q. What did Key Electrical do?
15 A. Warehouse -- same thing as First SOURCE.
16 Warehouse distribution.
17 Q. Relating to?
18 A. Electrical products.
19 Q. And they made money by selling those
20 products?
21 A. Yes.
22 Q. And when the products were sold, did the
23 company have to charge tax on them?
24 A. Oh, yes.
25 Q. And who was responsible for ensuring that the

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1 proper amount of tax was charged and collected?
2 A. We had a system that automatically charged
3 the sales tax to the customers.
4 Q. Okay. Did you have any responsibilities to
5 ensure that the system worked properly?
6 A. I guess I just don't -- I don't understand
7 what you mean by...
8 Q. Did you have any responsibility when you were
9 at Key Electrical to ensure that the proper amount of
10 taxes were collected?
11 A. When I filed the report, yes.
12 Q. Okay. And have you ever heard of a form
13 called a K1?
14 A. Yes.
15 Q. What is that?
16 A. That's a -- I get those every year from
17 First SOURCE. That's just a form telling me how much
18 the company lost, profit or loss.
19 Q. Okay.
20 A. And my share of that.
21 Q. Did you get one in 2012?
22 A. 2012?
23 Q. Yes. This year.
24 A. For 2011?
25 Q. Right.

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1 A. Yes.
2 Q. From First SOURCE?
3 A. Yes.
4 Q. And are you aware that you're getting the K1
5 because of your purchase of the shares with your
6 \$100,000?
7 A. Yes.
8 Q. Let me ask you to turn to Exhibit No. 7.
9 A. (Complying).
10 (Marked was Azuara Exhibit No. 7.)
11 Q. (By Mr. Oberti) There is a two-page memo,
12 the first two pages of Exhibit 7.
13 A. (Reviewing.)
14 Q. Have you ever seen this document before?
15 A. No.
16 Q. Let me just read over some of the stuff from
17 the document and ask you some questions.
18 A. Okay.
19 Q. The document is entitled "First SOURCE
20 Electrical, Houston, Texas, Inventory Reconciliation
21 Summary, May 21st, 2010." Correct?
22 A. Yes.
23 Q. And it says, "Summary. On Tuesday, May 11,
24 2010, a visit was made to First SOURCE Electrical to
25 review the monthly GL closing process and related

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1 issuance of financial statements."
 2 Does "GL" stand for general ledger?
 3 A. Yes.
 4 Q. And did you have any responsibilities
 5 associated with the general ledger?
 6 A. Yes.
 7 Q. And what were those responsibilities?
 8 A. To review the general ledger on a monthly
 9 basis.
 10 Q. And what does the general ledger purport to
 11 reflect?
 12 A. It reflects all the accounts that everything
 13 was hitting. You know, it's just a detailed general
 14 ledger of the company as a whole.
 15 Q. Revenues received and expenditures?
 16 A. Revenues, expenses, yes.
 17 Q. What is the point of a general ledger? Just
 18 to get a snapshot of the company's financial status?
 19 A. Yes.
 20 Q. Did Michele Souder come to First SOURCE
 21 Electrical on May 11, 2010?
 22 A. I don't recall when she came. She came
 23 several times.
 24 Q. So it's possible she came then?
 25 A. Possible.

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1 Q. It says, "For this process, supporting
 2 documentation was reviewed for balance sheet accounts."
 3 Were there times that Michele Souder came
 4 down and made this review that is described here?
 5 A. Not that I recall.
 6 Q. Is it possible that they did it and you
 7 didn't even know it?
 8 A. Possible.
 9 Q. "For the inventory account" -- what's the
 10 inventory account?
 11 A. It's everything that we have in inventory,
 12 and it's an account that holds all of our inventory.
 13 Q. And you have a warehouse?
 14 A. Yes.
 15 Q. And the inventory is in the warehouse?
 16 A. Yes.
 17 Q. And as a part of the general ledger, it's to
 18 accurately reflect what's in the warehouse and its
 19 value?
 20 A. Yes.
 21 Q. And then it says, "For the inventory account,
 22 the general ledger balance was compared to the Summary
 23 Inventory Value report produced by Eclipse. This
 24 report was run on May 11, 2010."
 25 Do you know what the Summary Inventory

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1 Value report produced from Eclipse is?
 2 A. That is the actual inventory in the
 3 warehouse, the counted inventory in the warehouse.
 4 Q. And how is that generated?
 5 A. Through the system. You just run the report.
 6 It's an ad hoc report.
 7 Q. But who inputs what's in inventory into
 8 Eclipse?
 9 A. It's automatic. It was a realtime system.
 10 Q. Okay. But, I mean, if something comes into
 11 inventory in the warehouse, how does that make its way
 12 into the system?
 13 A. It's received. When it's received through a
 14 purchase order, then it automatically hits the general
 15 ledger.
 16 Q. Okay.
 17 A. And vice versa when it's sold it.
 18 Q. It says, "For the month of April, the general
 19 ledger balance was \$268,000 higher than the inventory
 20 valuation report. February 2009 and April 2010
 21 inventory valuation reports are enclosed. When asked
 22 about the large discrepancy, Irma Azuara stated that
 23 there had been a significant variance since January,
 24 2009."
 25 Is that paragraph that I've read so far

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1 true?
 2 A. Yes.
 3 Q. And so just so I understand it, basically,
 4 what occurred is you have a general ledger balance that
 5 is about \$268,000 higher than what's actually in
 6 inventory?
 7 A. Yes.
 8 Q. And who asked you about this? It says, "When
 9 asked about the large discrepancy, Irma Azuara stated
 10 that there had been a significant variance since
 11 January 2009."
 12 Who did you tell that to?
 13 A. David.
 14 Q. Kleshinski?
 15 A. Yes.
 16 Q. He's from White Oak Partners?
 17 A. Yes.
 18 Q. Do you know what his title is?
 19 A. Yes.
 20 Q. Did you know he's involved in accounting?
 21 A. Yes.
 22 Q. Then it says, "A summary of monthly variances
 23 is shown below." And then there is a heading that says
 24 "First SOURCE Electrical Inventory Reconciliation" and
 25 then it compares month by month from December 31, 2008,

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1 to April 30, 2010 with a couple of missing months,
 2 what's on the general ledger, what's on the subledger,
 3 and what the difference is, correct?
 4 A. Yes.
 5 Q. Then, on the second page it says "Additional
 6 Detail. Per Mark Jenson, approximately 40 percent of
 7 First SOURCE Electrical sales are in copper wire, so we
 8 carry a significant amount of copper inventory.
 9 Do you know if that's true, or not?
 10 A. No, I don't.
 11 Q. Were you aware that First SOURCE Electrical
 12 as an electrical company carried a significant amount
 13 of copper inventory?
 14 A. Yes.
 15 Q. I'm guessing Key Electrical did, too,
 16 obviously.
 17 A. Yes.
 18 Q. It says, "In January, 2009 copper fell to
 19 around \$1.50 per pound from \$3 per pound around
 20 September, 2008."
 21 Do you know if that's true or not?
 22 A. No, I do not.
 23 Q. It says, "Our sales pricing for copper wire
 24 is set based on current market conditions."
 25 Do you know if that's true, or not?

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1 A. I do not.
 2 Q. Does that make sense, that it would be?
 3 A. Yes.
 4 Q. "This resulted in low or negative margins as
 5 inventory on hand carried a higher average cost. To
 6 resolve the margin issue, the average weighted cost
 7 used to value inventory for select copper products was
 8 adjusted down.
 9 "While this may have corrected the margin
 10 issue, the result was lowering the value of copper
 11 inventory, which created the variances detailed above."
 12 Did I read that correctly?
 13 A. Yes.
 14 Q. Does all of that make sense to you?
 15 A. Yes.
 16 Q. "Contributing to the magnitude of this
 17 variance was the quantity of copper wire on hand during
 18 this period. On December 31, 2008, we had on hand
 19 2,999,315 feet of product category CUROMEX,
 20 C-U-R-O-M-E-X-Copper Wire-Romex, R-O-M-E-X.
 21 "A review of the 11 available month end
 22 inventory for 2009 show the next highest on hand was
 23 2,263,372 feet in March, 2009. The CUROMEX-Copper
 24 Wire-Romex product summary account historically has a
 25 significant value on the inventory summary reports.

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1 This is one of eight copper wire summary product
 2 accounts."
 3 What I just read, did you know any of
 4 that?
 5 A. No.
 6 Q. The next paragraph says, "The correct method
 7 to lower inventory value would have been to perform a
 8 physical inventory of the select items, compute the
 9 difference between current average costs and revised
 10 average costs and apply the difference to the inventory
 11 to arrive at an inventory write down and resulting
 12 change to costs of goods sold."
 13 Do you agree that that is accurate, that
 14 that would be the correct method?
 15 A. Yes.
 16 Q. I mean, essentially, what you have is you
 17 have a bunch of wire that was originally worth X; and
 18 now, because of market condition changes, it is now
 19 worth X minus something, correct?
 20 A. Yes.
 21 Q. So you would have to make an adjustment,
 22 correct?
 23 A. Yes.
 24 Q. And in the paragraph I just read is the
 25 correct way to do that?

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1 A. Yes.
 2 Q. "By only adjusting the average cost, the
 3 total amount of the decrease in inventory value remains
 4 on our balance sheet."
 5 True?
 6 A. Yes.
 7 Q. "In speaking with the support group at
 8 Activant Eclipse" -- what is Activant Eclipse?
 9 A. Software company that provides software for
 10 the company.
 11 Q. For First SOURCE?
 12 A. For First SOURCE.
 13 Q. And this software has different modules, one
 14 of which is accounting?
 15 A. It's all within Eclipse, yes.
 16 Q. But the inventory is in Eclipse, too?
 17 A. Yes.
 18 Q. It's kind of like a SAP type thing?
 19 A. Yes.
 20 Q. "...manual changes or overrides to average
 21 cost are noted in the system with an asterisk.
 22 However, you must look for these by product so research
 23 can be done but is tedious. A formal request has been
 24 made to Activant Eclipse for a quote to write a report
 25 that will show all manual adjustments or overrides to

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1 average costs for any given period of time.
 2 "The report request will also include the
 3 Eclipse sign on of the person making the change. A
 4 quote has not been received at this time.
 5 "Conclusion. As a result of average cost
 6 changes, inventory was overstated on our balance sheet
 7 and cost of goods sold was understated by approximately
 8 \$200,000 in the first quarter of 2009."
 9 Do you agree with that conclusion?
 10 A. Yes.
 11 Q. "The inventory variance continued to increase
 12 throughout 2009 to be approximately \$275,000 by
 13 December 2009."
 14 Do you agree with that conclusion?
 15 A. I don't remember the amount, but it was
 16 200,000 and -- I don't recall the exact amount.
 17 Q. So you're not sure if it was actually
 18 approximately \$275,000 or not, but it was somewhere in
 19 that ballpark?
 20 A. Yes.
 21 Q. Next one, "We are working with Activant to
 22 further understand the Eclipse software and the impact
 23 of changes to average costs."
 24 Finally, "Either a prior period
 25 adjustment or a current year charge to earnings is

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1 necessary."
 2 Do you agree with that conclusion?
 3 A. Yes.
 4 Q. And which one occurred? Do you know?
 5 A. The prior period adjustment.
 6 Q. What does that mean? You went back and
 7 restated the prior periods to adjust them for accuracy?
 8 A. I don't know what they did. We didn't do it.
 9 White Oak did that.
 10 Q. Okay. You would agree with me that the
 11 upshot of all of this is that in roundabout May of 2010
 12 or so an adjustment was made to reflect that the value
 13 in inventory had been overstated for over a year?
 14 A. Yes.
 15 Q. Now, before May of 2010 was this need for an
 16 adjustment brought to your attention?
 17 A. I don't understand the question.
 18 Q. Before May of 2010, did it ever occur to you
 19 or was it ever brought to your attention that there was
 20 a need to make an accounting adjustment because of this
 21 copper price issue?
 22 A. Yes.
 23 Q. And who brought it to your attention?
 24 A. I brought it to Mark Jenson's attention.
 25 Q. And when did you do that?

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1 A. January of 2009, I believe.
 2 Q. And, I guess, you told him: Hey, according
 3 to the reports, what we have in inventory versus what
 4 we have in the general ledger, there is a discrepancy,
 5 we need to do a write-down?
 6 A. Yes.
 7 Q. And what did he say?
 8 A. "No."
 9 Q. And did you ask him why not?
 10 A. I don't recall.
 11 Q. Did you ever ask him about -- or bring that
 12 to his attention again?
 13 A. Every month.
 14 Q. Every month between January, 2009 and May,
 15 2010?
 16 A. Yes.
 17 Q. Because you did the general ledger and the
 18 comparison on a monthly basis?
 19 A. Yes.
 20 Q. So you would say, "Hey" -- well, I'm assuming
 21 that, as what we just read reflected, the need for the
 22 adjustment became bigger and bigger, the variance
 23 became bigger and bigger month by month?
 24 A. Yes.
 25 Q. So each month you're telling him: Hey, this

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1 variance still exists; we need to make an accounting
 2 adjustment?
 3 A. Yes.
 4 Q. And every month he said: No?
 5 A. Correct.
 6 Q. Did he ever give you an explanation for why
 7 he was saying no?
 8 A. He kept telling me, "We will do it next
 9 month."
 10 So I bring it up every month. He kept
 11 telling me to wait.
 12 Q. When did he start saying that we would do it
 13 next month?
 14 A. Since January of 2009.
 15 Q. So I'm guessing after a few months, when the
 16 next month rolled around with the adjustment and he
 17 still said not to make it, did you ever say, "Mark,
 18 you've been saying 'next month' for months now. What's
 19 up?"
 20 A. Yes.
 21 Q. And what did he say?
 22 A. I don't recall the exact words, but I would
 23 think that -- no. I think he said he was waiting for
 24 the copper to turn around. I think. I think that's
 25 what he said. The pricing.

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1 Q. Right. He was hoping the value of copper
2 would go back up and everything would work itself out?
3 A. Yes, yes.
4 Q. But that didn't happen?
5 A. No.
6 Q. I mean, when he's telling you this every
7 month, eventually did you get a feeling that what he's
8 asking you to do isn't really the right thing?
9 A. Yes.
10 Q. And how far into the process did you develop
11 that feeling?
12 A. I don't recall.
13 Q. And I'm assuming after six months or so
14 you're developing the feeling in the pit of your
15 stomach that what he's asking you to do isn't right
16 here?
17 A. Yes.
18 Q. But still, he continues to say: Next month,
19 next month, next month?
20 A. Yes.
21 Q. Okay. And did you go to anybody else and
22 tell them what Jenson -- you know, that Jenson didn't
23 want to make the adjustment month after month?
24 A. No.
25 Q. And, of course, by this point in time --

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1 well, by January of 2009 you knew that White Oak owned
2 First SOURCE, right?
3 A. Yes.
4 Q. Had you met Michael Menzer?
5 A. Yes.
6 Q. Had you met Michele Souder?
7 A. Yes.
8 Q. Had you met Dave Kleshinski?
9 A. I don't remember when I met Dave Kleshinski.
10 Q. Had you had any contact with him?
11 A. I don't remember when he started with the
12 company.
13 Q. Okay. But you had met Mr. Menzer and
14 Ms. Souder?
15 A. Yes.
16 Q. And so it's accurate to say that the
17 adjustment was never made until when?
18 A. I don't recall when it was made.
19 Q. It looks like around May, 2010.
20 A. Okay.
21 Q. And what stimulated it to finally be made?
22 A. I don't know.
23 Q. Well, it looks like people from White Oak
24 came down, saw it, and instructed that the adjustment
25 be made.

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1 A. Yes.
2 Q. And who were the people from White Oak who
3 did that, if you remember?
4 A. Dave.
5 Q. Kleshinski?
6 A. Yes.
7 Q. And did you talk to Dave about it?
8 A. Yes.
9 Q. Did you talk to anybody else from White Oak
10 about it?
11 A. Not that I can recall.
12 Q. And when you talked to Dave about it, did he
13 say -- did he ask you why this adjustment hadn't been
14 made before?
15 A. Yes.
16 Q. And what did you tell him?
17 A. Mark Jenson instructed me not to.
18 Q. And what did he say?
19 A. I don't recall what he said.
20 Q. Was there anybody else there when he said
21 that?
22 A. No.
23 Q. This was an in-person meeting?
24 A. He was reviewing the accounts at the time,
25 and he was in my office.

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1 Q. Just the two of you-all?
2 A. Yes.
3 Q. Okay. And did anyone from White Oak ever say
4 anything to you about whether they believed that you
5 should have brought this to their attention?
6 A. Not that I recall.
7 Q. Did anyone either from White Oak or within
8 First SOURCE say something like that to you?
9 A. Not that I recall.
10 Q. Now, you are aware that Mr. Jenson was fired
11 shortly after White Oak came down and instructed that
12 this adjustment be made around May, 2010, correct?
13 A. I didn't know the reason for his termination.
14 Q. I'm not asking the reason. I'm just saying
15 from a timing perspective, Mr. Jenson was fired very
16 shortly after Mr. Kleshinski came down from White Oak
17 and had the adjustment made, correct?
18 MR. LEVY: Object to form.
19 A. I don't recall.
20 Q. (By Mr. Oberti) Do you remember when he was
21 fired? It was June, 2010. Correct?
22 A. Correct.
23 Q. So it is accurate that he was fired, roughly,
24 within a month of this adjustment being made. Correct?
25 A. Yes.

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1 Q. Did anyone ever tell you why Mr. Jenson was
2 fired?
3 A. No.
4 Q. Did Mr. Jenson ever tell you?
5 A. No.
6 Q. Did you speculate, in your mind, as to why he
7 was fired?
8 A. No.
9 Q. Well, did it occur to you that it was because
10 this adjustment hadn't been made after so long?
11 A. No.
12 Q. Prior to May, 2010, did Michele Souder ever
13 instruct you to make the adjustment?
14 A. I don't think so. I don't recall. I don't
15 recall.
16 Q. Prior to May, 2010, had anybody asked you to
17 make the adjustment?
18 A. Not that I can recall.
19 Q. Prior to 2010, had you actually talked to
20 anybody about the variance that you believed required
21 an adjustment, other than Mark Jenson?
22 A. No.
23 Q. After Mr. Kleshinski came down and the
24 adjustment was made, did anyone ask you about why you
25 hadn't made it earlier, when you told him: I was just

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1 following Jensen's orders?
2 A. I think so. I really don't recall. I'm
3 sorry.
4 Q. Do you have any recollection of that sort of
5 conversation?
6 A. No, I don't.
7 Q. When you and Jenson were going back and forth
8 every month and you're saying, "Here's the variance, we
9 need to make the adjustment" and he's saying, "Next
10 month," was this all verbal; or was any of it in
11 e-mail?
12 A. Verbal.
13 Q. No e-mail?
14 A. Not that I recall.
15 Q. How far was his office from yours?
16 A. A couple of doors down.
17 Q. Both on the second floor?
18 A. Yes.
19 Q. It's a two-story building?
20 A. Yes.
21 Q. Would you agree with me that White Oak had a
22 right to be upset when they learned that this
23 adjustment had not been made for over a year?
24 A. Yes.
25 Q. Because by not making the adjustment for over

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1 a year, it painted a falsely inflated picture of the
2 valuation of First SOURCE's inventory, correct?
3 A. Yes.
4 Q. And you know, as someone who has worked in
5 accounting and as controller for a long time, that
6 accuracy in financial reporting is important?
7 A. Yes.
8 Q. If you could do it all over again, would you
9 have done it the same way and just keep on listening to
10 Mr. Jenson?
11 MR. LEVY: Object to form.
12 A. I don't know. And the reason I'm saying that
13 is because Mark Jenson was my superior and he was the
14 highest ranking officer in the company and, you know, I
15 never went over his head. I mean, I'm pretty loyal to
16 whoever my superior is. The fact that I now know
17 and -- I don't know. I don't know.
18 Q. (By Mr. Oberti) So you're saying: Hey, I
19 was just following my superior's orders?
20 A. Yes.
21 Q. Okay. I mean, would you agree with me that
22 if your superior tells you to do something that you
23 know is wrong, you shouldn't do it. Correct?
24 MR. LEVY: Object, form.
25 A. I'm sorry?

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1 Q. (By Mr. Oberti) If your superior tells you
2 to do something that you objectively know is wrong,
3 well, then, you shouldn't do it. Correct?
4 MR. LEVY: Object to form.
5 A. Correct.
6 Q. (By Mr. Oberti) And you, yourself, admitted
7 that you knew the adjustment should have been made for
8 over a year, correct?
9 A. Yes.
10 Q. And when was the last time you talked to
11 Mr. Jenson?
12 A. About a month ago.
13 Q. Was that on the phone or in person?
14 A. Phone.
15 Q. And do you know where he's working now, if
16 anywhere?
17 A. He's working, but I don't know the name of
18 the company.
19 Q. Do you know the name of any company he went
20 to work for after he was fired by First SOURCE?
21 A. No.
22 Q. And have you actually seen him in person
23 since he was fired from First SOURCE?
24 A. No.
25 Q. You talk to him over the phone?

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1 A. Correct.
2 Q. A handful of times or more, since he got
3 fired?
4 A. About a handful.
5 Q. And you've had some e-mail correspondence
6 with him?
7 A. Yes.
8 Q. When was the last time you e-mailed him?
9 A. Last year.
10 Q. So it's been a while?
11 A. Yes.
12 Q. Any text messages back and forth between you
13 two?
14 A. No.
15 Q. Do you know Jim Cramer?
16 A. Yes.
17 Q. Who is he?
18 A. He works for White Oak.
19 Q. And did you ever meet him in person?
20 A. Yes.
21 Q. How many times?
22 A. He came to the office quite a few times. I
23 can't recall the number of times.
24 Q. Okay. Were you ever in meetings with him?
25 A. Yes.

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1 Q. And did the issue of this adjustment or the
2 failure to make it ever come up with Mr. Cramer?
3 A. Not that I recall.
4 Q. Go to Exhibit No. 10.
5 (Marked was Azuara Exhibit No. 10.)
6 Q. (By Mr. Oberti) Have you ever seen these
7 documents before today? I'm guessing not.
8 A. No.
9 Q. It's looking like Mr. DeLoache -- by the way,
10 is it accurate that after Mr. Jenson was fired, then
11 Mr. DeLoache was made the president of First SOURCE?
12 A. Yes.
13 Q. And it looks like Mr. DeLoache, as of
14 August 13, 2010, is writing somebody about some
15 assistance to get -- search for a person they would
16 hire who would have the duties of a company controller,
17 title to be determined. Correct?
18 A. I don't know. I've never seen this document.
19 Q. Right. Just from reading it, that's what it
20 looks like. Right?
21 A. Well, I've got to read it (reviewing.)
22 Q. Do you see where I'm talking, where it says,
23 "Prudence, as we discussed First SOURCE and White Oak
24 Partners would like to begin a confidential search for
25 a finance person who generally would have the duties of

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1 a company controller (title to be determined)"?
2 A. Yes.
3 Q. And you were the company controller at that
4 time, right?
5 A. Yes.
6 Q. So just reading this, it kind of looks like
7 they are looking to replace you, correct?
8 A. Yes.
9 Q. Did you ever hear any noise about that, that
10 they are looking to hire somebody to replace you?
11 A. Never aware, no.
12 Q. So you had no idea?
13 A. No.
14 Q. Do you know who they hired over at
15 First SOURCE to replace you, if anybody?
16 A. No.
17 Q. Since March 29, 2011, have you been
18 physically back to First SOURCE?
19 A. No.
20 Q. As I imagine, First SOURCE had a line of
21 credit with somebody.
22 A. Yes.
23 Q. And was that line of credit through a company
24 called First Capital Loan?
25 A. Yes.

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1 Q. And where are they out of? Oklahoma?
2 A. I do not know.
3 Q. Did you ever actually meet anybody from
4 First Capital Loan, to your knowledge?
5 A. Not to my knowledge.
6 Q. Do you know what the company's line of credit
7 was with First Capital Loan?
8 A. I don't recall.
9 Q. Do you know the amount of the company's
10 indebtedness at any one time with First Capital Loan?
11 A. Not that I recall.
12 Q. Did you have any responsibilities, as part of
13 your job as controller, for being responsible for that
14 loan?
15 A. No.
16 Q. Or managing the relationship with First
17 Capital Loan?
18 A. No. Not that I'm aware of.
19 Q. Do you know who did that?
20 A. Mark Jenson.
21 Q. Did it ever come to your attention that at
22 some point First Capital Loan imposed fees on
23 First SOURCE such as a waiver fee of \$7500?
24 A. Not that I recall. I don't recall.
25 Q. Turn to Exhibit 11.

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1 (Marked was Azuara Exhibit No. 11.)
2 Q. (By Mr. Oberti) There is an e-mail from
3 Lee Elmore. His e-mail address is
4 LEElmore@firstcapital.com. You're not on the e-mail, so
5 obviously you didn't get this anyway.
6 But Lee Elmore, senior president, says in
7 an e-mail to Jim Cramer: "Jim, good afternoon. I
8 apologize for the delay." And this e-mail is dated
9 September 1, 2010.
10 "Below is what we approved regarding the
11 fees/interest: Decrease the Waiver Fee from \$10,000 to
12 \$7,500. The increase in the interest margin will be 50
13 bps. I have been in meetings yesterday and today. Can
14 we discuss further tomorrow? Please advise."
15 Did I read that correctly?
16 A. Yes.
17 Q. Do you know what he's talking about about
18 this waiver fee?
19 A. No.
20 Q. No idea?
21 A. No.
22 Q. To your knowledge, did First Capital Loan
23 ever perform any sort of audit on First SOURCE?
24 A. Yes.
25 Q. What do you know about that?

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1 A. They came, I believe, once -- I want to say
2 once a quarter. I'm not sure exactly the time frame.
3 And they would come and audit the financials and the
4 books for First SOURCE.
5 Q. And who would they work with to do that?
6 A. Me.
7 Q. And would they actually go out into the
8 warehouse and look at the inventory, too?
9 A. Yes.
10 Q. And when did they start doing this?
11 A. I don't recall.
12 Q. Prior to Mr. Jenson being fired, did they
13 ever do it?
14 A. Yes.
15 Q. How many times, if you know?
16 A. I don't recall.
17 Q. And did they charge First SOURCE for that
18 audit?
19 A. Yes, I think they did.
20 Q. Do you know how much it was?
21 A. No, I don't.
22 Q. When Mr. Jenson was fired, do you know who
23 actually told him he was fired?
24 A. No, I do not.
25 Q. Do you know if somebody from White Oak came

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1 down?
2 A. No one came down.
3 Q. So you don't know who told him he was fired?
4 A. No.
5 Q. When he got fired, were you concerned that
6 you might get fired?
7 A. No.
8 Q. Now, as of, let's say, May or June, 2010, do
9 you know, roughly, how many employees First SOURCE had?
10 A. Close to 30.
11 Q. Did you run payroll?
12 A. Yes.
13 Q. Did anybody report to you as the controller
14 at First SOURCE?
15 A. Yes.
16 Q. Who?
17 A. Accounts receivable and the billing clerk.
18 Q. Who was accounts receivable?
19 A. Sarah Levan, L-E-V-A-N.
20 Q. Who was the billing clerk?
21 A. Janice Miers.
22 Q. Did they come from Key Electrical?
23 A. Yes.
24 Q. Were they still there when you were
25 terminated?

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1 A. As far as I know, yes.
2 Q. So First SOURCE Electrical had, roughly, 30
3 employees or so as of June, 2010?
4 A. Roughly.
5 Q. You were part of -- well, how big, roughly,
6 was the team that launched the company back in
7 February, 2008? It's a smaller number, obviously.
8 A. Yes.
9 Q. What are we talking about? About ten people?
10 A. Roughly.
11 Q. You were one of the persons that helped
12 launch, I guess, First SOURCE off the ground?
13 A. Yes.
14 Q. Other than you and Jenson as of, say, June,
15 2010, did anyone else at First SOURCE have any in-depth
16 knowledge of the company's finances?
17 A. Not that I know of.
18 Q. And the Eclipse business system, were you
19 adept with that system?
20 A. Yes.
21 Q. Did Key Electrical use that system?
22 A. Yes.
23 Q. So you had experience with it at
24 Key Electrical?
25 A. Yes.

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1 Q. And one of the modules on it is for
2 accounting?
3 A. Yes.
4 Q. Did anybody else use the accounting module of
5 Eclipse other than you?
6 A. Mark Jenson.
7 Q. Anybody else?
8 A. I don't understand the question. Was it
9 "used" or "had access to"?
10 Q. Actually used it.
11 A. Used it?
12 Q. Other than you and Jenson.
13 A. Not that I recall.
14 Q. Then, who actually did the payroll?
15 A. I did.
16 Q. Yourself. Not one of your helpers?
17 A. I did.
18 Q. And did ADP run the payroll?
19 A. Yes.
20 Q. So what was your responsibilities? To get
21 ADP the correct information so they could run the
22 payroll?
23 A. Yes.
24 Q. And how was that communicated to them?
25 Through Eclipse?

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1 A. No. We had a time clock where everybody
2 clock in, and it was downloaded into my computer and
3 then sent via the Web.
4 Q. A secured website?
5 A. Yes.
6 Q. Were people paid weekly or biweekly?
7 A. Biweekly.
8 Q. And how long would it take you, on average,
9 to run payroll?
10 A. I would say about four hours.
11 Q. Every two weeks?
12 A. I would think, yes. Roughly.
13 Q. So it's not a super simple process?
14 A. No.
15 Q. Bills, as far as paying incoming bills to
16 First SOURCE, who did that?
17 A. I did.
18 Q. And did the company have any bank loans,
19 other than with First Capital, that you're aware of?
20 A. Not that I'm aware of.
21 Q. Did the company have an obligation to pay its
22 bank loan on some sort of revolving basis, like monthly
23 or something like that?
24 A. I don't recall.
25 Q. Now, do you remember there was a fellow named

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1 Mark Yocum that came over to First SOURCE from
2 Key Electrical, correct?
3 A. Correct.
4 Q. He was an outside salesperson?
5 A. Yes.
6 Q. As I understand it, he then quit First SOURCE
7 and went back to Key Electrical. Correct?
8 A. Correct.
9 Q. And did he do that before or after
10 Mark Jenson was fired?
11 A. I don't recall.
12 Q. Do you recall that it was about the same
13 time?
14 A. I don't recall. Sorry.
15 Q. You know it happened, but you don't remember
16 when?
17 A. Correct.
18 Q. Was there another fellow named Eddie Goates
19 that worked for First SOURCE?
20 A. Yes.
21 Q. Had he also come from Key Electrical?
22 A. Yes.
23 Q. And as I understand it, Mr. Goates was an
24 inside salesman?
25 A. Yes.

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1 Q. And Mr. Yocum was an outside salesman?
2 A. Yes.
3 Q. And as I understand it, Mr. Goates also then
4 quit First SOURCE and went back to Key Electrical?
5 A. Yes.
6 Q. And do you remember around about when that
7 happened?
8 A. No, I do not.
9 Q. Do you remember if it was before or after
10 Mr. Jenson was terminated?
11 A. I believe it was after.
12 Q. All right. And naturally Key Electrical -- I
13 mean, naturally First SOURCE relies on its salespersons
14 to generate business?
15 A. Yes.
16 Q. And do you know whether or not it was
17 considered a negative thing that Yocum and Goates had
18 quit First SOURCE and gone back to Key Electrical?
19 A. Yes.
20 Q. Well, naturally, it's like, one, we're
21 probably going to lose clients, right?
22 A. Yes.
23 Q. And, two, we're going to lose them to the
24 company that we least want to lose them to, which is
25 Key Electrical.

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1 A. Yes.
2 Q. Now, during -- I'm not going to get deep into
3 it; but after you joined First SOURCE, Key Electrical
4 sued you and a number of other people, correct?
5 A. Yes.
6 Q. And I understand that you had a lawyer.
7 Well, did you have a lawyer?
8 A. Personally?
9 Q. Yes.
10 A. No, no.
11 Q. Well, you were sued. Did anyone represent
12 you?
13 A. As a company, as a whole, yes.
14 Q. Okay. Who was that?
15 A. I don't recall her name.
16 Q. And who paid for her services?
17 A. Key Electrical did.
18 Q. So you didn't have to pay the lawyer
19 yourself?
20 A. Oh, no.
21 Q. And do you remember -- as I understand it,
22 that case was eventually settled?
23 A. Yes.
24 Q. Do you remember, roughly, when it was
25 settled?

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1 A. No.
2 Q. Was it before or after Mr. Jenson was fired?
3 A. Before, I want to say. Yes, before.
4 Q. Now, were you ever assigned to work with
5 Dave Kleshinski.
6 A. I don't understand your question.
7 Q. Did Mr. Kleshinski -- as I understand it, he
8 was an accounting manager at White Oak Partners,
9 correct?
10 A. I don't know what his title was.
11 Q. Did he ever monitor your work in the area of
12 weekly borrowing base certificate, or BBC?
13 A. I remember the BBC. I just don't know how
14 frequent it was. I do remember the BBC, but I don't
15 know the frequency of it. Whether it was weekly or
16 biweekly or monthly, I don't recall.
17 Q. On some basis Mr. Kleshinski monitored your
18 work in BBC?
19 A. Yes.
20 Q. Did he also monitor your work on monthly
21 financials?
22 A. Yes.
23 Q. And cash forecasting?
24 A. That, I don't recall.
25 Q. Do you recall the monitoring that

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1 Mr. Kleshinski did do began only after Mr. Jenson was
2 fired?
3 A. I don't think so. I think he was doing that
4 before.
5 Q. Do you recall having more interaction with
6 Mr. Kleshinski after Jenson was fired?
7 A. Yes.
8 Q. Do you know why that was?
9 A. No. I thought that just was his duties. I
10 thought that's what he was told to do.
11 Q. Are you aware that First Capital placed an
12 AR reserve on First SOURCE?
13 A. No.
14 Q. Do you know what an AR reserve is?
15 A. More or less, yes.
16 Q. What is it?
17 A. I guess they borrow against the accounts
18 receivable, or we can borrow against the accounts
19 receivable a certain reserve.
20 Q. Okay. But you don't know if they ever put an
21 AR reserve on First SOURCE saying: Well, up to a
22 hundred thousand dollars, for example, you can't borrow
23 against that?
24 A. I don't recall.
25 Q. Let me ask you to turn to Exhibit No. 12.

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1 (Marked was Azuara Exhibit No. 12.)
2 A. (Reviewing.)
3 Q. (By Mr. Oberti) The first page of Exhibit
4 No. 12 is a letter dated September 14, 2010, from
5 Michael J. Menzer, Board of Managers, First SOURCE
6 Electrical, LLC, to yourself, correct?
7 A. Yes.
8 Q. And it says, "Subject: Notice of Additional
9 Capital Contributions Required." Correct?
10 A. Yes.
11 Q. It looks like the next two pages are
12 identical letters dated the same day, meaning
13 September 14, 2010, to Mark Jenson and Phil DeLoache;
14 A. Correct.
15 Q. And, of course, by this time Mark Jenson was
16 not even an employee of the company, right?
17 A. Yes.
18 Q. Did you get this letter?
19 A. I'm assuming I did because it's mailed to my
20 home address. I don't remember.
21 MR. LEVY: Objection, nonresponsive.
22 Q. (By Mr. Oberti) Do you have any recollection
23 of whether you actually read it?
24 A. I have no recollection.
25 Q. So is it accurate to say that until you just

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1 read the letter right now, you don't remember reading
2 it before then?
3 A. Correct.
4 Q. Do you understand what -- do you know what a
5 capital call is?
6 A. No.
7 Q. Was there ever any discussion between
8 yourself and, let's say, Phil DeLoache about something
9 called "dilution"?
10 A. Not that I recall.
11 Q. And, I guess, it's accurate to say that prior
12 to being terminated by First SOURCE, you didn't go to a
13 lawyer or some other professional to try to understand
14 what your rights were regarding your 12 Class A shares,
15 correct?
16 A. Correct.
17 Q. And, I guess, if you go four pages up,
18 there's some documents, an Exhibit A, an Exhibit B, and
19 an Exhibit C.
20 Do you see that?
21 A. Yes.
22 Q. Do you recall ever seeing these documents
23 before?
24 A. No. I do not.
25 Q. It's accurate to say you didn't put -- after

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1 the original \$100,000, you didn't put any additional
2 money of your own into the company. Correct?
3 A. Correct.
4 Q. If you go to Exhibit B, it says, "First
5 SOURCE Electrical, LLC, Schedule of Dilution -
6 Proforma, as of 10-31-2010."
7 And then there are some names on the
8 left-hand corner, which is Mark Jenson, Phil DeLoache,
9 and Irma Azuara. Correct?
10 A. Yes.
11 Q. And next to your name it says, "Capital
12 contribution, \$100,000," which that's accurate,
13 correct?
14 A. Yes.
15 Q. And then it says, "No. of units, 12," and
16 then it gives you a percentage. And then the next
17 column to that says, "Current valuation of" -- I'm not
18 quite sure what that word is there.
19 A. It's so small, I can't even see that.
20 Q. But the number next to yours is, like,
21 \$7,932. Do you see that?
22 A. No, I can't see that. That's too small.
23 Q. Yes, it's very small.
24 MR. LEVY: Maybe it's 17.
25 Q. (By Mr. Oberti) Maybe it's 17. What I'm

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1 getting at -- maybe I asked you this before -- did it
2 ever come to your attention what the value of those 12
3 Class A shares were?
4 A. No.
5 Q. Did you ever ask Phil DeLoache, "Hey, if
6 First SOURCE goes out of business, can I get my
7 \$100,000 back?"
8 A. No, I don't think so. I don't recall.
9 Q. Exhibit No. 13.
10 (Marked was Azuara Exhibit No. 13.)
11 A. (Reviewing.)
12 Q. (By Mr. Oberti) Do you see this e-mail dated
13 February 1st, 2011, from Dave Kleshinski to
14 Phil DeLoache with a copy to you?
15 And it says, "Phil, there is an
16 unfavorable error on the cash forecast. Irma's has the
17 line called Available to Borrow. It's \$340,000 this
18 week and consists of \$280,000 funding from BBC plus
19 anticipated \$60,000 wire by Mike. Since the \$280,000
20 already represents the line at its max, you don't pick
21 up any more cash in the RLOC Bal - Prior Week and RLOC
22 Bal - This Week Area. I set the RLOC balances at the
23 line max of \$2,250,000. Unfortunately, you have
24 \$40,000 less to work with this week.
25 "I am glad I thought of this before

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1 presenting to Jim which I will do now. Perhaps Mike
2 will fund \$100,000. If you absolutely need wire to be
3 \$100,000, please let me know."
4 And then, later that day Mr. DeLoache
5 sends an e-mail to Dave Kleshinski saying, "Dave, wow,
6 I just can't stand working with bad numbers. Ok, well
7 while it's always possible to delay another vendor
8 payment I believe doing so will likely result in
9 impairment of the business which will negatively impact
10 future operating results so there is a difficult
11 decision to make. I will be sending you the updated 6
12 week forecast and I corrected the error you found in it
13 as well as making other changes."
14 My question to you is: Do you agree that
15 it appears you made a \$40,000 error on the cash
16 forecast this particular week?
17 A. I don't remember this at all.
18 Q. Look at Exhibit No. 14.
19 (Marked was Azuara Exhibit No. 14.)
20 Q. (By Mr. Oberti) It's some e-mails between
21 you and Mr. Kleshinski in February, 2011, February 8th,
22 2011?
23 A. (Reviewing.) Okay.
24 Q. Okay. And the takeaway from this is that you
25 made an error on the weekly borrowing base that

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1 particular week, right?
2 A. No, I don't see that.
3 Q. Well, it says, "FCC only wired \$274,000 last
4 week. You are showing a wire of \$435,000."
5 A. It didn't work exactly the way -- I think
6 everything is being read into something that really
7 didn't happen.
8 It worked from week to week, and the way
9 we did the vendors is we would go in and Mark Jenson
10 would say: Okay, we're not going to pay this vendor.
11 How much money do we have?" and so on and so forth.
12 And whatever we -- I don't really recall
13 how we did it, but it wasn't as black and white as you
14 see it here.
15 Q. Well, this is after Jenson was terminated,
16 though, right?
17 A. But it all worked the same.
18 Q. Did you ever make any errors in your
19 financial reporting to White Oak?
20 A. Not that I recall.
21 Q. Exhibit 15.
22 (Marked was Azuara Exhibit No. 15.)
23 Q. (By Mr. Oberti) Do you see this e-mail from
24 Mr. Kleshinski to yourself dated February 9, 2011?
25 He says, "Irma, here are the two payments

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1 for WC," meaning workers' comp, "under this year's
2 policy. Notice the large differences in reported
3 payrolls for each of the class codes. For example,
4 code 8107 only had \$31,583 for the 1st filing. It then
5 jumps to \$176,886 for the 2nd filing. These numbers
6 show tie to payroll paid for the date ranges. Can you
7 explain the differences? I am trying to figure out
8 which one is most correct. I want to make sure we have
9 neither over or under paid through November.
10 "I would think there would still be a
11 year end audit at the end of the policy period. Any
12 error we may have made would become evident at the
13 time. Therefore, if we need to correct we should do
14 so. If applicable, we would make a 2010 entry to
15 properly state our expense.
16 "When you have time, let me know your
17 thoughts on this."
18 Do you remember making an error related
19 to the workers' comp?
20 A. No.
21 Q. Do you remember this issue at all?
22 A. I don't. But can I say something?
23 Q. Sure.
24 A. The way this works is you have to classify
25 each person within that class code; and if we didn't

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1 know what the class code was for each person, that's
2 what I have to find out.
3 I always have to find out at the very
4 beginning, okay, who classifies where, when, and
5 whatever.
6 So every time somebody moved or was
7 reclassified, then I would have to remember to
8 reclassify them on here, as well. So that's what
9 this -- I'm assuming that's what this is for.
10 Q. Look at No. 16.
11 (Marked was Azuara Exhibit No. 16.)
12 Q. (By Mr. Oberti) Go ahead and take your time
13 to read this. It's a two-and-a-half, three pages of
14 e-mails.
15 MR. LEVY: Start at the ending or
16 beginning? Like Page 3?
17 MR. OBERTI: I think they start on
18 Page 3, yeah, and go forward.
19 A. (Reviewing) Okay.
20 Q. Do you remember this issue?
21 A. I believe I do.
22 Q. All right. What do you remember about it?
23 A. Activant Eclipse charged us too much for the
24 sales tax, annual sales tax. I think it was, like,
25 \$10,000 or so.

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1 And as far as I remember, either we
2 weren't going to pay it or we were. They had given us
3 a credit. That's all I recall.
4 Q. Well, do you recall you came up with a
5 calculation and then Dave told you to go with his?
6 A. Yes.
7 Q. Is it accurate to say that after Mr. Jenson
8 was terminated and Mr. DeLoache took over as the
9 president of First SOURCE, there were typically weekly
10 meetings then conducted with Phil DeLoache, yourself,
11 Jimmy Chandler, and Michael Pesek?
12 A. Yes.
13 Q. And Jimmy Chandler was the vice president of
14 purchasing?
15 A. Yes.
16 Q. And Michael Pesek was the vice president of
17 operations?
18 A. Yes.
19 Q. And did Mr. Kleshinski participate in some of
20 the meetings via teleconference?
21 A. Yes.
22 Q. Did he typically participate in the meetings?
23 A. Yes.
24 Q. How did you feel like you and Kleshinski
25 worked together?

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1 A. Very well.
 2 Q. Did he ever comment to you about his
 3 perception of your job performance?
 4 A. Never.
 5 Q. Had you ever heard the name Kristi Blaschke?
 6 A. No.
 7 Q. Go to Exhibit No. 20.
 8 (Marked was Azuara Exhibit No. 20.)
 9 Q. (By Mr. Oberti) Go to the third page. Do
 10 you know who Sarah Campbell is?
 11 A. I think she works for White Oak.
 12 Q. Okay. Do you know what she does for them?
 13 A. No.
 14 Q. This is a two-page document here. It's a
 15 letter signed by Michael Menzer. Do you see that on
 16 the second page?
 17 A. Yes.
 18 Q. Did you ever get this letter?
 19 A. Yes.
 20 Q. You got it on March 29, 2011?
 21 A. Yes.
 22 Q. Who gave it to you?
 23 A. Phil DeLoache.
 24 Q. Did you keep it?
 25 A. Yes.

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1 Q. Do you still have it?
 2 A. Yes.
 3 Q. On the one we're looking at right now there
 4 is a blank where the date is. On yours, was the date
 5 actually filled in? Do you know?
 6 A. I do not know.
 7 Q. In any event -- well, let me ask you this.
 8 On the day of your termination, Mr. DeLoache is the one
 9 who told you?
 10 A. Yes.
 11 Q. Where did the meeting occur?
 12 A. My office.
 13 Q. Did he come into your office?
 14 A. Yes.
 15 Q. Was anybody else there?
 16 A. Yes.
 17 Q. Who?
 18 A. I don't recall his name. Bart, I think.
 19 Q. Was he somebody from First SOURCE or somebody
 20 from White Oak?
 21 A. First SOURCE.
 22 Q. What was his job? Do you remember?
 23 A. Sales manager, I think.
 24 Q. Okay. Who did the talking? Phil?
 25 A. Yes.

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1 Q. And do you remember what he said?
 2 A. Yes, I do.
 3 Q. What did he say?
 4 A. He said I was being laid off because the
 5 company wasn't making any money.
 6 Q. Anything else?
 7 A. He then presented me with a document that
 8 said the company wasn't making any money and I was
 9 being laid off for that.
 10 Q. Was this the document?
 11 A. No.
 12 Q. Was it a different document?
 13 A. Yes.
 14 Q. Do you have that document?
 15 A. Yes.
 16 Q. At your house?
 17 A. Yes.
 18 Q. Do you know, did you produce copies of that
 19 document and the termination letter in this lawsuit?
 20 A. Yes.
 21 Q. Anything else that you recall Phil DeLoache
 22 saying during the termination meeting?
 23 A. I said something, but I don't recall anything
 24 else he said. That's about it.
 25 Q. What did you say?

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1 A. He gave me the letter and I asked him, "This
 2 letter states I was being terminated for cause."
 3 Q. Right.
 4 A. "What did I do -- what did I not do? What
 5 did I do wrong?"
 6 Q. And what did he say?
 7 A. He wouldn't answer. So I asked him again,
 8 "Phil, this states that I wasn't doing my job. I've
 9 been meeting all my deadlines, I've been coming in,
 10 I've been working from home. What is it that I did not
 11 do?"
 12 And his answer is, "You will have to talk
 13 to Mike."
 14 Q. Mike Menzer?
 15 A. Yes.
 16 Q. Did you ever talk to Mike Menzer?
 17 A. I did not.
 18 Q. Anything else that Phil said or you said in
 19 the termination meeting that you can recall?
 20 A. Not that I can recall.
 21 Q. And you said you worked from home. Were you
 22 hooked up to the computer system from home?
 23 A. Yes.
 24 Q. And then the letter, like you said, it says,
 25 "Dear Ms. Azuara, effective immediately, your

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1 employment with the Company is hereby terminated for
2 cause pursuant to the terms and conditions of the
3 Employment Agreement. Your material nonperformance and
4 underperformance of your duties and responsibilities
5 constitute grounds 'for Cause' pursuant to Sections
6 4(c)(ii) Section 7 and 8 of the Employment Agreement."
7 That's what you read, obviously?
8 A. Yes.
9 Q. Is there a reason you didn't call Mr. Menzer?
10 A. I was just angry at the time.
11 Q. The documents that are attached to this
12 letter, there is something called a Waiver of Review
13 Period and then there is a Separation Agreement and
14 General Release.
15 Were those given to you by Phil, too?
16 A. I have them. I don't know how they were
17 given to me, whether it was mailed; but yes, I do have
18 those.
19 Q. Obviously you didn't sign off on them.
20 Correct?
21 A. Correct.
22 Q. There is also -- as an attachment there is
23 the actual employed agreement, the Modified Employment
24 Agreement. Was that sent to you as well or given to
25 you as well?

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1 MR. LEVY: Which page are you talking
2 about? Sorry.
3 Q. (By Mr. Oberti) If you go after the
4 Separation Agreement and General Release, there is a
5 copy of the Modification of Employment Agreement.
6 My question was: Was that part of what
7 was given to you when you were terminated?
8 A. I don't recall.
9 MR. OBERTI: Do you-all want to take a
10 lunch break now?
11 MR. LEVY: Let's go off the record and
12 talk about it.
13 (Lunch recess taken at 12:07 p.m.,
14 resuming at 1:12 p.m.)
15 Q. (By Mr. Oberti) Now, do you recall that
16 shortly after Mr. Jenson was fired, there was a meeting
17 with Mike Menzer, Jim Cramer, yourself, and
18 Phil DeLoache and the discussion about his termination
19 occurred?
20 A. Yes.
21 Q. And do you remember that also the fact of
22 this adjustment not being made was discussed?
23 A. Not that I recall.
24 Q. Was there -- what was the discussion about
25 him being fired?

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1 A. For cause.
2 Q. Did anybody -- who said "for cause"?
3 A. Mike Menzer, I believe.
4 Q. Did he explain it?
5 A. Not that I recall.
6 Q. Now, did you ever ask Phil DeLoache if you
7 were in trouble after Jenson was fired?
8 A. I don't recall.
9 Q. Do you ever recall a time when you asked
10 Phil DeLoache if Mike Menzer would buy your stock back?
11 A. Yes.
12 Q. And Phil said, probably not; but if he did,
13 it would be at the share's current price, which he
14 didn't think you would be happy with?
15 A. Yes.
16 Q. And was that conversation in 2011?
17 A. I don't recall.
18 Q. Obviously, was it after Jenson was fired,
19 though?
20 A. Yes.
21 Q. And are you aware that First Capital
22 obviously received the company's financials,
23 First SOURCE's financials, so it could understand what
24 the company's financial status was for purposes of its
25 line of credit, correct?

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1 A. Yes. I didn't send it to them, but yes.
2 Q. Who sent it to them? Do you know?
3 A. Mark Jenson.
4 Q. And how often did he send it to them?
5 A. I have no idea.
6 Q. Were you aware that after the adjustment was
7 made around May, 2010, that obviously part of the
8 adjustment was to notify the bank of that. Correct?
9 A. I would say so, yes.
10 Q. Now, don't tell me anything you discussed
11 with your lawyers; but I just want to know when did you
12 hire your lawyers in this case?
13 A. Last year.
14 Q. After you were fired?
15 A. Yes.
16 Q. And have you paid them any money yet out of
17 your own pocket?
18 A. Yes.
19 Q. How much?
20 A. I believe \$7,500.
21 Q. Now, your compensation package at the company
22 was your salary. You had a salary, correct?
23 A. Yes.
24 Q. Did you get a bonus or anything when you were
25 working at First SOURCE?

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1 A. No.
2 Q. Did you get any other sort of compensation?
3 A. Yes. I guess -- well, I'm not sure what you
4 mean by "compensation." In the form of money?
5 Q. Yes.
6 A. No.
7 Q. But you had a gas card?
8 A. Yes.
9 Q. What was the gas card for?
10 A. To just fill up my vehicle whenever needed.
11 Q. So the company paid for your gas to and from
12 home?
13 A. Yes.
14 Q. What about when you were out on the weekends
15 or whatever?
16 A. No.
17 Q. How far from the First SOURCE office did you
18 live?
19 A. About 35 miles.
20 Q. And then the company was sent that bill?
21 A. Yes.
22 Q. So the company paid the bill, not yourself?
23 A. Correct.
24 Q. Did you have health insurance through
25 First SOURCE?

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1 A. Yes.
2 Q. And after you were terminated, have you had
3 any health insurance for yourself?
4 A. No.
5 Q. Does your husband have health insurance?
6 A. He does now.
7 Q. Through?
8 A. His job.
9 Q. Before he was underneath First SOURCE?
10 A. Yes.
11 Q. After you got terminated, he picked up health
12 insurance under his job?
13 A. He had to wait.
14 Q. How long did he have to wait?
15 A. He just now picked it up.
16 Q. Did he incur any medical expenditures while
17 there wasn't coverage?
18 A. No.
19 Q. But you still don't have health insurance?
20 A. No.
21 Q. So you haven't had any since you were
22 terminated?
23 A. No.
24 Q. And you can't get on your husband's health
25 insurance plan?

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1 A. It's too expensive.
2 Q. How expensive is it?
3 A. I believe it was -- I don't recall, but I
4 believe 200 or \$300 a paycheck.
5 Q. To add you?
6 A. Yes. Well, it was in total.
7 Q. Were you offered COBRA after you were
8 terminated by First SOURCE?
9 A. No.
10 Q. Do you know why not?
11 A. I have no idea.
12 Q. If you go to Exhibit No. 25, here is a letter
13 from your attorney, Mr. Rosenberg, to Mr. DeLoache,
14 dated May 3, 2011, about you. Correct?
15 (Marked was Azuara Exhibit No. 25.)
16 A. Yes.
17 Q. (By Mr. Oberti) So I guess it would be fair
18 to say that this was written shortly after you retained
19 Rosenberg & Sprovach?
20 A. Yes.
21 Q. And then, if you go to Exhibit No. 26, this
22 purports to be a response to Mr. Rosenberg's letter
23 dated May 12, 2011, from a law firm named Kephart,
24 Fisher, LLC, and a lawyer named Christopher D.
25 Adkinson. Correct?

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1 (Marked was Azuara Exhibit No. 26.)
2 A. (Reviewing.) Yes.
3 Q. (By Mr. Oberti) Have you seen this letter
4 before today?
5 A. I believe so.
6 Q. Do you recall reading it?
7 A. I think so. Yes.
8 Q. Then, after that, if you go to Exhibit
9 No. 30, it looks like in November of 2011 Plaintiff's
10 Original Petition was filed, meaning you filed your
11 lawsuit against First SOURCE Electrical, LLC, correct?
12 (Marked was Azuara Exhibit No. 30.)
13 A. Yes.
14 Q. (By Mr. Oberti) And did you read this
15 document, Exhibit 33, before it was filed in court?
16 A. Yes, I think I did.
17 Q. Do you know what -- I'm assuming that you are
18 familiar with First SOURCE's cash flow.
19 A. Yes.
20 Q. Would you agree with me that First SOURCE did
21 not achieve a net positive cash flow in any of the
22 calendar quarters of 2010?
23 A. I don't recall. You know, I -- no, I don't
24 recall.
25 Q. Would you agree with me that, overall,

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1 First SOURCE did not achieve a cumulative net positive
2 cash flow in 2010?
3 A. I don't recall.
4 Q. You've already said -- is it accurate to say,
5 ma'am, that you knew that at no time during your
6 employment with First SOURCE did the company turn a
7 profit.
8 A. That's correct.
9 Q. What is your definition of "profit"?
10 A. The bottom line, the bottom line of your
11 financials.
12 Q. Meaning what, revenues exceeding expenses?
13 A. Correct.
14 Q. Well, what is the definition of "net positive
15 cash flow"? Isn't that revenues exceeding expenses?
16 A. Not necessarily.
17 Q. What is it, then?
18 A. To me, that's money in the bank. I mean, you
19 can have money in the bank and still have a negative
20 profit, depending on where the money comes from.
21 Q. Well, let me change the question, then.
22 Would you agree with me that in all four
23 calendar quarters of 2010, First SOURCE's expenses
24 exceeded its revenues?
25 A. Yes.

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1 Q. Would you agree with me that overall in 2010,
2 First SOURCE's expenses exceed its revenues?
3 A. Yes.
4 Q. Now, to your knowledge, did anybody from
5 First SOURCE have actual knowledge of the inventory
6 overstatement between the end of 2009 and the middle of
7 2010?
8 A. You're asking me if anyone had knowledge of
9 it?
10 Q. Did they actually know? Do you know?
11 A. Jenson and I did.
12 Q. Well, yeah, but anybody at First -- sorry.
13 Anybody at White Oak?
14 A. Oh, okay.
15 Q. That you actually knew that they actually
16 knew about it.
17 A. What time frame was that again?
18 Q. Well, between the end of December when it
19 started in, like, May 2010 when, yeah, it was
20 definitely brought up then.
21 A. Oh, absolutely. Well, I'm sorry. You said
22 White Oak.
23 Q. Yes.
24 A. Because I know First Capital was aware of it,
25 as well.

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1 White Oak? The time frame, I don't
2 recall.
3 Q. Okay. Well, how did First Capital know about
4 it?
5 A. They came and audited the books.
6 Q. Well, was it ever discussed during those
7 audits?
8 A. Never.
9 Q. So you're assuming since they were audited,
10 they must have seen it?
11 A. They did see it.
12 Q. Well, did you ever discuss it with them?
13 A. Never.
14 Q. Okay.
15 A. But I gave them work papers. I had work
16 papers every month.
17 Q. What were the work papers?
18 A. Work papers just stated that there was a
19 difference in the inventory, general ledger versus the
20 subledger, and I e-mailed that to them.
21 Q. And somebody from First Capital Loan came
22 physically to First SOURCE every month, you said?
23 A. I don't recall how many times they were
24 there. I had my work papers every month, but they were
25 aware of it, yes.

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1 Q. Well, you don't know if they're aware of it,
2 or not. You're claiming that your work papers
3 reflected the discrepancy --
4 A. Yes.
5 Q. -- and that they had access to your work
6 papers?
7 A. I gave them all my work papers, yes.
8 Q. Who did you give them to?
9 A. The auditor.
10 Q. Who is the auditor?
11 A. I don't remember the name.
12 Q. Was it a male or female?
13 A. Male.
14 Q. Same guy every time?
15 A. Sometimes. Sometimes not.
16 Q. What did he look like?
17 A. I don't remember.
18 Q. Okay. Did he come in December of '09?
19 A. I don't recall.
20 Q. Well, what months in 2010 did he come?
21 A. I don't remember. I don't remember. I don't
22 remember when they came out there. I know they were
23 there.
24 Q. Did you ever discuss that with Jenson, that:
25 Gee, the people from First Capital are going to have

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1 access to my papers. They might figure it out?
 2 A. No.
 3 Q. He never talked to you about it?
 4 A. No.
 5 Q. And no one from First Capital brought it up
 6 to you, like: Whoa, what's going on with this
 7 discrepancy? Correct?
 8 A. Not that I recall, no.
 9 Q. Do you know whether or not First SOURCE
 10 breached its -- well, have you ever seen a copy of the
 11 loan agreement between First SOURCE and First Capital
 12 Loan?
 13 A. No.
 14 Q. Do you know whether or not First SOURCE was
 15 ever in breach of its loan agreement with First Capital
 16 Loan?
 17 A. No.
 18 Q. You don't know?
 19 A. Not that I recall.
 20 Q. You don't know?
 21 A. I don't know.
 22 Q. Tell me again what your definition of "net
 23 positive cash flow" is.
 24 A. It's money in the bank.
 25 Q. Come on now. If a business sells a bottle of

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1 Coke for 50 cents and puts the 50 cents in the bank but
 2 then it goes on to lose a million dollars because of
 3 all kinds of expenses, the fact that it has 50 cents in
 4 the bank doesn't mean it had a net positive cash flow,
 5 correct?
 6 MR. LEVY: Object to form.
 7 A. I guess.
 8 Q. (By Mr. Oberti) So do you even know what net
 9 positive cash flow means?
 10 A. Yes.
 11 Q. Well, would you agree with me that if a
 12 company's expenses exceed its revenues, well, then,
 13 there is no way it could have a positive cash flow,
 14 correct?
 15 A. I would assume, yes.
 16 Q. I'm trying to understand your claim regarding
 17 the \$100,000 that you spent to get the 12 Class A
 18 shares.
 19 Do you know what you're claiming about
 20 that in this lawsuit?
 21 A. I'm not sure.
 22 Q. Are you saying that you should get the
 23 \$100,000 back?
 24 A. Well, I was hoping I would, yeah.
 25 Q. Yeah, I don't blame you. I would, too.

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1 But are you claiming that you actually
 2 have any legal right to it back?
 3 MR. LEVY: Object to form.
 4 A. Yes.
 5 Q. (By Mr. Oberti) Based on what?
 6 A. I can't think of it right now.
 7 Q. If you look at Exhibit 3, which is the
 8 Amended and Restated Limited Liability Company
 9 Agreement, is there anything stated in Exhibit 3 that
 10 you believe supports your right to get any of your
 11 \$100,000 back?
 12 MR. LEVY: Object, form.
 13 A. I would have to read it.
 14 Q. (By Mr. Oberti) You said you have read it,
 15 right?
 16 A. That was quite some time ago.
 17 Q. Okay. Well, based on your recollection of
 18 reading it, is there anything in there that you believe
 19 supports your claim to get some or all of your \$100,000
 20 back.
 21 A. I don't know how to answer that question
 22 because I don't remember what it has in there. I would
 23 have to read it again.
 24 Q. All right. Well, go ahead and look through
 25 it.

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1 A. (Reviewing) It's kind of hard to understand.
 2 Q. Let me ask it this way. Go to Exhibit 26.
 3 A. Okay.
 4 Q. If you go to the second page, the second
 5 paragraph -- or the first full paragraph says, "With
 6 respect to your demand for the repayment of
 7 Ms. Azuara's investment in the Company of \$100,000 'in
 8 exchange for Class B stock,' Ms. Azuara is similarly
 9 not entitled to any such amount.
 10 "Ms. Azuara's initial capital
 11 contribution to the Company of \$100,000 entitled her to
 12 12 Class A Units of the Company. Despite your
 13 assertions to the contrary, Ms. Azuara has not demanded
 14 to be tendered her shares, though she has no right to
 15 make such demand of the Company in the first place, nor
 16 was she advised that she forfeited her 'stock.'"
 17 Have you asked for your shares back?
 18 A. No.
 19 Q. And I think you told me before that you
 20 couldn't remember anybody telling you that you had
 21 actually forfeited your stock, correct?
 22 A. Correct.
 23 Q. And then it says, "Ms. Azuara remains a
 24 member of the Company pursuant to that certain Amended
 25 and Restated Limited Liability Company Agreement of the

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1 Company dated October 1st, 2008 (as amended to date,
2 the 'Operating Agreement') and she remains entitled to
3 the benefits, and bound by the obligations, accorded to
4 her interests therein, as the same has been modified
5 and amended to date.
6 "Though Ms. Azuara has no right under the
7 Operating Agreement to demand the return of her
8 investment or to demand that the Company purchase her
9 Units, the Company has the right, but not the
10 obligation, under the Operating Agreement to buy her
11 Units back.
12 "In such event, the purchase price the
13 Company would pay for such interest would be equal only
14 to the 'Fair Value' of her Units (as defined in the
15 Operating Agreement), less discounts for minority
16 ownership, lack of marketability, lack of control and
17 other transfer restrictions, which is a figure far less
18 than the amount of her initial investment."
19 So that last sentence that I read,
20 basically he's saying: Hey, the company doesn't have
21 to buy their units back; but even if they do, all you
22 would get is what's quoted as fair value as defined in
23 the operating agreement.
24 Do you have any factual basis to dispute
25 that?

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1 MR. LEVY: Object, sidebar, and form.
2 A. I don't know how to answer that.
3 Q. (By Mr. Oberti) What I'm saying, I guess is,
4 like, you're the one suing the company, saying you
5 should get --
6 A. Well, I just -- I just...
7 MR. LEVY: Are you asking her about your
8 interpretation of this sentence or what the sentence
9 is? Because, I guess, you restated it in your own
10 words; and that's what I was objecting to.
11 Q. (By Mr. Oberti) Well, I'm just saying the
12 last sentence there of Paragraph 2 that I read, do you
13 have any knowledge of whether that's true or false?
14 A. I do not.
15 Q. Okay. Is it accurate to say that the entire
16 time you worked for First SOURCE, you worked under the
17 terms of a written employment contract?
18 A. Yes.
19 Q. And you didn't have any side agreements with
20 First SOURCE about your employment, other than what's
21 in the written contracts, correct?
22 A. Correct.
23 Q. And did you ever notify First SOURCE that you
24 expected to be paid something more than what you were
25 entitled to under your written employment agreements?

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1 A. Not that I recall. That I was expected to be
2 paid?
3 Q. Yeah.
4 A. Not that I recall.
5 Q. In other words, did you ever tell anyone from
6 First SOURCE or White Oak, "Hey, I know the employment
7 agreement provides for me to get paid a certain amount,
8 but I'm doing extra work. I want some extra pay for
9 that"?
10 A. Oh, no, I don't think so. Not that I recall.
11 No.
12 Q. All right. Now, obviously, you were an
13 employee of First SOURCE, correct?
14 A. Yes.
15 Q. And you were a member under this definition
16 of this Amended and Restated Limited Liability Company
17 Agreement, whereby you got the 12 shares, correct?
18 A. Yes.
19 Q. Did you realize you were not a partner in the
20 company? Did you know that?
21 A. I wasn't sure.
22 Q. Well, did you-all ever refer to each other as
23 partners? Like, this is my partner, and that sort of
24 thing?
25 A. No.

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1 Q. Did anyone ever tell you you were a partner
2 in the company?
3 A. Not that I recall.
4 Q. Did you ever consider yourself a joint
5 venturer?
6 A. No.
7 Q. Now, are you aware that over time White Oak
8 Partners has vested money into First SOURCE?
9 A. Yes.
10 Q. Do you know how much?
11 A. No.
12 Q. Did anyone ever tell you you couldn't go see
13 a lawyer before you signed any of your agreements that
14 we've gone over today?
15 A. No.
16 Q. Did you ever feel like First SOURCE had some
17 sort of excessive control or influence over your
18 business dealings?
19 A. No.
20 Q. Go to Exhibit No. 23. So it's March 29 that
21 you got terminated. Correct?
22 (Marked was Azuara Exhibit No. 23.)
23 A. Yes.
24 Q. (By Mr. Oberti) So on March 30th, the next
25 day after your termination, Mr. Jenson sent you an

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1 e-mail saying, "Irma, I received news this morning of a
2 change for you. I hope that you are okay." So on and
3 so forth.
4 A. Through my personal e-mail, yes.
5 Q. Did you have personal e-mail on your computer
6 at work?
7 A. It was coming in when I left and I didn't
8 have time to do anything with it before I left, yes. I
9 was not going to touch anything.
10 Q. So it was accessible, I guess, to whoever was
11 gathering e-mails on the system?
12 A. Apparently.
13 MR. LEVY: Can we go off the record?
14 MR. OBERTI: Sure.
15 (Recess taken at 1:38 p.m., resuming at
16 1:39 p.m.)
17 Q. (By Mr. Oberti) As I understand it,
18 Ms. Azuara, you didn't have a personal computer at
19 home?
20 A. Correct.
21 Q. Your only computer access was through work at
22 First SOURCE?
23 A. Correct.
24 Q. But you did have a personal e-mail address?
25 A. Correct.

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1 Q. But as a result of all of that, you ran your
2 personal e-mail through your Outlook that First SOURCE
3 hosted on its server?
4 A. Correct.
5 Q. Well, in any event, Mr. Jenson sent you this
6 e-mail after you got fired. Right?
7 A. Yes.
8 Q. You responded, though, right, because it
9 says -- well, it looks like you responded. It says,
10 "Actually it was both our decisions. I made the
11 mistake of venting to Phil." Correct?
12 A. Yes.
13 Q. I'm trying to see. When did you respond? I
14 couldn't really tell from this.
15 A. It may have been a day after, two days after.
16 You're right, based on this (indicating), I can't
17 really tell.
18 Q. So how did you respond? If you weren't at
19 work anymore and you didn't have a computer, how --
20 A. I bought a computer. I had to buy a computer
21 after I left.
22 Q. You bought it the same day?
23 A. No. It must have been -- it must have been
24 three or four days after. Do you want me to elaborate?
25 Q. Go ahead.

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1 A. I bought it from Best Buy, and they didn't
2 have it in stock so...
3 Q. So you had to wait a few days?
4 A. I had to wait a few days before it came in.
5 Q. I mean, then he says also on the 30th -- I
6 mean, he appears to reply to you. So it looks like you
7 responded on the 30th.
8 And he says, "Life goes on anyway. Glad
9 you responded."
10 A. I didn't have a computer then, so I don't...
11 Q. Well, is that your e-mail there, where --
12 A. Yes.
13 Q. -- it's starting with the paragraph,
14 "Actually it was both our decisions"?
15 MR. LEVY: Let him finish, please.
16 THE WITNESS: Sorry.
17 A. Yes.
18 Q. (By Mr. Oberti) So do you know what computer
19 you sent it from?
20 A. It could have been my daughter's. I don't
21 know.
22 Q. Did you realize that the e-mail was still
23 popping up at First SOURCE?
24 A. No.
25 Q. But now that you think about it, that makes

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1 sense?
2 A. Yes.
3 Q. And you know that First SOURCE has backup of
4 all of its e-mails, correct?
5 A. Yes.
6 Q. So those e-mails were being backed up on its
7 server, too. Correct?
8 A. Yes.
9 Q. And I'm pretty confident -- well, I don't
10 know; you tell me -- but I'm sure when you start the
11 computer at First SOURCE, it has the typical screen
12 that says everything on this computer is company
13 property and you don't have any right to privacy.
14 Correct?
15 A. I don't remember. Not that I recall.
16 Q. Did you realize that using a computer on the
17 company server meant that the company had a right to
18 see what was on the computer?
19 A. Yeah, I would think, yes.
20 Q. Anyway, do you know when the company cut that
21 off?
22 A. I sent a -- no, I do not.
23 Q. Anyway, you wrote, "Actually it was both our
24 decisions. I made the mistake of venting to Phil."
25 You're saying it was both you and the

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1 company's decision for you to leave, correct?
2 A. Yes. I was embarrassed, yes.
3 Q. So you wanted to save face?
4 A. Yes.
5 Q. "I made the mistake of venting to Phil
6 (thought I could trust him) and letting him know how
7 unhappy I was there and what jerks White Oak were."
8 When did you vent to Phil?
9 A. I believe a month before I was let go.
10 Q. What did you tell him?
11 A. I told him I wasn't happy with the way Jim
12 treated me at times and just wasn't happy with
13 White Oak at all.
14 And I think at that time I had asked him
15 about my stock, if I could -- you know, I think it was
16 at that time.
17 Q. Sometime in maybe, like, early 2011?
18 A. Yes. I think. I don't recall, but it was
19 sometime around there.
20 Q. What was it about the way Jim Cramer was
21 treating you that you didn't like?
22 A. He reprimanded me on my absences, because I
23 wasn't there a lot of the times because I was taking
24 care of my mother. I was a primary caregiver for my
25 mother. She had cancer. But I was working from home,

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1 meeting all of my deadlines. But he wanted me in the
2 office.
3 Q. Over what period of time were you out of the
4 office frequently because of caring for your mother?
5 A. 2010, I believe, off and on.
6 Q. Did she pass?
7 A. Yes.
8 Q. When did she pass?
9 A. Last year, right after I was laid off.
10 Q. And "what jerks White Oak were." Why did you
11 think they were jerks?
12 A. Just -- I didn't mean White Oak. I meant
13 Jim Cramer.
14 Q. Wasn't it true that you did go to Phil and
15 tell him that, hey, you really didn't like this Dave
16 Kleshinski guy, having to deal with him all the time?
17 A. I don't recall.
18 Q. And that you resented that?
19 A. No, I don't recall that at all. Dave and I
20 got along fine.
21 Q. "And you know Phil, he told them everything
22 and they laid me off."
23 So your surmise was that you had gone to
24 Phil, told him how unhappy you were, and then Phil
25 turned around and told the people at White Oak, so they

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1 laid you off?
2 A. Yes.
3 Q. Obviously, that's your speculation?
4 A. Yes.
5 Q. "I'm very happy it happened this way and I'm
6 excited about the future. They actually did me a
7 favor."
8 Is all of that part true?
9 A. No.
10 Q. Why did you write it, then?
11 A. I was embarrassed.
12 Q. Just trying to put a positive spin on it?
13 A. Yes.
14 Q. "I have not been happy since you left and it
15 was just getting worse."
16 Now, that part is true?
17 A. Yes.
18 Q. "I was recently hospitalized (probably stress
19 related) and that scared me so as the saying goes,
20 everything happens for a reason."
21 When were you hospitalized?
22 A. I believe it was right before I was laid off.
23 Q. How long were you in the hospital?
24 A. I believe it was one -- one day, I believe.
25 Q. Was it overnight?

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1 A. Yes.
2 Q. Which hospital?
3 A. Methodist.
4 Q. Did you just go into the ER, or did the
5 doctor tell you to go there?
6 A. I went into the ER.
7 Q. What time? Did you go during the work day or
8 at night?
9 A. No, it was in the middle of the night.
10 Q. What caused you to go? Chest pains or
11 something?
12 A. Yes, I was in a lot of pain.
13 Q. In your chest?
14 A. Chest area, stomach area, yes.
15 Q. And did they do some tests?
16 A. Yes.
17 Q. What did they determine?
18 A. Pneumonia and kidney infection.
19 Q. Did they fix it?
20 A. Yes.
21 Q. So did anyone say what caused it?
22 A. No.
23 Q. I mean, kidney infection isn't caused by
24 stress, is it?
25 A. No. Not that I --

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1 MR. LEVY: Object to form.
2 A. I don't know.
3 Q. (By Mr. Oberti) And you say, "If I'm not
4 happy, no amount of money would have made me stay
5 anyway."
6 Is that part true or false?
7 A. It's true to some point.
8 Q. To what point is it true?
9 A. Well, I needed to pay off my loan, and I was
10 going to stay until that loan was paid off or until my
11 contract expired. So regardless of how unhappy I was,
12 I was going to stay.
13 Q. Because you financially needed to?
14 A. I had to. Still need to.
15 Q. How much is the monthly loan?
16 A. A thousand dollars.
17 Q. For how many years do you have left?
18 A. Well, it's 60,000; so I think I've gotten
19 maybe ten years left.
20 Q. Yeah, with interest and everything?
21 A. Yeah.
22 Q. Had you paid your house off before you took
23 off this other \$100,000 loan?
24 A. No.
25 Q. There was enough equity, though, in your

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1 house to get this loan?
2 A. That was my second home. In 2008, I moved;
3 so I have two mortgages now.
4 Q. You kept your first house?
5 A. Yes.
6 Q. Do you lease it out?
7 A. My daughter lives there.
8 Q. Does she pay rent?
9 A. No.
10 Q. The next page here in this Exhibit 23,
11 Kleshinski said he didn't like the lawyer he had. Did
12 he ever tell you who it was?
13 A. No, I don't think so.
14 Q. Then you said, "Yes, they said I was
15 terminated for not doing my job."
16 Basically, you got that from the letter
17 where it said "terminated for cause"?
18 A. Yes.
19 Q. Then he says, "Don't be surprised if you get
20 a Cease and Desist letter in a couple of days."
21 Did you?
22 A. No.
23 Q. On the next page he says, "Remember you are a
24 protected class, female, over 40 and Hispanic."
25 Correct?

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1 A. Yes.
2 Q. Next page, it looks like Michael Pesek is
3 saying that he copied some stuff on a CD and sent it to
4 you?
5 A. Yes.
6 Q. What did he copy on a CD?
7 A. My e-mails, my pictures.
8 Q. Your personal e-mails?
9 A. Uh-huh, yes.
10 Q. Off your gmail account?
11 A. Off of the Outlook.
12 Q. How did he know which ones were personal?
13 A. I had them under personal, a folder under
14 personal.
15 Q. Oh, you separated them out?
16 A. Yes.
17 Q. And it says "a copy of your contact." I'm
18 assuming --
19 A. "Contacts."
20 Q. Oh, your "contacts," okay.
21 Then, the next page, you tell Mr. Pesek
22 on March 31, 2011, by e-mail, "I am wonderful. They
23 did me a huge favor and I'm enjoying every minute of
24 it. I was going to retire anyway so now I will retire
25 a little earlier."

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1 So all of that is false?
2 A. I was embarrassed, again.
3 Q. Right. So it's not true, then?
4 A. No.
5 Q. When were you planning on retiring?
6 A. When my contract was up. I signed a
7 contract, and I was going to stick by it because that's
8 the way I am. I signed a contract; and whenever the
9 contract was over, I should have already paid my loan
10 by then. So I was accelerating the payments.
11 Q. The contract was for five years, and it was
12 signed in 2008.
13 A. Uh-huh, next year, 2013, would have been five
14 years.
15 Q. So you're saying that if you hadn't been
16 fired, your plan was to retire in February, 2013?
17 A. Yes. More or less in that area, depending on
18 how long my loan was.
19 Q. And then do what?
20 A. I'm not sure. That was as far as I went.
21 Q. Okay. Did you ever -- have you ever been a
22 member of any sort of organization of controllers or
23 accounting-type people?
24 A. No.
25 Q. I guess -- I mean, you're aware that some

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1 people with the title controller have four-year
2 degrees, right?
3 A. Yes.
4 Q. And some of them even have CPAs, right?
5 A. Yes.
6 Q. Obviously, I'm assuming you never took the
7 CPA exam, did you?
8 A. No.
9 Q. And you don't have a four-year degree or a
10 CPA, correct?
11 A. Correct.
12 Q. Did you ever feel like in your job at
13 First SOURCE that you were kind of over your head?
14 A. No.
15 Q. That they were expecting too much from you?
16 A. No. I wore a lot of hats. Not only was I
17 doing the financials, I wore a lot of hats. So I tried
18 to do the best I could at every job to the best of my
19 ability.
20 Q. How many employees, roughly, did
21 Key Electrical have at the time you left there?
22 A. Close to 80.
23 Q. So significantly bigger?
24 A. Yes.
25 Q. Then, the next page on April 2nd, you send an

Page 150

1 e-mail to Mark Jenson.
2 You said, "Thanks Mark. I am fine
3 really. They actually did me a favor. I was going to
4 retire in 2 years anyway so just doing it a little bit
5 earlier." Correct?
6 A. Yes.
7 Q. And, actually, the part where you said, "I
8 was going to retire in 2 years anyway so I'm just doing
9 it a little bit earlier," that part actually is
10 accurate?
11 A. Yes.
12 Q. And the last page of Exhibit 23 -- who is
13 Raphael Fernandez?
14 A. My brother.
15 Q. And where does he live?
16 A. Jewitt.
17 Q. Where?
18 A. Jewitt.
19 Q. Oh, Texas?
20 A. Yes.
21 Q. What does he do over there?
22 A. He works for the light company.
23 Q. And you sent him an e-mail on April 8th
24 saying, "Hi Bro, just wanted to fill you in on the good
25 news. I quit my job. This is my new e-mail and phone

Page 151

1 number," and you gave it to him.
2 "My job was too stressful and with taking
3 care of Mom and my job, I was getting very sick so I
4 really had no choice than to quit. Anyway, hope all is
5 well. Talk to you soon. Love ya. Irma."
6 Correct?
7 A. Yes.
8 Q. And, once again, you're trying to --
9 A. No one in my family knows I got fired. I've
10 never been fired in my life.
11 Q. Even now they don't know?
12 A. No.
13 Q. Do they know you filed this lawsuit?
14 A. No.
15 Q. Obviously, you told your husband?
16 A. Yes.
17 Q. How many brothers and sisters do you have?
18 A. Six sisters and one brother.
19 Q. None of them know that you've been
20 terminated?
21 A. (Moving head side to side.)
22 Q. Is your father still alive?
23 A. No.
24 Q. What about your children? Do they know
25 you've been terminated?

Page 152

1 A. My daughter, yes.
2 Q. As far as the unemployment claim goes, when
3 did you apply for unemployment? How soon after you
4 were terminated?
5 A. I want to say maybe a couple of weeks or a
6 week, something like that. I don't remember.
7 Q. Do you know, did the company fight the claim?
8 A. Not that I recall. No, I don't think they
9 did.
10 Q. If you will, go to Exhibit 18.
11 (Marked was Azuara Exhibit No. 18.)
12 Q. (By Mr. Oberti) This is where Dave Kleshinski
13 in February of 2011 is asking you to provide a trial
14 balance for the end of 2010?
15 A. Yes.
16 Q. I guess what you had sent him is attached?
17 A. Yes.
18 Q. Did Dave tell you he wanted it in, like, a
19 better order?
20 A. This was sent from the Eclipse system and he
21 did not know how to go into Excel and make it look
22 better, so he asked me to send him a better copy and I
23 did. I downloaded it for him and sent it to him.
24 Q. If you go to the last page, do you know whose
25 form this is?

Pages 149 to 152

ORAL DEPOSITION OF IRMA AZUARA

Page 153

1 A. No.
2 Q. Have you ever seen this form before?
3 A. I don't recall.
4 Q. Did you have responsibility for ensuring that
5 the Eclipse system properly was set up so that the
6 correct sales tax was charged on sales of First SOURCE?
7 A. I knew where to go and get it set up. Was I
8 responsible for it? I don't think so.
9 Q. Have you ever taken any sort of course or
10 class on sales tax?
11 A. In the past?
12 Q. Yeah.
13 A. I don't recall.
14 Q. What about more recently?
15 A. No.
16 Q. Do you know if First SOURCE was supposed to
17 be charging tax on sales of items based on the point of
18 material delivery or at the point of order acceptance?
19 A. I believe it's acceptance.
20 Q. Do you know what First SOURCE was charging?
21 A. I don't recall.
22 Q. Well, First SOURCE didn't have its own
23 in-house lawyer, did it?
24 A. There was a lawyer, I believe.
25 Q. Where?

Page 154

1 A. Where?
2 Q. Yes. There in Houston at First SOURCE?
3 A. I think so.
4 Q. Who?
5 A. He collected accounts receivable for us.
6 Q. Oh, collected on judgments, or whatever?
7 A. Yes.
8 Q. Or trying to get judgments?
9 A. Yes.
10 Q. Was there somebody there you would go to for
11 legal questions?
12 A. Not that I know of.
13 Q. Who at First SOURCE would have been
14 responsible for being knowledgeable of state tax
15 regulations and ensuring First SOURCE's compliance?
16 Would that have been your job as controller?
17 A. Mark Jenson. Mark Jenson did a lot of that
18 and so did I; so it was like a joint effort, I believe.
19 Q. What about after Jenson was fired?
20 A. Then it would have been me.
21 Q. Did you set up the business system to collect
22 tax --
23 A. No.
24 Q. -- at the point of delivery?
25 A. No.

Page 155

1 Q. Who set it up?
2 A. Mark Jenson.
3 Q. Did you tell anybody at the company that you
4 were knowledgeable of the tax code?
5 A. No.
6 Q. Have you ever taken a state sales tax course?
7 A. No.
8 Q. So if it turns out that the company had been
9 charging sales tax on its sales based on the point of
10 delivery rather than the point of order of acceptance,
11 which is required under the law, and, as a result,
12 First SOURCE didn't collect sufficient taxes, hence,
13 owes the state money for that, you're saying that would
14 be Mark Jenson's fault or possibly your fault? One of
15 you-all's two?
16 A. We had been audited by the state controller's
17 office. I don't understand what's going on. We passed
18 our audits, so I don't understand.
19 Q. Well, it is you or Jenson that was
20 responsible for setting the system up, right?
21 A. I did not set the system up.
22 Q. He did?
23 A. Yes.
24 Q. Did you use the system?
25 A. Yes.

Page 156

1 Q. Now, how long had Phil DeLoache worked at
2 Key Electrical before moving on to First SOURCE? Do
3 you know?
4 A. No.
5 Q. You know it wasn't very long, right?
6 A. I don't recall.
7 Q. Do you know that White Oak Partners invested
8 approximately \$7 million in First SOURCE Electrical to
9 get it off the ground?
10 A. I don't know.
11 Q. Did you know it was millions?
12 A. Yes.
13 Q. Now, during 2009, do you know if
14 Michele Souder ever directed Mark Jenson to record a
15 proper write-down of the inventory to make the
16 adjustment?
17 A. I don't recall.
18 Q. Did she ever instruct you to do that?
19 A. Not to my knowledge.
20 Q. Do you know how much the loan for
21 First Capital was?
22 A. I don't recall.
23 Q. Do you know who guaranteed the loan?
24 A. No.
25 Q. Are you aware that it was guaranteed by

Pages 153 to 156

ORAL DEPOSITION OF IRMA AZUARA

Page 157

1 Michael Menzer?
2 A. Well, I guess it would, yes.
3 Q. And are you aware that it wasn't until 2009
4 that White Oak Partners sought out that loan?
5 A. I don't recall the time frame.
6 Q. Are you aware that they did so because of the
7 need for money since First SOURCE wasn't performing
8 that well?
9 A. Yes.
10 Q. Did you know that the person who was with
11 Mr. DeLoache during the termination was Mark Perez?
12 A. "Bart" Perez, yes. I don't know his first
13 name. They called him "Bart."
14 Q. Last name Perez?
15 A. Yes.
16 Q. Go back to Exhibit No. 7, second page.
17 A. (Complying).
18 Q. The last paragraph before the word
19 "conclusion," it says, "In speaking with the Support
20 Group at Activant Eclipse, manual changes or overrides
21 to average cost are noted in the system with an
22 asterisk. However, you must look for these by product
23 so research can be done but it is tedious. A formal
24 request has been made to Activant Eclipse for a quote
25 to write a report that will show old manual adjustments

Page 158

1 or overrides to average costs for any given period of
2 time.
3 "The report request will also include the
4 Eclipse sign on of the person making the changes. A
5 quote has not been received at this time."
6 Do you know if a quote was ever received?
7 A. No, I do not.
8 Q. Do you know if the report was ever received?
9 A. No, I do not.
10 Q. Did you ever tell Mr. Kleshinski or
11 Mr. Cramer that the variance that hadn't been recorded
12 for over a year was caused by a malfunction in the
13 Activant Eclipse accounting software system?
14 A. Not that I recall, no.
15 Q. Did Mr. Jenson ever tell anybody that?
16 A. I have no idea what Mr. Jenson told him.
17 Q. Well, once this issue came up with White Oak,
18 that there was this variance and the need for an
19 adjustment and that it hadn't been made for over a
20 year, did you and Mr. Jenson ever talk about what you
21 guys were going to say?
22 A. No. Not that I recall.
23 Q. I mean, did you ever go to him and say,
24 "Mark, you know, I'm going to have to tell them that
25 you told me not to do it for over a year, even though

Page 159

1 I've been telling you to do it?"
2 A. No.
3 Q. Did he ever come to you and say, you know,
4 "This is what I'm going to say"?
5 A. Not that I recall, no.
6 Q. When First Capital increased the interest
7 margin from 100 bps to 50 bps, do you know what "bps"
8 stands for?
9 A. No.
10 Q. Did this Dave Kleshinski guy seem competent
11 to you?
12 A. Yes.
13 Q. Did either you or Jenson make manual
14 adjustments to the automated accounting and management
15 system at First SOURCE Electrical --
16 MR. LEVY: Object to form.
17 Q. (By Mr. Oberti) -- regarding the value of
18 the certain copper inventory?
19 MR. LEVY: Object to form.
20 A. I did not. I don't know anything about what
21 Mark Jenson did.
22 Q. (By Mr. Oberti) So between 2009 and
23 May -- beginning of May, 2010 -- strike that.
24 How much were your gas charges on your
25 gas card, typically, on a monthly or weekly basis?

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1 A. About 200.
2 Q. A month?
3 A. Uh-huh.
4 Q. Yes?
5 A. That's just a guesstimate. About 200.
6 Q. Okay. So you were over human resources at
7 First SOURCE?
8 A. Yes.
9 Q. What did you have to do as far as a human
10 resources function goes?
11 A. Benefits. As far as the yearly meetings for
12 benefits, 401(k)s, any questions that the employees
13 had. I had to keep up with the employee files, the
14 I-9s, make sure everything was done.
15 Q. Did you-all have an employee handbook?
16 A. Yes.
17 Q. And did you have a copy of it?
18 A. Yes.
19 Q. Was there an ethics policy as a part of that?
20 A. I don't recall.
21 Q. Do you have a copy of the handbook?
22 A. No, I do not.
23 MR. LEVY: Can we take a short break?
24 (Recess taken at 2:11 p.m., resuming at
25 2:24 p.m.)

Pages 157 to 160

ORAL DEPOSITION OF IRMA AZUARA

1 Q. (By Mr. Oberti) You're not claiming any sort
2 of medical problems as a result of your termination
3 from the company, are you?
4 A. No.
5 Q. Now, did you realize that, like any
6 investment, your \$100,000 investment in the 12 shares,
7 how that investment would turn out for you depended
8 upon the performance of First SOURCE?
9 A. Yes.
10 Q. Well, thank you for your time and attention
11 here today.
12 MR. OBERTI: I will reserve the rest of
13 me questions until the time of trial.
14 Pass the witness.
15 THE WITNESS: Okay.
16 MR. LEVY: Off the record.
17 (Recess taken at 2:26 p.m., resuming at
18 2:27 p.m.)
19 MR. LEVY: We will reserve until trial.
20 THE REPORTER: We are off the record at
21 2:27 p.m.
22 (Proceedings concluded at 2:27 p.m.)
23 * * *
24
25

1 CHANGES AND SIGNATURE
2 IRMA AZUARA
3 Page 2
4 PAGE LINE CHANGE REASON
5
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10
11 I, IRMA AZUARA, have read the foregoing
12 deposition and hereby affix my signature that same is
13 true and correct, except as noted above.
14 IRMA AZUARA
15 THE STATE OF :
16 COUNTY OF :
17 BEFORE ME, _____, on this day
18 appeared IRMA AZUARA, known to me or proved to me on
19 the oath of _____ or through
20 [description of identity card or
21 other document] to be the person whose name is
22 subscribed to the foregoing instrument and acknowledged
23 to me that they executed the same for purposes and
24 consideration therein expressed.
25 Given under my hand on this _____ day
of _____, 2012.
Notary Public in and for the
State of _____
My commission expires: _____
Job No. : 99672

1 IRMA AZUARA VS. FIRST SOURCE ELECTRICAL, LLC
2 ORAL DEPOSITION OF
3 IRMA AZUARA
4 APRIL 11, 2012
5 CHANGES AND SIGNATURE
6 PAGE LINE CHANGE REASON
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1 CAUSE NO. 211-70575 / Court: 061
2 IRMA AZUARA, : IN THE DISTRICT COURT OF
3 Plaintiff :
4 VS. : HARRIS COUNTY, T E X A S
5 FIRST SOURCE ELECTRICAL, :
6 LLC, :
7 Defendant : 61ST JUDICIAL DISTRICT
8 REPORTER'S CERTIFICATION TO THE
9 ORAL DEPOSITION OF IRMA AZUARA
10 APRIL 11, 2012
11 I, Pat English-Arredondo, CSR, RMR, CRR, CLR,
12 a Certified Shorthand Reporter in and for the State of
13 Texas, hereby certify to the following:
14 that the witness, IRMA AZUARA, was duly sworn by
15 the officer and that the transcript of the oral
16 deposition is a true record of the testimony given by
17 the witness;
18 that the deposition transcript was submitted on
19 April _____, 2012, to the witness, or to the attorney
20 for the witness, for examination, signature and return
21 to Sunbelt Reporting & Litigation Services by
22 May _____, 2012.
23 That the amount of time used by each party at the
24 deposition is as follows:
25 Mr. Mark Oberti - 3 Hours, 11 Minutes
That pursuant to information given to the
deposition officer at the time said testimony was

ORAL DEPOSITION OF IRMA AZUARA

Page 165

1 taken, the following includes counsel for all parties
 2 of record:
 3 Mr. Brian Levy, Attorney for Plaintiff;
 4 Fax # 713.621.6670
 5 Mr. Mark Oberti, Attorney for Defendant;
 6 Fax # 713.401.3547
 7 I further certify that I am neither counsel for,
 8 related to, nor employed by any of the parties or
 9 attorneys in the action in which this proceeding was
 10 taken, and further that I am not financially or
 11 otherwise interested in the outcome of the action.
 12 Further certification requirements pursuant to Rule
 13 203 of TRCP will be certified to after they have
 14 occurred.
 15 Certified to by me on this _____ day of April, 2012.
 16
 17
 18
 19 PAT ENGLISH-ARREDONDO, CSR, RMR, CRR, CLR
 Texas CSR Certificate No.: 3828
 20 Expiration Date: 12/31/13
 21 Sunbelt Reporting & Litigation Services
 CRCB No: 300
 22 6575 W. Loop South, Suite 580
 Bellaire/Houston, Texas 77401
 23 Phone: 713.667.0763
 Fax: 713.661.3838
 24
 25 Job No.: 99672

Page 166

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP
 2 The original deposition was/was not returned to the
 deposition officer on _____;
 3
 4 If returned, the attached corrections and signature
 page contains any changes and the reasons therefor;
 5 If returned, the original deposition was delivered
 to MR. MARK OBERTI, Custodial Attorney;
 6
 7 that \$ _____ is the deposition officer's charges
 to the Defendant, MR. MARK OBERTI, TBA No. 00789951,
 for preparing the original deposition transcript and
 8 any copies of exhibits;
 9 that the deposition was delivered in accordance
 with Rule 203.3, and that a copy of this certificate
 10 was served on all parties shown herein on and filed
 with the Clerk.
 11
 12 Certified to by me this _____ day of
 _____, 2012.
 13
 14
 15 PAT ENGLISH-ARREDONDO, CSR, RMR, CRR, CLR
 Texas CSR Certificate No.: 3828
 Expiration Date: 12/31/13
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 17 Sunbelt Reporting & Litigation Services
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Sunbelt Reporting & Litigation Services

Corporate Office
6575 West Loop South, Suite 580
Houston/Bellaire, Texas 77401

www.sunbeltreporting.com
1.800.666.0763 (Fax) 713.661.3838

May 3, 2012

Mark J. Oberti
Oberti Sullivan, LLP
723 Main, Suite 340
Houston, TX 77002

Austin
1016 La Posada Drive
Suite 294
Austin, Texas 78752
512.465.9100

Bryan/College Station
1716 Briarcrest Drive
Suite 300
Bryan, Texas 77802
979.774.4000

Corpus Christi
711 N. Carancahua
Suite 700-N
Corpus Christi, Texas
78401
361.882.0763

Dallas/Fort Worth
15150 Preston
Suite 300
Dallas, Texas 75248
214.747.0763

East Texas
100 E. Ferguson
Suite 917
Tyler, Texas 75702
903.593.3213

Houston
6575 W. Loop South
Suite 580
Bellaire, Texas 77401
800.666.0763

San Antonio
8000 IH-10 West
Suite 1500
San Antonio, Texas
78230
210.342.0763

Re: Deposition of IRMA AZUARA
04/11/2012
IRMA AZUARA V. FIRST SOURCE ELECTRICAL, LLC

As indicated below: Please be advised of current status of the Original Deposition.

- ✓ The attached Original Deposition, after being signed and notarized by the witness on the errata/correction page, is being forwarded to you in accordance with the Texas/Federal Rules of Civil Procedure.
- The attached Original Deposition, which was returned unsigned and/or not notarized, is being forwarded to you in accordance with the Texas/Federal Rules of Civil Procedure.
- ✓ The attached copies of Certificate(s) and/or executed and notarized Errata/Correction Sheet(s) are sent to you for your files. If you have any questions, please call.
- Please be advised that the Original Deposition was not returned within the time specified for unknown reasons.
- The attached Original Exhibit(s) are being returned without the Original Deposition, which was due on _____, for unknown reasons.
- ✓ A copy of the Certificate is being sent to the Court Clerk for filing of taxable cost.
- Original Deposition and Original Exhibits are being released on _____, due to trial on _____.

Sincerely,

Ileana Chavez

Ileana Chavez
Sunbelt Reporting and Litigation Services
No. 99672

ENCLOSED PLEASE FIND:

- ✓ Original Deposition
- ✓ Original Exhibit(s)
- ✓ Errata/Correction Page(s)
- ✓ Reporter's Certificate

cc: Brian J. Levy

One Call Does It All!

ORAL DEPOSITION OF IRMA AZUARA

1 CAUSE NO. 211-70575 / Court: 061
 2 IRMA AZUARA, : IN THE DISTRICT COURT OF
 Plaintiff :
 3 :
 VS. : HARRIS COUNTY, T E X A S
 4 :
 FIRST SOURCE ELECTRICAL, :
 5 LLC, :
 Defendant : 61ST JUDICIAL DISTRICT
 6

7 REPORTER'S CERTIFICATION TO THE
 ORAL DEPOSITION OF IRMA AZUARA
 APRIL 11, 2012
 8

9 I, Pat English-Arredondo, CSR, RMR, CRR, CLR,
 10 a Certified Shorthand Reporter in and for the State of
 11 Texas, hereby certify to the following:

12 that the witness, IRMA AZUARA, was duly sworn by
 13 the officer and that the transcript of the oral
 14 deposition is a true record of the testimony given by
 15 the witness;

16 that the deposition transcript was submitted on
 17 April 24, 2012, to the witness, or to the attorney
 18 for the witness, for examination, signature and return
 19 to Sunbelt Reporting & Litigation Services by
 20 May 14, 2012.

21 That the amount of time used by each party at the
 22 deposition is as follows:

23 Mr. Mark Oberti - 3 Hours, 11 Minutes

24 That pursuant to information given to the
 25 deposition officer at the time said testimony was

Sunbelt Reporting & Litigation Services

Houston Austin Bryan/College Station Corpus Christi Dallas/Fort Worth East Texas San Antonio

ORAL DEPOSITION OF IRMA AZUARA

1 taken, the following includes counsel for all parties
2 of record:

3 Mr. Brian Levy, Attorney for Plaintiff;

4 Fax # 713.621.6670

5 Mr. Mark Oberti, Attorney for Defendant;

6 Fax # 713.401.3547

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to Rule
13 203 of TRCP will be certified to after they have
14 occurred.

15 Certified to by me on this 25th day of April, 2012.

16

17

18

Pat English-Arredondo

19

PAT ENGLISH-ARREDONDO, CSR, RMR, CRR, CLR

20

Texas CSR Certificate No.: 3828

Expiration Date: 12/31/13

21

Sunbelt Reporting & Litigation Services

22

CRCB No: 300

23

6575 W. Loop South, Suite 580

24

Bellaire/Houston, Texas 77401

25

Phone: 713.667.0763

Fax: 713.661.3838

26

27

Job No.: 99672

Sunbelt Reporting & Litigation Services

Houston Austin Bryan/College Station Corpus Christi Dallas/Fort Worth East Texas San Antonio

ORAL DEPOSITION OF IRMA AZUARA

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the
 3 deposition officer on 4/27/12;

4 If returned, the attached corrections and signature
 5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
 7 to MR. MARK OBERTI, Custodial Attorney;

8 that \$1074.30 is the deposition officer's charges
 9 to the Defendant, MR. MARK OBERTI, TBA No. 00789951,
 10 for preparing the original deposition transcript and
 11 any copies of exhibits;

12 that the deposition was delivered in accordance
 13 with Rule 203.3, and that a copy of this certificate
 14 was served on all parties shown herein on and filed
 15 with the Clerk.

16 Certified to by me this 3rd day of
 17 May, 2012.

18 Pat English-Arredondo
 19 PAT ENGLISH-ARREDONDO, CSR, RMR, CRR, CLR
 20 Texas CSR Certificate No.: 3828
 21 Expiration Date: 12/31/13

22 Sunbelt Reporting & Litigation Services
 23 CRCB No: 300
 24 6575 W. Loop South, Suite 580
 25 Bellaire/Houston, Texas 77401
 Phone: 713.667.0763
 Fax: 713.661.3838

Job No.: 99672

Sunbelt Reporting & Litigation Services

Houston Austin Bryan/College Station Corpus Christi Dallas/Fort Worth East Texas San Antonio

ORAL DEPOSITION OF IRMA AZUARA

IRMA AZUARA VS. FIRST SOURCE ELECTRICAL, LLC

ORAL DEPOSITION OF
IRMA AZUARA
APRIL 11, 2012

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
8	20	77471	Wrong zip code
20	22	Jeff Spradling	misspelled
20	22	Mark Yokum	✓
21	17	Jeff SPRADLING	✓
21	19	Mark Yokum	✓
95	21	Jania Smiers	✓
99	1	Mark Yokum	✓

RECEIVED APR 27 2012

ORAL DEPOSITION OF IRMA AZUARA

Page 163

CHANGES AND SIGNATURE
IRMA AZUARA
Page 2

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PAGE	LINE	CHANGE	REASON

I, IRMA AZUARA, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

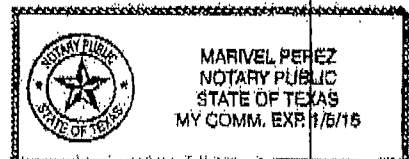
Irma Azuara
IRMA AZUARA

THE STATE OF Texas :
COUNTY OF Fort Bend :

BEFORE ME, Marivel Perez Marivel Perez, on this day appeared IRMA AZUARA, known to me or proved to me on the oath of or through TXDL exp: 08/17/12 [description of identity card or other document] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for purposes and consideration therein expressed.

Given under my hand on this 25th day of April, 2012.

Notary Public in and for the
State of Texas
My commission expires: 01/05/2015



Job No.: 99672

281) 239-6111

RECEIVED APR 27 2012

EXHIBIT B

IRMA AZUARA,

Plaintiff,

V.

FIRST SOURCE ELECTRICAL, LLC,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

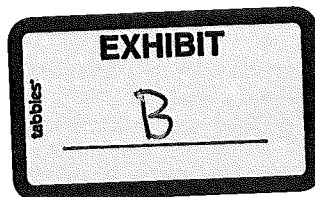
61ST JUDICIAL DISTRICT

AFFIDAVIT OF PHIL DELOACHE

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

On this day, personally appeared before me, the undersigned authority, Phil deLoache, who upon his oath, deposes and states:

1. My name is Phil deLoache. I am over the age of 21, competent to make this affidavit, and have personal knowledge that everything stated herein is true and correct.
2. Prior to February 2008, I worked for Key Electrical Supply along with Mark Jenson and Irma Azuara. In February 2008, myself, Jenson, Azuara and nine other individuals left Key Electrical Supply and formed a new company First Source Electrical. First Source Electrical is a small company, employing approximately forty people. It supplies and distributes commercial, multi-family, residential, and low-voltage electrical supplies to electrical contractors.
3. Jenson, Azuara and I invested in First Source Electrical and were part of the management team: Jenson invested \$325,000; I invested \$200,000; and Azuara invested \$100,000. The bulk of the operations funds were derived from a private equity firm, White Oak Partners, Inc., located in Westerville, Ohio. White Oak Partners invested approximately seven million dollars in First Source Electrical. Michael Menzer is the founder and Chief Executive Officer of White Oak Partners.
4. At inception, in February 2008, Jenson, Azuara, and I each signed an Employment Agreement with First Source Electrical. Jenson became the President, Azuara was the Controller, and I served as Vice President of Sales for First Source Electrical.



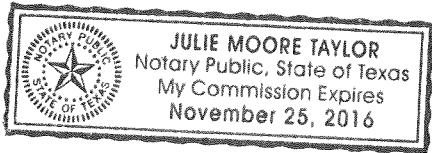
5. From the beginning, the Company has struggled and operated in the negative. In late-2008 and/or early-2009, the value of copper declined sharply. At the time the decline in the market price of copper occurred, First Source Electrical held in inventory a substantial amount of copper wire purchased prior to the decline in the market.
6. At some point in 2009, the Chief Financial Officer at White Oak Partners, Michelle Souder, discovered that the general ledger and financial statements of First Source Electrical exceeded the balance reflected in the detailed perpetual inventory by hundreds of thousands of dollars.
7. Ms. Souder directed Jenson and Azuara to record a proper write-down of the inventory carrying value in the general ledger and financial statements. To the best of my knowledge, I thought this had been taken care of by Azuara.
8. Despite the substantial seed money put in by White Oak Partners, First Source Electrical was not performing. Thus, in late-2009, White Oak Partners sought external funding for First Source Electrical and was able to secure a two million dollar loan from First Capital out of Oklahoma. Michael Menzer, the primary investor at White Oak Partners, guaranteed the loan
9. In exchange for Mr. Menzer assuming the risk on the new loan, White Oak Partners wanted some level of management control of First Source Electrical. Hence, in January 2010, Jenson, Azuara and I each signed a Modification of Employment Agreement that tied job performance to the Loan Agreement with First Capital.
10. In spring 2010, the new CFO (Jim Cramer) and new Controller (David Kleshinski) for White Oak Partners came to Houston to familiarize themselves with the personnel and books of First Source Electrical. During the visit, it was determined that, for the past year, the carrying value of the inventory remained overstated and had increased to approximately \$275,000.
11. A short time later, in June 2010, Jenson was fired. Thereafter, I became the President of First Source Electrical. With Jenson's departure, two other key outside/inside salepeople (Mark Yokum and Eddie Goates) voluntarily left First Source Electrical and returned to Key Electrical Supply. Azuara began reporting to me.
12. Although everyone was upset with Azuara and her role (*i.e.*, complicity with Jenson) in what had happened, First Source Electrical could not afford to fire Azuara. She was the only person with any historical knowledge of the Company's finances on multiple levels (*e.g.*, payroll, loan, etc.) and the Company had already lost several key employees. So, instead of firing Azuara, she was admonished as to the serious error in judgment given the already tenuous position of the Company and placed on a very short leash.

13. First Source Electrical notified First Capital of a write-down adjustment. The write-down adjustment, coupled with other breaches of the loan agreement, caused First Capital to charge First Source Electrical with a waiver fee, increase its interest margin, and make frequent visits requiring higher audit fees per fiscal quarter. In essence, after the write-down adjustment was reported to First Capital, the lender closely scrutinized everything that First Source Electrical did.
14. Additionally, we worked very closely with the account manager, David Kleshinski, at White Oak Partners. We had weekly teleconferences to review cash forecasts with Mr. Kleshinski.
15. Over the course of the summer 2010, I became privy to the mistakes that Azuara continued to make in her role as the Controller. Her inability to provide accurate numbers was a constant source of concern and reflected badly upon the Company.
16. In August 2010, I contacted White Oak Partners about my concerns with Azuara's continued underperformance. White Oak Partners hired a recruiting firm, Egret Consulting Group, to begin a confidential search for candidates to replace Azuara. This proved to be more difficult than anticipated, in part, due to the specialized accounting software program (Activant/Eclipse) utilized by First Source Electrical.
17. In January 2011, I met with a different recruiting company, Mergis Group, which specialized in financial placement.
18. On March 29, 2011, I along with Bart Perez, met with Azuara to let her know her job was being terminated effective immediately. I gave Azuara a letter that outlined the bases for the termination.
19. First Source Electrical hired Kristi Blaschke to serve as its Controller.
20. I have personal knowledge of the fact that the documents attached to Defendant's Motion for Summary Judgment as Exhibits D, E, F, G, J, K, and L are from records kept by First Source Electrical in the regular course of business, and it was the regular course of business of First Source Electrical for an employee or representative of First Source Electrical, with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are true and correct copies of the originals.

Further, Affiant sayeth not.

Phil deLoache
Phil deLoache

SUBSCRIBED AND SWORN TO before me on this the 12th day of December, 2012, certify which witness my hand and seal of office.



Julie Moore Taylor
Notary Public in and for
The State of TEXAS
Printed name: Julie Moore Taylor
My commission expires: 11/25/2014

EXHIBIT C

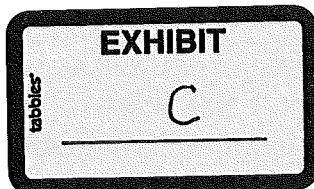
IRMA AZUARA,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
V.	§	HARRIS COUNTY, T E X A S
	§	
FIRST SOURCE ELECTRICAL, LLC,	§	
	§	
Defendant.	§	61ST JUDICIAL DISTRICT

AFFIDAVIT OF MICHELE SOUDER

STATE OF T E X A S §
 §
COUNTY OF TRAVIS §

On this day, personally appeared before me, the undersigned authority, Michele Souder, who upon her oath, deposes and states:

1. My name is Michele Souder. I am over the age of 21, competent to make this affidavit, and have personal knowledge that everything stated herein is true and correct.
2. During the period from the entire year of 2008 through the spring 2010, I served as the Chief Financial Officer of White Oak Partners, Inc., a small private equity firm, located in Westerville, Ohio. In the spring of 2010, Jim Cramer transitioned into the position of CFO, and I became a Senior Partner in the Real Estate Section. My primary duties in that position were to manage the due diligence and acquisition activities for the firm and to provide oversight to White Oak investments.
3. As CFO, I oversaw the investments of the partnership, including the approximately seven-million dollar investment made in 2008 to a start-up company, First Source Electrical, located in Houston, Texas. First Source Electrical is an electrical supplier and distributor to electrical contractors.
4. At its inception in February 2008, Mark Jenson served as President and Irma Azuara as Controller of First Source Electrical.
5. In late-2008 and/or early-2009, the value of copper declined sharply. At the time the decline in the market price of copper occurred, First Source Electrical held in inventory a substantial amount of copper wire purchased prior to the decline in the market.



6. Without my knowledge or authorization, around the time the market for copper declined, Jenson and/or Azuara began making manual adjustments to the automated accounting and management system of First Source Electrical. The manual adjustments determined the unit cost and resulting profit recognition at the time sales transactions were being posted. These manual adjustments, in turn, had the effect of reducing the value of certain copper inventory in the detailed perpetual inventory records by significant amounts and the then-resulting effect of understating cost of goods sold (and over-stating gross profits) on sales transaction. Ultimately, the manual adjustments described resulted in sales of copper, which had cost First Source Electrical considerably more on a per-unit basis than the then-current market sales price, to be reported at historically typical profit margins rather than at losses.
7. The proper procedure for recording a write-down would have been to adjust the carrying value of the inventory to the lower of cost of market, or record a "valuation reserve." In making the write-down, the value (unit cost) of all items of copper inventory within the detailed perpetual inventory would have to be adjusted. Next, the adjusted total inventory would have to be re-compiled. Lastly, the general ledger and financials would have to be adjusted with the write-down, causing the detailed records and general ledger to remain in balance.
8. In March 2009, the Controller of White Oak Partners reported to me that the inventory balance of First Source Electrical (as of February 28, 2009) in the general ledger and financial statements exceeded the balance reflected in the detailed perpetual inventory by \$198,936.
9. On several occasions, I directed Jenson and Azuara to record a proper write-down of the inventory carrying value in the general ledger and financial statements as to copper and aluminum to reflect their true value in accordance with GAAP. In response, both Jenson and Azuara assured me on a number of occasions that the adjustment to the financials (to write down the inventory) had been made.
10. Despite my express directives to Jenson and Azuara to make the proper write-down – and their repeated representations to me that they had done so – I subsequently learned in May 2010, that the write-down had not been recorded. Thus, the carrying value of the inventory remained overstated and had increased to approximately \$275,000.
11. On June 3, 2010, Jenson flew to Ohio and met with management of White Oak Partners, Inc., including myself. During the meeting, Jenson was fired.
12. I left the employment of White Oak Partners, Inc. in October 2012.
13. I have personal knowledge of the fact that the documents attached to Defendant's Motion for Summary Judgment as Exhibit M are from records kept by White Oak Partners, Inc. in the regular course of business, and it was the regular course of business of White Oak Partners, Inc. for an employee or representative of White

Oak Partners, Inc., with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are true and correct copies of the originals.

Further, Affiant sayeth not.

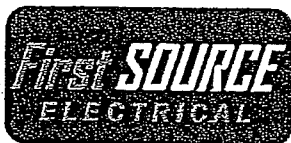
Michele Souder
Michele Souder

SUBSCRIBED AND SWORN TO before me on this the 17 day of December, 2012, certify which witness my hand and seal of office.



Efrain Moysa Jr
Notary Public in and for
The State of TEXAS
Printed name: Efrain Moysa Jr
My commission expires: 8-11-2015

EXHIBIT D



EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made as of February 7, 2008 by and between Irma Azuara, an individual ("Executive"), and First Source Electrical, LLC, a Delaware limited liability company (the "Company").

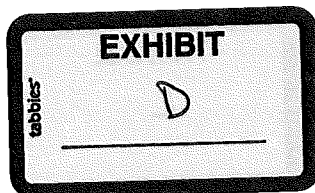
RECITALS

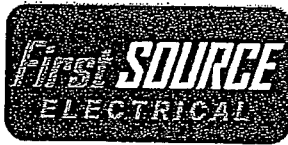
WHEREAS, the Company has agreed to employ Executive, and Executive has agreed to become employed by the Company, in the position of Senior Vice President and Controller.

WHEREAS, the Company has determined that it is in the best interests of the Company to enter into this Agreement to insure the Company of the continued service of Executive and to set forth the rights and duties of the parties hereto, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and Executive, intending to be legally bound, hereby agree as follows:

1. Term of Employment. Executive's employment under this Agreement shall commence on the date hereof and shall continue for a period of five (5) years (unless earlier terminated pursuant to Section 4 of this Agreement) (the "Term of Employment"). This Agreement may be renewed or extended on terms and conditions mutually agreeable to the Company and Executive. Executive represents and warrants that neither Executive's entry into this Agreement nor Executive's performance of his duties and obligations hereunder will conflict with or result in a breach of any other agreement, arrangement, or obligation, of any nature whatsoever, in which Executive is a party or by which Executive is bound.
2. Duties of Executive.
 - (a) During the Term of Employment, the Company shall employ Executive, and Executive shall work for the Company, as Senior Vice President and Controller. In such capacity, Executive shall have all of the duties and responsibilities as may be delegated from time to time by the Board of Managers of the Company (the "Board") or by an individual(s) designated by the Board.
 - (b) During the Term of Employment, Executive shall (i) devote all of his business time to, and use his best efforts in, carrying out Executive's duties hereunder, (ii) not engage in any activity which would be inconsistent with such duties or with the objectives and business of the Company, and (iii) diligently perform his obligations and discharge his duties hereunder.
3. Compensation and Benefits. During the Term of Employment, the following compensation and benefits shall be payable and provided to Executive:
 - (a) The Company shall pay Executive a base salary at the annual rate of One Hundred Thirty Eight Thousand Two Hundred Ninety Eight Dollars (\$138,298.00), which shall be payable in accordance with the standard payroll practices of the Company (the "Base Salary").





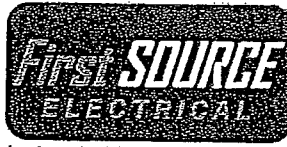
- (b) Executive will be entitled to receive an annual bonus ("*Bonus*"), if earned, on terms and conditions deemed appropriate by the Board in its discretion, which terms and conditions may be amended by the Board at any time and from time to time. Any such Bonus shall be paid to Executive within sixty (60) days after the end of the Company's fiscal year in which such Bonus was earned.
- (c) Executive shall be entitled to participate in employee fringe benefit plans, including, without limitation, 401(k) plan eligibility, family health, dental, life, disability insurance, and other benefit plans to the extent provided by the Company to similarly situated employees, at no cost to Executive, except for Executive's income taxes associated with such benefits. Executive shall be entitled to paid vacation in accordance with the standard policies and practices of the Company.
- (d) Executive shall be entitled to reimbursement by the Company of all reasonable, documentable out-of-pocket expenses incurred by Executive in performing services under this Agreement, within thirty (30) days after the submission of such accounts and records as may be required under the Company's policies; provided, however, that any single expense or related expenses greater than \$2000 must first be approved by the Board.
- (e) Executive shall receive a monthly automobile allowance in the amount of Six Hundred Fifty Dollars (\$650.00), payable on the Effective Time and payable on the Company's first regular payday each month thereafter during the Term of Employment.
- (f) All compensation referred to in this Section 3 is stated in terms of gross amount, it being understood that the Company is or may be required to withhold from such gross amount deductions in respect of federal, state or local income taxes, F.I.C.A., Medicare taxes and any other amounts that may be required to be withheld under the laws of any applicable jurisdiction.

4. Termination.

- (a) Events of Termination. The employment of Executive hereunder and the Term of Employment shall terminate as provided in Section 1 hereof or, if earlier, upon the earliest to occur of any of the following events:
 - (i) the death of Executive;
 - (ii) the termination of Executive's employment by the Company due to Executive's Disability (as defined below) pursuant to Section 4(b) hereof;
 - (iii) the voluntary termination of Executive's employment by Executive upon sixty (60) days prior written notice to the Company;
 - (iv) the termination of Executive's employment by the Company for Cause (as defined below) pursuant to Section 4(c) hereof; or
 - (v) the termination of Executive's employment by the Company for reasons other than Cause upon thirty (30) days prior written notice to Executive.



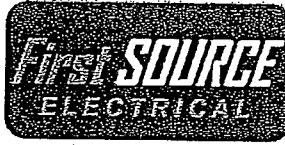
- (b) Disability. In the event of Executive's Disability, the Company shall be entitled to terminate Executive's employment hereunder by delivery to Executive of a written notice of termination for Disability, effective upon the date which is stated in such notice. The term "Disability" shall mean the inability of Executive to substantially perform the essential functions of his position hereunder by reason of a medically determinable physical or mental impairment for a period of 60 consecutive days or 120 days out of any period of 180 consecutive calendar days.
- (c) Cause.
- (i) Executive's employment hereunder may be terminated by the Company for Cause upon delivery to Executive of a written notice of termination for Cause that shall indicate the specific termination provision set forth in paragraph (ii) of this Section 4(c) relied upon. The effective date of such a termination for Cause shall be the date indicated in such notice; provided, however, that Executive's employment shall not terminate if he cures the circumstances otherwise resulting in Cause to the extent permitted, and within the applicable time periods provided in paragraphs (ii)(2) and (ii)(5) of this Section 4(c).
- (ii) For purposes of this Agreement, "Cause" shall mean (1) in connection with his employment by the Company, an act by Executive of fraud, dishonesty, misappropriation, gross negligence, or willful misconduct; (2) Executive's breach or non-observance of any agreement or covenant of this Agreement, but only if such breach or non-observance shall continue for a period of thirty (30) days after delivery to Executive of notice of such breach and if such breach is susceptible to cure; (3) conviction of, or plea of guilty to, any felony or first degree misdemeanor; (4) drug abuse; (5) Executive's failure to observe or perform his duties under this Agreement if such failure is not cured within thirty (30) days after notice from the Company thereof and if such failure is susceptible to cure; or (6) an intentional disregard by Executive of a material lawful directive given to Executive by the Board or by a designee of the Board.
5. Compensation Payable to Executive Upon Termination. The rights of Executive to compensation upon termination of employment are as follows:
- (a) If the Term of Employment expires by its own terms, the Company shall pay to Executive, within sixty (60) days after the date of such termination, (i) any of the Base Salary accrued but not yet paid on the date Executive's employment terminates, (ii) Bonus to the extent earned and unpaid on the date of such termination, and (iii) and reimbursement of business expenses incurred by Executive but not yet paid.
- (b) In the case of the death of Executive, the Company shall pay to Executive's beneficiary or beneficiaries designated in writing to the Company, or to Executive's estate in the absence or lapse of such designation, (i) any of the Base Salary accrued but not yet paid through the last day of the month in which the death occurred, (ii) the pro rata portion of the Bonus, if earned, accruing through the last day of the month in which the death occurred (computed and payable within sixty (60) days after the end of the Company's fiscal year), and (iii) reimbursement of business expenses incurred by Executive but not yet paid.



- (c) In the case of Executive's Disability, the Company shall pay to Executive (i) any of the Base Salary accrued but not yet paid through the last day of the month in which such Disability is determined, (ii) the pro rata portion of the Bonus, if earned, accruing through the last day of the month in which such Disability is determined (computed and payable within sixty (60) days after the end of the Company's fiscal year), and (iii) reimbursement of business expenses incurred by Executive but not yet paid.
- (d) If Executive's employment is terminated by the Company for Cause or by the voluntary resignation of Executive, the Company shall pay Executive any Base Salary accrued but not yet paid on the date Executive's employment with the Company terminates. Notwithstanding the foregoing, in the event that Executive's employment is terminated by the Company for Cause, any amount due and owing to Executive pursuant to this Section 5(d) may be offset to the extent of any losses resulting, directly or indirectly, to the Company from Executive's conduct resulting in the for Cause termination.
- (e) If, prior to the end of the Term of Employment, Executive's employment is terminated by the Company without Cause (other than due to death or Disability), Executive shall be entitled to any (i) Base Salary accrued and earned but not yet paid through the date of termination, (ii) the pro rata portion of the Bonus, if earned, accruing through the last day of the month in which the termination occurred (computed and payable within sixty (60) days after the end of the Company's fiscal year, and (iii) reimbursement of business expenses incurred by Executive but not yet paid, and the continuation of Base Salary and benefits (to the extent allowed under the benefit plans of the Company), payable on a monthly basis, for a period of two (2) years from the date of termination. The receipt of any payment set forth in this Section 5(e) shall be contingent upon Executive's execution of an agreement acceptable to the Company that (i) waives any rights Executive may otherwise have against the Company and its affiliates, and (ii) releases the Company and its affiliates from any and all actions, suits, claims, proceedings and demands of Executive related to the Term of Employment and/or the termination of Executive's employment with the Company.

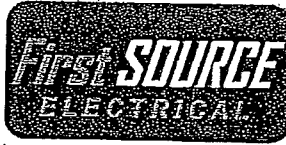
6. Confidentiality, Non-Competition and Invention Assignment.

- (a) Confidential Information.
 - (i) All information provided by the Company to Executive, including, without limitation, (A) research, development or business activities of the Company, including, without limitation, marketing and business plans, strategic plans, forecasts and projections, processes, business methods, and procedures; (B) any product, financial, marketing, manufacturing, organizational, or technical information of the Company including, without limitation, the Company's know-how, contracts, software and hardware products, samples, materials, equipment, drawings, specifications, customer and supplier lists or identities, performance or process data, cost or financial information; (C) any documents marked "confidential" or "proprietary" and other items that, by their nature are generally considered proprietary and confidential (regardless of whether such information is specifically labeled as such); (D) any Trade Secret (as defined in the Uniform Trade Secrets Act as adopted by the State of Delaware as of the date of this Agreement); (E) any of the foregoing under clauses (A) through (D) above that is owned by third parties and that the Company has a duty to hold confidential; and



(F) any notes, analyses, summaries, compilations, studies, or other records (whether written, oral, or otherwise) made by Executive, all of which shall, for purposes of this Agreement, be treated as "*Confidential Information*". Confidential Information includes not only written information, but also information transferred orally, visually, electronically, or by any other means. Confidential Information shall include any of the foregoing information regardless of whether such information is disclosed to Executive prior to, on, or after the date of this Agreement. Executive acknowledges the sensitive and confidential nature of the Confidential Information as disclosed or otherwise used in a manner not expressly permitted by this Agreement.

- (ii) During the Term of Employment and for all periods thereafter, Executive shall not, under any circumstances, use, distribute, reproduce, disseminate or otherwise disclose Confidential Information in any manner contrary to the best interests of, detrimental to, or in competition with the Company and shall only use such Confidential Information in the furtherance of the business of the Company.
- (iii) During the Term of Employment and for all periods thereafter, Executive will safeguard all Confidential Information and that, without the express written consent of the Company, Executive will not use Confidential Information for Executive's own benefit, for the benefit of any third party, or to the detriment of the Company, and shall not disclose Confidential Information to any third party. If Executive becomes required under compulsion of legal process to disclose Confidential Information, Executive shall not, unless required by law, order, regulation or ruling, disclose Confidential Information until the Company has first (A) received prompt written advance notice of such requirement to disclose and (B) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Executive shall provide the Company with written notice within three (3) days of receipt of any subpoena, discovery request or other demand for information that would require, or may reasonably be expected to involve, the disclosure of any Confidential Information. Furthermore, Executive shall provide the Company with any assistance requested, including, without limitation, seeking a protective order or similar relief from any court having jurisdiction, and shall not oppose actions by the Company to assure such confidential treatment. If the Company is unable to obtain such protective order or other appropriate remedy, Executive shall furnish only that portion of the Confidential Information which Executive is legally required to furnish and shall utilize his best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed. Any disclosure of Confidential Information pursuant to this section shall not affect or lessen Executive's obligations to maintain strict confidentiality as expressed herein.
- (iv) Upon the written request of the Company, Executive shall promptly return to the Company all tangible forms of Confidential Information in Executive's possession or control, including any copies made by Executive, destroy any software, machine readable code or other materials developed using Confidential Information, and shall not thereafter use or disclose Confidential Information, except as expressly permitted by this Agreement. In addition, upon the written



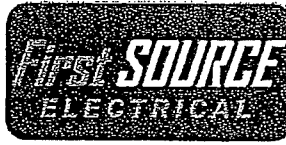
request of the Company, Executive shall promptly deliver all documents, memoranda, notes, analyses, compilations, studies, and other writings whatsoever prepared by or on behalf of Executive based on, in any manner, Confidential Information.

- (v) Confidential Information may not be mechanically copied or otherwise reproduced without the express written consent of the Company. To the extent that the original of any Confidential Information, as provided to Executive, bears any proprietary/confidential notice or legend, said notice or legend will be reproduced on all copies made, unless otherwise expressly authorized in writing by the Company prior to reproduction.
 - (vi) Confidential Information disclosed by the Company to Executive shall remain the exclusive information and property of the Company, and all rights to Confidential Information will be held in trust by Executive for the benefit of the Company. Neither this Agreement nor the disclosure or revelation of Confidential Information shall constitute or be construed as granting to Executive, by implication or otherwise, any right, title or license under any patent, patent application, trademark, copyright or any know-how to which the Company now has or hereafter may obtain, or as imposing on Executive any obligation, except as specified in this Agreement. The Company does not make any representations or warranties regarding the infringement of any patents, trademarks or copyrights held by any third party.
 - (vii) The obligations set forth above shall not prohibit:
 - (A) the use or disclosure of any information previously known to Executive, which knowledge can be proven by the written and dated records of Executive;
 - (B) the use or disclosure of any information that is or becomes publicly known through no wrongful act of Executive;
 - (C) the use or disclosure of any information that Executive or the Company receives from a third party, which information the Company is not required to keep confidential under an agreement with the third party; or
 - (D) the use or disclosure of any information that the Company may expressly authorize in writing prior to the time of such use or disclosure.
- (b) Non-Competition and Non-Solicitation.
- (i) Executive will not, directly or indirectly, for the benefit of Executive or any third party, during the Term of Employment and for a period of two (2) years thereafter (the "*Restriction Period*"), and, with respect to (b)(i)(E) below at any time during the Term of Employment and for all periods thereafter, do any of the following:
 - (A) own, manage, control or participate in the ownership, management or control of, or be employed by or otherwise affiliated or associated as a consultant, independent contractor or otherwise with, any other



corporation, limited liability company, partnership, firm, association, or other business entity, or otherwise engage in (1) any business which is competitive with the business of the Company or (2) any business which is engaged in, directly or indirectly, the electrical distribution business in the Territory (as defined below); provided, however, that the ownership of not more than one percent (1%) of the stock of any publicly traded corporation will not be deemed a violation of this covenant. For purposes of this Agreement, "Territory" shall mean Houston, Texas.

- (B) solicit, hire, or otherwise engage the services of any person who then currently is, or who within the previous twenty-four (24) calendar months was, an employee, consultant, contractor, officer, or agent of the Company or its affiliates, or otherwise induce or attempt to induce a current customer or supplier of the Company or their respective affiliates, to cease doing business or reduce the amount of business being done with the Company or its affiliates;
 - (C) solicit for the purpose of selling, sell to or otherwise provide any products or services competitive with the products and services of the Company to any person, firm or entity which was a customer or prospective customer of the Company at any time within the previous twenty-four (24) calendar months, or advise or assist in any way any person or entity in such activity. As used herein, "*prospective customer*" means any potential customer of the Company which Executive knew or reasonably should have known that the Company was actively soliciting (other than through a general campaign) or actively considered soliciting (other than through a general campaign) at any time within the previous twenty-four (24) calendar months;
 - (D) divert or attempt to divert any business, customer, partner, or supplier of the Company to any competitor, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill and business reputation associated with the Company; or
 - (E) make any statement, whether oral, in print, through electronic communication or otherwise, relating or referring to the Company or its officers, managers, or members, or any of its affiliates, or any products or services offered by the Company or its officers, managers, members or affiliates, that could be reasonably expected to disparage or impair the goodwill, reputation or business of the Company or any of its affiliates, members or any of their respective services, products, officers, members, managers, employees, or facilities.
- (ii) Reasonableness of the Restrictions. Executive has carefully considered the nature and extent of the restrictions upon him and the rights and remedies conferred upon the Company under this Agreement, and hereby acknowledges and agrees that the same are reasonable in both time, territory, and scope, are designed to eliminate unfair competition with the Company, do not stifle the inherent skill and experience of Executive, do not operate as a bar to Executive's sole means of revenue, are fully required to protect the legitimate economic



interests of the Company, and do not confer a benefit upon the Company that is disproportionate to the detriment to Executive.

(c) Right to Inventions, Copyrights and Other Intellectual Property.

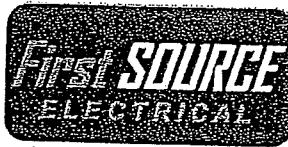
- (i) Inventions Retained and Licensed. Executive has attached hereto as Exhibit A a list describing with specificity all inventions, original works of authorship, developments, improvements, and trade secrets, if any, which were made by Executive prior to the commencement of Executive's employment with the Company (collectively, "*Prior Inventions*"), which belong solely to Executive or belong to Executive jointly with others. If no such list is attached, Executive represents to the Company that there are no such Prior Inventions. If, in the course of Executive's Relationship with the Company, Executive incorporates into a product of the Company, process or machine a Prior Invention owned by Executive or in which Executive has an interest, the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of or in connection with such product, process or machine.
- (ii) Assignment of Inventions. Executive shall promptly make full written disclosure to the Company, shall hold in trust for the sole right and benefit of the Company, and assigns to the Company, or its designee, Executive's right, title and interest throughout the world in and to any and all Inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registerable under copyright or similar laws, which Executive may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time in which Executive is employed by the Company or that, directly or indirectly, result from or are suggested by any work that Executive did or that other employees do on behalf of the Company within the Restriction Period (collectively, "*Inventions*"). Executive further acknowledges that all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets which are made by Executive (solely or jointly with others) within the scope of and during the period of Executive's employment with the Company are "works made for hire" (to the greatest extent permitted by applicable law) and are compensated by Executive's salary, unless regulated otherwise by the mandatory law of the State of Delaware.
- (iii) Maintenance of Records. Executive shall keep and maintain detailed and current written records of all Inventions made by Executive (solely or jointly with others). These records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, and any other format. The records shall be available to and remain the sole property of the Company at all times. Executive agrees not to remove such records from the Company's place of business without the express prior written consent of the Company. Executive agrees to return all such records (including any copies thereof) to the Company at the time of termination of Executive's employment with the Company.



- (iv) Patent and Copyright Rights. Executive agrees to assist the Company, or its designee, in every way to secure the Company's rights in the Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which the Company shall deem necessary in order to apply for, obtain, maintain and transfer such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. If the Company is unable, because of Executive's mental or physical incapacity or unavailability or for any other reason, to secure Executive's signature to apply for or to pursue any application for any United States or foreign patents, copyright, mask works or other registrations covering Inventions or original works of authorship assigned to the Company as above, then Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agent and attorney in fact, to act for and on Executive's behalf and to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent, copyright or other registrations thereon with the same legal force and effect as if originally executed by Executive. Executive hereby waives and irrevocably quitclaims to the Company any and all claims, of any nature whatsoever, which Executive now or hereafter has for infringement of any and all proprietary rights assigned to the Company.
- (v) Presumption of Inventions. Executive agrees that all Inventions, discoveries and improvements disclosed to a third party or described in a patent application or copyright registration application filed by Executive or on Executive's behalf, except those specified on Exhibit A, within the Restriction Period, shall be presumed to have been conceived or made by Executive while engaged by the Company unless proved to have been conceived and made by Executive following termination of Executive's employment with the Company.

7. Rights and Remedies upon Breach.

- (a) Executive expressly agrees and understands that the remedy at law for any breach by Executive of Section 6 will be inadequate and that the damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon adequate proof of Executive's violation of Section 6, the Company will be entitled, among other remedies, to immediate injunctive relief and may obtain a temporary restraining order restraining any threatened or further breach. Nothing in this subsection (a) will be deemed to limit the Company's remedies at law or in equity for any breach by Executive of any of the provisions of this Agreement which may be pursued or availed of by the Company.
- (b) In the event any court of competent jurisdiction determines that the specified time period or geographical area set forth in Section 6 is unenforceable, then a lesser time period or geographical area that is determined by the court to be enforceable shall be enforced.



- (c) In the event Executive violates any legally enforceable provision of Section 6 as to which there is a specific time period during which Executive is prohibited from taking certain actions or engaging in certain activities, then, in such event, the violation will toll the running of the time period from the date of the violation until the violation ceases.
 - (d) The rights of the Company under Section 6 of this Agreement are independent of all other rights in this Agreement and any claim Executive may have shall not constitute a defense to the enforcement of Section 6 hereof.
8. Miscellaneous. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors, permitted assigns, heirs, executors and legal representatives. No amendment, modification, or waiver of any provision of this Agreement, or consent to any departure by Executive therefrom, shall be effective unless the same shall be in writing and signed by both parties. This Agreement may only be assigned by a party with the express written consent of the other party; provided, however, that the Company may assign this Agreement to any successor of the Company (by operation of law or otherwise) without obtaining such consent from Executive. This Agreement supersedes all prior employment or other agreements, negotiations and understandings of any kind between the parties with respect to the subject matter hereof and contains all of the agreements and understandings between the parties hereto with respect to the subject matter hereof. Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. Delivery by facsimile of an executed copy of this Agreement shall be deemed as actual delivery and such facsimile shall be deemed effective and enforceable as if it were an original.
9. Acknowledgment. The Executive acknowledges that neither Company nor any of Company's affiliates, officers, employees, consultants, agents or representatives has provided or is providing the Executive with any tax advice regarding the Executive's rights under this Agreement or any other tax matter, and Company has urged the Executive to consult the Executive's own tax advisor with respect to the rights granted to the Executive hereunder and all other tax matters.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of law principles.
11. Notices. Any notice given to either party shall be in writing and shall be deemed to have been given when delivered personally or one (1) day after having been sent by overnight courier service or three (3) days after having been sent by certified or registered mail, postage prepaid, return receipt requested, duly addressed to the party concerned at the address indicated below or to such changed address as such party may subsequently give such notice of:

If to the Company:

First Source Electrical, LLC

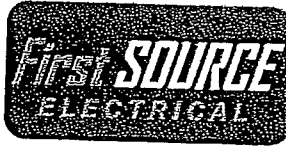
[]

Telephone:

Attention:

With a copy to:

Benesch Friedlander Coplan & Aronoff LLP
200 Public Square



Suite 2300
Cleveland, Ohio 44114
Telephone: (216) 363-4500
Attention: Gregg A. Eisenberg, Esq.

If to Executive:

Irma Azuara
5707 Meadowlark Lane
Richmond, Texas 77469

With a copy to:

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Employment Agreement on the date first above written.

FIRST SOURCE ELECTRICAL, LLC

By: *Mark Jensen*
Name: MARK JENSEN
Its: PRESIDENT & CEO

EXECUTIVE

Irma Azuara
Irma Azuara

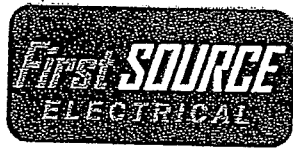


EXHIBIT A

Prior Inventions

EXHIBIT E

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY
AGREEMENT**

of

FIRST SOURCE ELECTRICAL, LLC

a Delaware Limited
Liability Company

October 1, 2008

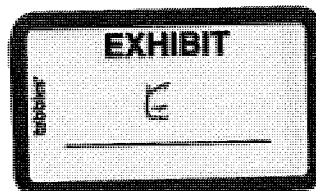


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**LIMITED LIABILITY COMPANY AGREEMENT
OF FIRST SOURCE ELECTRICAL, LLC**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT ("Agreement") is made and entered into as of the _____ day of October, 2008, by and among First Source Electrical, LLC (the "Company") and the Persons listed on Exhibit A attached hereto and made a part hereof (the "Members"). This Agreement amends, restates and supersedes the Limited Liability Company Agreement of the Company dated as of January 29, 2008.

SECTION 1

THE COMPANY

1.1 **Formation.** The Company is a limited liability company formed pursuant to the provisions of the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, *et seq.*, as amended in effect from time to time, the "LLC Law"). The Certificate of Formation of the Company (the "Certificate of Formation") was filed with the Secretary of State of Delaware on January 29, 2008 (the "Commencement Date"). The rights and liabilities of the Members will be as provided in the LLC Law except as otherwise expressly provided in this Agreement. The Members agree that all actions taken by the authorized representatives in connection with the organization of the Company are hereby ratified as acts of the Company.

1.2 **Company Name.** The name of the Company is First Source Electrical, LLC. The business of the Company will be conducted under such name or under such other name as the Board may deem appropriate.

1.3 **Purposes.** The purposes of the Company shall be:

(a) to either, directly or indirectly, own, operate, manage, sell, dispose of and engage in the business of manufacturing and distributing electrical products; and

(b) to engage in any other operations, businesses or activities permitted under the LLC Law and any other applicable law or regulation.

The Company is empowered to do any and all acts and things reasonably necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Company.

1.4 **Principal Place of Business.** The principal place of business of the Company will be 7930 Blankenship, Houston, Texas 77055, or such other place as the Board may determine from time to time. The Company will maintain, at its principal office, all records pertaining to the Company as required by the LLC Law.

1.5 **Term.** The term ("Term") of the Company commenced on the Commencement Date and will continue in perpetuity unless earlier dissolved in accordance with the provisions of this Agreement or as otherwise provided by law.

1.6 Filings; Registered Office; Registered Agent for Service of Process.

(a) The Certificate of Formation of the Company has been filed in the office of the Secretary of State of Delaware in accordance with the provisions of the LLC Law. The Board and, if applicable, the Members will take any and all other actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of Delaware.

(b) The Board and, if applicable, the Members will take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company or similar type of entity under the laws of any States or jurisdictions other than Delaware in which the Company engages in business.

(c) The Company's registered agent for service of process on the Company in Delaware shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19808. The Company's registered office in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19808. The Board may change, at any time and from time to time, such registered statutory agent or registered office.

(d) Upon the dissolution of the Company, the Board and, if applicable, the Members will promptly execute and cause to be filed a certificate of cancellation in accordance with the LLC Law and the law of any other States or jurisdictions in which the Company has qualified to conduct business.

1.7 Defined Terms. Unless the context otherwise requires or unless otherwise provided in this Agreement, capitalized terms used in this Agreement shall have the meanings ascribed to them as set forth in Appendix B to this Agreement.

SECTION 2

MEMBERS, UNITS AND SHARING PERCENTAGES

2.1 Names, Addresses, Units and Percentage Interests of Members. The names, addresses, number and class of Units, and Percentage Interests of the Members are set forth on Exhibit A hereto. Initially the Company shall have two classes of Units, the Class A Units and Class B Units. The Class B Units shall have no right to vote on any matter, unless specifically required by applicable law. The Board shall promptly amend Exhibit A from time to time to reflect the admission or withdrawal of Members to the extent permitted hereunder; a change in a Member's address; the sale, grant, issuance or redemption of Units, the contribution of additional Capital Contributions or other event that results in a change in the information on Exhibit A; and any such amendment, which shall not require any consent, approval or vote of the Members, shall be effective as of the date of the event necessitating such amendment. Any reference in this Agreement to Exhibit A shall be deemed to be a reference to Exhibit A as amended and in effect from time to time.

2.2 Certificates for Membership Units. A Member's Units may, but need not, be represented by a Certificate of Membership. The exact contents of a Certificate of Membership, if any, will be determined by the Board.

2.3 **Additional Members.** The Company may issue additional Units to any Person (including any Additional Member) on terms and conditions as determined by the Board. The Board may admit to the Company, and issue Units to, Additional Members who shall have an Interest on such terms as the Board may determine. The Board may create additional classes of Units (each such class, a "New Class") having such relative rights, powers and duties as may from time to time be established by the Board. No Member shall have preemptive rights to purchase Units. Notwithstanding the foregoing, the Board will issue up to an additional seventy (70) Class B Units to employees of the Company in such amounts and at such times as determined by the Board.

SECTION 3

CAPITAL CONTRIBUTIONS

3.1 **Capital Contributions.** The Capital Contributions made by the Members are set forth on Exhibit A to this Agreement.

3.2 **Additional Capital Contributions.**

(a) If at any time or from time to time during the period commencing on the date hereof and ending one year from the date hereof, the Board determines that the Company requires additional Capital Contributions, then the Board shall give notice to each Class A Member of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contributions are required, (iii) each Class A Member's proportionate share of the total additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Class A Member's additional Capital Contribution is due and payable, which date shall be at least thirty (30) days after notice has been given (the "Due Date"). A Class A Member's proportionate share (the "Proportionate Share") of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Class A Member's percentage interest of the outstanding Class A Units and the total additional Capital Contribution required. A Class A Member's Proportionate Share shall be payable in cash certified check, wire transfer or as otherwise agreed by the Board.

(b) Except as provided in Section 3.2(a), no Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company or any other Member except to the extent provided in Section 3.2(c).

(c) In the event that there is a Class A Member who fails to contribute his or her Proportionate Share ("Defaulting Member"), then (i) the other Class A Members shall have the right to contribute all or part of the Defaulting Member's Proportionate Share among themselves in proportion to their percentage interest of the outstanding Class A Units (not counting the percentage interest of the Defaulting Member) or as they may otherwise agree, and (ii) all additional contributions made by the Class A Members pursuant to this Section 3.2 shall be deemed contributed to the Company in exchange for additional Class A Units in the Company at their then fair value as determined by the Board in good faith.

3.3 Other Matters.

(a) No Member may demand a return of its Capital Contribution from the Company.

(b) No Member will receive any interest, salary or draw with respect to its Capital Contribution or its Capital Account or otherwise solely in its capacity as a Member.

(c) No Member, in its capacity as a Member, will be liable for the debts, liabilities, contracts or any other obligations of the Company.

SECTION 4

CAPITAL ACCOUNTS AND ALLOCATIONS

4.1 Capital Accounts. A Capital Account shall be maintained for each Member in the manner set forth in Appendix A to this Agreement.

4.2 Profits, Losses and Tax Items. The Profits and Losses (as defined in Appendix A to this Agreement) and any tax items of the Company shall be allocated among the Members as set forth in Appendix A to this Agreement.

SECTION 5

DISTRIBUTIONS TO MEMBERS

5.1 Distributions.

(a) Except as otherwise provided in Section 5.2, with respect to Mandatory Tax Distributions, or Section 10, with respect to distributions upon a liquidation of the Company, the Board shall have sole discretion to make distributions of Net Cash from Operations, which, to the extent made, shall be distributed to the Class A Members as follows:

(i) First, to the Class A Members (in proportion to their Unpaid Preferred Returns) until the Unpaid Preferred Return of such Class A Members has been reduced to zero;

(ii) Second, to the Class A Members (in proportion to their Unreturned Capital Contributions) until the Unreturned Capital Contributions of such Class A Members has been reduced to zero;

(iii) Thereafter, to the Class A Members in proportion to their Class A Percentage.

(b) Except as otherwise provided in Section 5.2, with respect to Mandatory Tax Distributions, or Section 10 with respect to distributions upon a liquidation of the Company, the Board shall have the sole discretion to make distributions of Other Property, which, to the extent made, shall be distributed to the Members as follows:

(i) First, to the Class A Members (in proportion to their Unpaid Preferred Returns) until the Unpaid Preferred Return of such Class A Members has been reduced to zero;

(ii) Second, to the Class A Members (in proportion to their Unreturned Capital Contributions) until the Unreturned Capital Contributions of each of the Class A Members has been reduced to zero; and

(iii) Thereafter, to the Members in proportion to their Percentage Interests.

5.2 Tax Payment Distributions.

(a) Within ninety (90) days, or as soon thereafter as reasonably practicable, after the end of each taxable year of the Company other than the taxable year that includes a Sale Event (or, in the Board's discretion, in such installments on such earlier dates as individual taxpayers are required to make estimated tax payments), the Company shall calculate and distribute to each Class A Member such Class A Member's Tax Distribution Amount (as defined herein); provided, however, that the payment of any Tax Distribution Amount shall be deferred if (i) the Board determines that the Company does not have sufficient cash (including under a line of credit) to fund such Tax Distribution Amounts until such time as there is sufficient cash to fund the payment or (ii) the payment of such Tax Distribution Amounts would cause a default under the terms of any funded indebtedness of the Company.

(b) The Tax Distribution Amount for each Class A Member in each taxable year means an amount equal to (x) the excess of (i) the product of (A) the net taxable income of the Company allocated to (or reasonably estimated to be allocable to) such Class A Member with respect to such taxable year attributable to the items allocated to such Class A Member under Section 4 and Appendix A to this Agreement (excluding any allocations as a result of a compensation payment to such Class A Member being treated as a guaranteed payment for federal income tax purposes and excluding any Capital Account shifts or allocations to an option holder pursuant to Section 1.5(e) of Appendix A to this Agreement) and (B) the sum of the maximum Federal individual income tax rate and the maximum combined state and local individual income tax rate to which any direct or indirect Class A Member is subject (less the effect of the deduction of state and local income taxes on the federal return, assuming no limitation of such deduction under Section 68 of the Code), taking into account for this purpose the character of items allocated to such Class A Member as ordinary income or capital gain, less (ii) the sum of the aggregate Tax Distribution Amounts distributed to such Class A Member with respect to such taxable year and the aggregate distributions made to such Class A Member pursuant to Section 5.1(a) with respect to such taxable year.

(c) Any determination of the amount of a Tax Distribution made by the Company shall be conclusive and binding on all of the Class A Members absent manifest error. Solely for purposes of this Section 5.2, if a Class A Member is allocated a net loss for federal income tax purposes under Section 4 and Appendix A to this Agreement for any taxable year or period of the Company (calculated under the principles described in clause (i) of the preceding sentence) beginning after the date of this Agreement, such net

loss shall be offset against, and shall reduce the net income allocated (or reasonably estimated to be allocable to) to such Class A Member under Section 4 and Appendix A of this Agreement in subsequent taxable years of the Company (until such net loss is exhausted) for purposes of calculating the Tax Distribution Amount for such Class A Member for such subsequent taxable years.

(d) Tax Distribution Amounts shall be treated as distributions pursuant to Section 5.1(a)(iii), and to the extent such distributions result in a ratio other than in the ratio required by Section 5.1(a)(iii), the first distributions pursuant to Section 5.1(a)(iii) that are not Tax Distribution Amounts shall be made so as to cause the aggregate distributions pursuant to Section 5.1(a)(iii) and this Section 5.2 (to the extent treated as distributions pursuant to Section 5.1(a)(iii) to be as nearly as possible in the ratio required by Section 5.1(a)(iii).

5.3 Treatment of Taxes Withheld. All amounts withheld or paid by the Company pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to a Member, or any such amount that is paid by the Company solely by reason of the holding of an Interest by any Member, shall be treated as an advance from the Company to the Member with respect to whom such tax is required to be withheld or paid. The Company shall have the right to apply any amounts otherwise distributable to a Member, or otherwise payable by the Company to such Member under any other provision of this Agreement, to pay the outstanding balance of such Member's advances described in the immediately preceding sentence. The obligation of a Member to pay the outstanding balance of such Member's advances under this Section 5.3 shall continue after such Member transfers its Interest in the Company and after a withdrawal by such Member. Each Member agrees to furnish the Company with any information, representations or forms as shall reasonably be requested by the Company to assist it in determining the extent of, or in fulfilling, any withholding obligations it may have.

5.4 Restricted Distributions. Notwithstanding anything to the contrary contained herein, the Company shall not make a distribution to any Member on account of its Interest if such distribution would violate the LLC Law or other applicable law.

SECTION 6

MANAGEMENT AND CONTROL

6.1 Management. Subject to the provisions of Section 6.2, the limitations imposed by the LLC Law and as otherwise provided in this Agreement, the Board, in its full and exclusive discretion, will manage and control, have authority to obligate and bind, and make all decisions affecting the business and assets of the Company. The Board shall appoint a Member to act as the tax matters Member, who shall act in the same capacity as the "tax matters partner" of a partnership as referred to in Section 6231(a)(7)(A) of the Code.

6.2 Rights of Members. Except as otherwise expressly provided in this Agreement, no Member shall be entitled to participate in the control and management of the Company or any Subsidiary of the Company, nor shall any Member have the right to sign for or bind the Company except when acting within the scope of powers properly delegated by the Board to a Member, officer, employee or agent of the Company.

6.3 Board of Managers.

(a) The Company shall have not more than five (5) natural persons as members of its Board of Managers (each, a "Manager"). As long as White Oak or its Permitted Transferees, directly or indirectly, owns Units, White Oak or its Permitted Transferees shall be entitled to designate three (3) of the Managers. The remaining two Managers shall be elected by the Members holding a majority of the Class A Units; provided, however, as long as Mark Jenson is employed by the Company as President he shall be entitled to serve as a Manager in one of the two seats elected by the holders of a majority of the Class A Units. Each Manager shall serve until a successor is duly appointed, or until the earlier of the resignation, incapacity, removal or death of such Manager. A Manager may be removed from the Board, and such vacancy filled, by the consent or approval of the Members who initially designated them; provided, however, that as long as Mark Jenson is employed by the Company as President and he is serving as a Manager he may not be removed by the holders of a majority of the Class A Units. In the event that White Oak, or its Permitted Transferees, ceases to own Units as required above then the Managers they were entitled to designate shall be designated by the Members holding a majority of the Class A Units.

(b) Any action under this Agreement requiring the consent of or determination or approval of the Board will require the consent or approval of a majority of the Board (which will include Michael Menzer, or his designee, as long as he or his designee is serving as a Manager).

(c) Members of the Board shall be natural persons of full age and need not be Members. Except in the case of vacancies, each Manager shall be elected to serve until his successor is elected and qualified.

(d) A resignation from the Board shall be deemed to take effect upon its receipt by the Chairman of the Board, unless some other time is specified therein.

(e) Regular meetings of the Board may be called by the Chairman of the Board on five (5) business days notice to each Manager, either personally or by mail, electronic mail or facsimile. Meetings of the Board also shall be called by the Secretary in like manner and on like notice on the written request of any Manager. Special meetings may be held at such times and places as may be designated in the notices of their call, or they may be held at any time or place, without notice, by the presence of all Board members. Written notice of each special meeting, stating the time and place, shall be given to each Board member at least five (5) business days before such meeting, either personally or by mail, electronic mail or facsimile.

(f) To the extent permitted by law, members of the Board or any committee thereof may participate in a meeting of such body through the use of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

(g) At all meetings of the Board, a majority of Managers in office shall be necessary to constitute a quorum for the transaction of the business and the acts of a

majority of the Managers present at a meeting at which a quorum is present shall be the acts of the Board. Managers who have a personal or financial interest in a contract or transaction which is before the Board, or who are common managers or directors of the Company, and another corporation or entity with respect to which a contract or transaction is before the Board, may be counted in determining the presence of a quorum at a meeting of the Managers, or a committee thereof. If a quorum shall not be present at any meeting of Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement of the meeting, until a quorum shall be present.

(h) Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if such action is approved by the written consent of a majority of the then serving Managers, and such approval is evidenced by one or more written consents describing the action taken, signed by a majority of the Managers and delivered to the Company for inclusion in the minutes of the Company or for filing with the Company records. Action taken under this Section 6.3(h) is effective when the consent is signed by the requisite number of Managers, unless the consent specifies a different effective date.

(i) The Board may delegate any of its duties or responsibilities to one or more committees of the Board.

6.4 Officers. The Board may appoint individuals as officers of the Company which may include (a) a chief executive officer; (b) a president and chief operating officer; (c) one or more vice presidents; (d) a secretary and/or one or more assistant secretaries; and (e) a treasurer and/or one or more assistant treasurers. The Board may delegate a portion of its day to day management responsibilities to any such officers, as determined by the Board from time to time, and such officers will have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as so authorized by the Board, provided that in no event will any officer have any rights, duties, powers or authority greater than those so delegated or those of the Board.

6.5 Duties and Liability of the Board.

(a) Each of the Managers shall perform his duties as a Manager in good faith, in a manner it reasonably believes to be in or not opposed to the best interests of the Company, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances.

(b) The Managers and any officer of the Company in the performance of his duties shall be fully protected in relying in good faith on information, opinions, reports, or statements, including financial statements, books of account and other financial data, if prepared or presented other than by himself by: (i) one or more officers or employees of the Company or any Subsidiary; or (ii) legal counsel, public accountants or other Persons that he reasonably believes to have professional or expert competence.

(c) No Covered Person (as defined in Section 6.7(a)) shall be liable to the Company or any present or former Member with respect to claims relating to his conduct for or on behalf of the Company, except to the extent that there is a final judicial

determination that (i) his actions as they related to the Company, were not taken in good faith or (ii) with respect to any criminal action, proceeding or investigation, he had reasonable cause to believe his conduct was unlawful.

6.6 **Non Exclusivity.** Except as set forth in any other written agreement between the parties, the creation of the Company and the assumption by the Members or Managers of their duties under this Agreement will be without prejudice to the rights of the Members or Managers (or the rights of their Affiliates) to pursue or participate in other interests and activities including, without limitation, investments in and devotion of time to other businesses, and to receive and enjoy profits or compensation therefrom.

6.7 **Indemnification.**

(a) The Company will indemnify a Covered Person who was or is a party, or who is threatened to be made a party, to any threatened, pending or completed civil, criminal, administrative or investigative action, suit or proceeding, other than an action by or in the right of the Company, that is in any way related to or arising out of this Agreement, the Company or the management or administration of the Company or in connection with the business or affairs of the Company or activities of such Covered Person on behalf of the Company. The Company will indemnify a Covered Person against expenses, including attorney's fees, judgments, fines and amounts paid in settlement that actually and reasonably were incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company or permitted by this Agreement and, in connection with any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement or conviction or upon a plea of *nolo contendere* or its equivalent does not create of itself a presumption that the person did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in connection with any criminal action or proceeding, a presumption that he had reasonable cause to believe that his conduct was unlawful.

(b) Promptly after receipt by a Covered Person of notice of the commencement of any proceeding against such Covered Person, such Covered Person shall, if a claim for indemnification in respect thereof is to be made against the Company, give written notice to the Board of the commencement of such proceeding, provided that the failure of a Covered Person to give notice as provided herein shall not relieve the Company of its obligations under Sections 6.7(a) and 6.7(e), except to the extent that the Company is prejudiced by such failure to give notice. In case any such proceeding is brought against a Covered Person (other than a proceeding by or in the right of the Company), after the Company has acknowledged in writing its obligation to indemnify and hold harmless the Covered Person, the Company will be entitled to assume the defense of such proceeding; provided, that (a) the Covered Person shall be entitled to participate in such proceeding and to retain its own counsel at its own expense and (b) if the Covered Person shall give notice to the Company that in its good faith judgment certain claims made against it in such proceeding could have a material adverse effect on the Covered Person or its affiliates other than as a result of monetary damages, the Covered Person shall have the right to control (at the Company's expense and with counsel reasonably satisfactory to the Company) the defense of such specific claims with

respect to the Covered Person (but not with respect to the Company or any other Member); and provided further, however, that if a Covered Person elects to control the defense of a specific claim with respect to such Covered Person, such Covered Person shall not consent to the entry of a judgment or enter into a settlement that would require the Company to pay any amounts under Section 6.7(a) without the prior written consent of the Company, such consent not to be unreasonably withheld. After notice from the Company to such Covered Person acknowledging the Company's obligation to indemnify and hold harmless the Covered Person and electing to assume the defense of such proceeding, the Company will not be liable for expenses subsequently incurred by such Covered Person in connection with the defense thereof except as expressly set forth herein. Without the consent of such Covered Person, the Company will not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Covered Person of a release from all liability arising out of the proceeding and claims asserted therein. Any decision that is required to be made by the Company pursuant to Section 6.7(a) or 6.7(e) or this Section 6.7(b) shall be made on behalf of the Company by the Board.

(c) The indemnification authorized by this Section 6.7 is not exclusive of and will be in addition to any other rights that a Covered Person may have or acquire under any law or provision of this Agreement.

(d) The Company may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit or self-insurance, for or on behalf of a Covered Person and such other Persons as the Board shall determine. The insurance or similar protection purchased or maintained for those persons may be for any liability asserted against them and incurred by them in any capacity described in this Section 6.7 or for any liability arising out of their status as described in this Section 6.7, whether or not the Company would have the power to indemnify them against that liability under this Section 6.7.

(e) To the fullest extent permitted by applicable law, the Company shall pay the expenses (including reasonable legal fees and expenses and costs of investigation) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding in any way related to or arising out of this Agreement, the Company or the management or administration of the Company or in connection with the business or affairs of the Company or the activities of such Covered Person on behalf of the Company (other than a claim, demand, action, suit or proceeding brought by the Company against a Member for such Member's breach or violation of this Agreement) as such expenses are incurred by such Covered Person and in advance of the final disposition of such matter, provided that such Covered Person undertakes to repay such expenses if it is determined by agreement between such Covered Person and the Company or, in the absence of such an agreement, by a final judgment of a court of competent jurisdiction that such Covered Person is not entitled to be indemnified pursuant to Section 6.7(a). Any claim for advancement of expenses shall set forth in reasonable detail the basis for the claim.

6.8 Exculpation.

(a) To the fullest extent permitted by applicable law, and except as otherwise expressly provided herein, no Covered Person shall be liable to the Company or any

Member for any loss or liability arising out of any act or omission of such Covered Person in connection with the Company to the extent that such act or omission was taken or omitted in good faith and in a manner the Covered Person reasonably believed to be in or not opposed to the best interests of the Company or permitted by this Agreement and, with respect to any criminal act, the Covered Person had no reasonable cause to believe such Person's conduct was unlawful.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

6.9 Reliance on Acts of Board. No financial institution or any other person, firm or corporation dealing with the Board shall be required to ascertain whether the Board is acting in accordance with this Agreement, but such financial institution or such other person, firm or corporation shall be protected in relying solely upon the deed, transfer or assurance of, and the execution of such instrument or instruments by the Board.

SECTION 7

BOOKS AND RECORDS

7.1 Books and Records. The Company will keep adequate books and records at its principal place of business, setting forth a true and accurate account of all transactions and other matters arising out of and in connection with the conduct of the Company's business, which books and records will be otherwise kept in accordance with the provisions of the LLC Law. The Company will also keep books of accounts and records of the Company prepared on an accrual basis in accordance with United States generally accepted accounting principles and shall distribute annual financial statements promptly after the end of each fiscal year. Any Member or its designated representative will have the right, at any reasonable time, to have access to and to inspect the contents of such books or records subject to such confidentiality provisions as required by the Board. Within ninety (90) days after the end of each taxable year of the Company, or as soon thereafter as is reasonably practicable, the Company shall cause to be prepared and transmitted to each Member such tax information as shall be necessary for the preparation by such Member of his or its federal income tax return, state income tax return and other tax returns, including but not limited to, a K-1 statement showing each Member's share of the profits or losses of the Company for such year for Federal income tax purposes.

7.2 Fiscal Year. The accounting period and fiscal year of the Company will be the calendar year.

SECTION 8

TRANSFERS OF UNITS

8.1 Restriction on Transfers. Except as otherwise permitted by this Agreement, no Member may Transfer all or any portion of its Units.

8.2 Permitted Transfers of Units. Subject to the conditions and restrictions set forth in Section 8.3 below (or as may be set forth in any Restricted Unit Award, promissory note or pledge agreement or other agreement to which any Units may be subject), the Units of any Member may be Transferred (a "Permitted Transfer") without complying with Sections 8.4, 8.5, 8.6 and 8.8 of this Agreement solely in accordance with any of the following:

(a) A Member who is a natural person may Transfer all or any portion of such Member's Units by gift, sale, will, intestacy or otherwise, to one or more members of such Member's family, to a trust substantially for the benefit of such Member and/or one or more members of such Member's family, to one or more beneficiaries of any trust that is or was a Member, to a corporation of which such Member and/or such Member's family and/or family trust are the majority shareholders or to a partnership or limited liability company in which such Member and/or such Member's family holds the controlling interest.

(b) A Member that is a partnership, corporation, limited liability company, trust or similar entity (each, an "Entity Member") may Transfer all or any portion of such Entity Member's Units to (i) one or more partners, shareholders, members, beneficiaries or similar owners of or investors in such Entity Member (each, an "Entity Member Owner"), (ii) any member of an affiliated group of corporations within the meaning of Section 1504 of the Code that includes such Entity Member, (iii) a trust substantially for the benefit of (x) one or more Entity Member Owners or (y) one or more members of the family of the Entity Member Owner or (iv) a successor entity upon a sale of substantially all of the assets of such Entity Member; provided, however, an Entity Member that acquired its Units pursuant to Section 8.2(a) from a Member who is, or was, an employee or consultant of the Company or any of its subsidiaries may not Transfer its Units pursuant to this Section 8.2(b).

(c) A Member may Transfer all or any portion of its Units to the Company.

(d) A Member may Transfer all or any portion of its Units to another Member.

As used in this Agreement, "family" shall mean and include only the spouse, issue (whether natural or adopted), sibling or parent of a Member. Notwithstanding any provision of this Section 8.2 to the contrary, no Transfer shall be permitted under this Section 8.2 to or for the benefit of a separated or divorced spouse by agreement, court order or otherwise. Any transfer or disposition of Units made pursuant to this Section shall be made only in such manner as to provide control of such Units by a competent legal entity or adult, and so as not to vest control of any Units in any minor or other legally incompetent person.

8.3 Conditions to Permitted Transfers. A Transfer of all or any of a Members Units will not be treated as a Permitted Transfer unless and until the following conditions are satisfied:

(a) The transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of the Company (or in the Company's discretion, of counsel to the Company) to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Agreement. In all cases, the Company will be reimbursed by the transferor and transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.

(b) The transferor and transferee will furnish the Company with the transferee's taxpayer identification number, and any other information necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company will not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Units until it has received such information.

(c) Either (i) such Units will be registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or (ii) the transferor will provide, upon the Company's reasonable request, an opinion of counsel (which may include in-house counsel), which opinion and counsel will be reasonably satisfactory to the Company, to the effect that such Transfer will be exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the transfer of securities.

(d) The transferor may grant to any transferee of Units pursuant to a Permitted Transfer, the right to become a substitute Member, with respect to the Units transferred; provided, however, that no transferee shall be admitted as a substitute Member unless and until the admission of such transferee as a substitute Member is approved by the Board, which approval may be withheld in the Board's sole and unreviewable discretion, with or without cause.

(e) All transferees hereunder shall be bound by the terms of this Agreement in the same manner as the transferors, and any Units so transferred shall continue to be subject to the restrictions, liabilities and benefits associated therewith.

8.4 Right of First Refusal on Transfers of Units.

(a) (i) Except as otherwise permitted by Sections 8.2, 8.5, 8.6 or 8.8 hereof, no Member may Transfer any Units unless the Member desiring to make the Transfer (the "Transferor") first obtains a *bona fide* written offer from a third party to purchase all of such Member's Interest in the Company and first offers to sell such Interest (including all Units thereof) (the "Offered Interest") to the Company and/or other Class A Members in accordance with this Section 8.4(a). The *bona fide* offer, as well as the offer to the Company and/or other Class A Members, must include any and all Units held by the Transferor (which shall include any Units owned by any Permitted Transferee of a Permitted Transfer described in Section 8.2(a) or 8.2(b)(ii) hereof from the

Transferor). The *bona fide* offer must state (x) the name and address of the transferee, (y) the consideration that will be received by the Transferor for the transfer and (z) the payment terms of the consideration and other material terms and conditions of the proposed Transfer.

(ii) Within ten (10) days of the receipt of the *bona fide* offer, the Transferor shall furnish the Company and the Class A Members with a copy of such offer. Within sixty (60) days of the receipt of the offer, the Company may elect, in the discretion of the Board, to purchase all, but not less than all, of the Offered Interest on the same terms and conditions set forth in the *bona fide* offer, exercisable by delivery of written notice to the Transferor. If the Company does not elect to purchase all of the Offered Interest, then the Class A Members may elect to purchase all, but not less than all, of the Offered Interest in proportion to their Class A Percentage (excluding for purposes of this Section 8.4 any Class A Units being sold) (or in such proportion as such non transferring Class A Members may agree) on the same terms and conditions set forth in the *bona fide* offer, exercisable by delivery of written notice to the Transferor within ninety (90) days of their receipt of a copy of the *bona fide* offer.

(iii) In the event the Company and/or the Class A Members elect to purchase all of the Offered Interest, the closing of the purchase will take place on the first business day following the end of a period ninety (90) days after exercise of the Company's and/or the Class A Members' options to purchase by delivery of the last written notice thereof to the Transferor, or on such other date as mutually agreed upon by the parties.

(iv) In the event the Company and/or the Class A Members do not elect to purchase all of the Offered Interest, the Transferor may, subject to Section 8.5 hereof, if applicable, transfer the Offered Interest to the transferee named in, and on the terms and conditions set forth in, the notice, subject to the limitations of this Section 8.4; provided, however, that no Units may be Transferred to a Person (or any Affiliate of a Person) that is engaged, directly or indirectly, with the business of the Company or any of its Subsidiaries as conducted at the time of the proposed Transfer. If the Transferor fails to conclude such sale of the Offered Interest within fifteen (15) days thereafter, the Offered Interest will again become subject to all of the restrictions of this Section 8.4.

(b) No Transfer or assignment pursuant to Section 8.4(a) hereof shall be effective as to the Class A Members or the Company unless and until (i) a copy of an instrument of assignment executed by the assignor and the assignee, in form satisfactory to the Company and indemnifying the Company against loss or liability arising out of such assignment, shall have been received by the Company, (ii) the assignee executes and delivers to the Company such documents as the Company determines may be necessary or appropriate to confirm the agreement of the assignee to be bound by the provisions of this Agreement and (iii) the assignor, upon the reasonable request of the Company, in its discretion, provides the Company with an opinion of counsel, which opinion and counsel will be reasonably satisfactory to the Company, to the effect that the Transfer will be exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the transfer of securities. Thereafter, the Company

shall remit directly to the named assignee all distributions to which the assignee may be entitled pursuant to the provisions of this Agreement and the assignment.

(c) A Member who has assigned such Member's entire Interest in the Company pursuant to this Section 8.4, whether or not the assignee has become a substituted Member, shall not thereafter be entitled to exercise any of the rights of a Member with respect to such transferred Interest (and the Units associated therewith) nor have any other rights as a Member with respect to such transferred Interest except as otherwise provided by the LLC Law.

(d) Any Interest transferred pursuant to this Section 8.4 will remain subject to all of the provisions of this Agreement. Any Member that Transfers its Interest in accordance with this Section 8.4 to an assignee or transferee which is not a Member may grant to that assignee or transferee the right to become a Member; provided, however, that such assignee or transferee will not become a substitute Member unless and until the admission of such assignee or transferee is consented to in writing by the Board, which consent may be withheld by the Board in its sole and unreviewable discretion, with or without cause.

8.5 Tag-Along Rights.

(a) If the holders of a majority of the outstanding Class A Units of the Company (the "Control Group") intends to sell, exchange or otherwise transfer all of their Units to one or more Persons who are not Permitted Transferees or otherwise related to, or affiliated with, the Control Group, pursuant to a private sale or exchange or a series of related private sales or exchanges, it being acknowledged that such a sale, exchange or transfer is not subject to the provisions of Section 8.4 of this Agreement, the Control Group must first notify all other Members (individually, a "Tag-Along Member" and collectively, the "Tag-Along Members") in writing (for purposes of this Section 8.5, the "Tag-Along Notice") of such intended transfer at least twenty (20) days prior to the proposed date for the consummation of such sale, exchange or transfer, which notice will contain a summary of all the material terms of the sale, exchange or transfer, including, without limitation, the name and address of the prospective transferee(s), the purchase price and other terms and conditions of payment (or the basis for determining the purchase price and other terms and conditions), the date on or about which such sale is to be consummated and the Units to be sold, exchanged or transferred. Within fifteen (15) days after receipt of the Tag-Along Notice, each of the Tag-Along Members may notify (for purposes of this Section 8.5, the "Participation Notice") the Control Group that such Tag-Along Member will sell Units that it holds (the number of which shall be determined as set forth below) on the same terms as are applicable to the sale by the Control Group, which is the subject of the Tag-Along Notice; provided, however, that if the Units to be transferred by the Tag-Along Members are not of the same type of Units to be transferred by the Control Group, the purchase price of the Units to be sold by the Tag-Along Members pursuant to this Section 8.5 shall be determined by (i) first, calculating the aggregate amount of consideration that the transferring group will receive pursuant to the sale transaction (which is to be determined in accordance with Section 8.7(a) (the "Transferring Group Price")), (ii) second, calculating the amount of Other Property (the "Tag-Along Value") that would be required for the transferring group to receive, with respect to the number and type of Units to be transferred pursuant to this Section 8.5, an

amount equal to the Transferring Group Price pursuant to Section 5.1(b) of this Agreement if an amount of Other Property equal to the Tag-Along Value were then received and distributed, and (iii) third, calculating the amount, per type of Unit (the "Tag-Along Member Price") that the Tag-Along Members would be entitled to receive pursuant to Section 5.1(b) of this Agreement with respect to each Unit to be transferred pursuant to this Section 8.5 if an amount of Other Property equal to the Tag-Along Value were then received and distributed. The Tag-Along Members shall sell their Units pursuant to this Section 8.5 at the Tag-Along Price per type of Unit. The Units which each Tag-Along Member will be entitled to sell under this Section 8.5 (the "Tag-Along Units") will be determined as of the date of consummation of such transfer and will equal (x) the total number of Units that the Control Group proposes to sell as set forth in the Tag-Along Notice, multiplied by (y) a fraction, the numerator of which is the number of Units owned by each Tag-Along Member, and the denominator of which is the total number of Units then held by the Control Group and each Tag-Along Member who elects to participate in the proposed sale by delivering a Participation Notice to the Control Group. The Control Group will be entitled to sell a number of Units equal to the total Units that the Control Group proposed to sell as set forth in the Tag-Along Notice, less the number of Tag-Along Units.

(b) If the Control Group receives one or more Participation Notices in a timely manner, it will assign to each Tag-Along Member delivering a Participation Notice the portion of their interest in the agreement of sale referred to in the Tag-Along Notice equal to the number of Units that the Control Group is entitled to sell, determined as provided in Section 8.5(a) hereof and will not consummate a sale unless each Tag-Along Member who sent in a Participation Notice is permitted to sell in accordance with the terms of this section 8.5.

(c) The Control Group will be free to sell its Units for which the Tag Along Members have not delivered Participation Notices pursuant to Section 8.5(a) hereof, and which are the subject matter of the Tag-Along Notice, but only to the prospective purchaser, at or about the time (not later than seventy-five (75) days after the date of the Tag Along Notice) and at the price and on the same terms and conditions as those contained in the Tag-Along Notice or on terms less favorable to the Control Group.

(d) Any Participation Notice given pursuant to this Section 8.5 hereof, when taken together with the Tag-Along Notice given will constitute a binding legal agreement on the terms and conditions therein set forth, subject to the consummation of the transactions described in the Tag-Along Notice; provided, however, that in the event of any material modification, amendment or variance by the Control Group of the material terms and conditions set forth in the Tag-Along Notice, other than as provided in this Agreement, each Tag-Along Member shall be notified of such change and shall be given the right to elect to participate or to withdraw its Participation Notice.

(e) The costs and expenses of any transfer pursuant to this Section 8.5 (which will include the costs and expenses of the Control Group's attorneys, financial advisors and other professionals, but shall not include any such costs or expenses of a Tag-Along Member) will be borne by the Control Group and all participating Tag-Along Members on a pro rata basis according to their Units being sold (or in such other proportion as such Persons may agree).

(f) Notwithstanding anything to the contrary in this Section 8.5, a Tag-Along Member shall not be entitled to sell any Class B Units subject to a Restricted Unit Award that are not vested as of the closing of, or in connection with, a transaction described in this Section 8.5 and no such Class B Units that are not vested shall be treated as owned by the holder thereof for purposes of determining how many Units may be sold by such Member pursuant to this Section 8.5.

8.6 Drag-Along Rights.

(a) If the Control Group intends to sell, exchange or otherwise transfer Class A Units representing more than fifty percent (50%) of the outstanding Class A Units to one or more Persons who are not Permitted Transferees or not otherwise related to, or Affiliated with, the Control Group, the Control Group may notify all of the other Members (and all other transferees or other holders of Units that are not Members, together with the Members, the "Drag-Along Members") in writing (the "Drag-Along Notice") of such intended sale, exchange or other transfer, and the exercise of its rights hereunder at least fifteen (15) days prior to the proposed date for the consummation of such sale, exchange or other transfer, which notice will contain a summary of all of the material terms, including, without limitation, the name and address of the prospective transferee(s), the purchase price and other terms and conditions of payment (or the basis for determining the purchase price and other terms and conditions), and the planned date on or about which such sale, exchange or other transfer is to be consummated and the Units to be sold, exchanged or otherwise transferred. The Drag-Along Notice also shall contain a demand from the Control Group that each of the Drag-Along Members shall sell a number of each such Drag-Along Member's Units equal to the product of (i) the total number of Units held by such Drag-Along Member, and (ii) a fraction, the numerator of which is the total number of Class A Units that the Control Group intends to sell as set forth in the Drag-Along Notice, and the denominator of which is the total number of Class A Units then owned by the Control Group pursuant to the same terms and conditions as are or will be applicable to the Control Group; *provided, however*, that if the Units to be transferred by the Drag-Along Members are not of the same type of Units to be transferred by the Control Group, the purchase price of the Units held by the Drag-Along Members shall be determined by (x) first, calculating the aggregate amount of consideration that the Control Group will receive pursuant to the sale transaction (which is to be determined in accordance with Section 8.7(c)) (such aggregate consideration, the "the Control Group Price"), (y) second, calculating the amount of Other Property (the "Total Value") that would be required for the Control Group to receive an amount equal to the Control Group Price pursuant to Section 5.1(b) of this Agreement if an amount of Other Property equal to the Total Value were then received and distributed, and (z) third, calculating the amount, per type of Unit, (the "Drag-Along Price") that the Drag-Along Members would be entitled to receive pursuant to Section 5.1(b) of this Agreement if an amount of Other Property equal to the Total Value were then received and distributed. The Drag-Along Members shall sell their Units pursuant to this Section 8.6 at the Drag-Along Price per type of Unit.

(b) On the date of the closing of the transfer described in the Drag-Along Notice, the Control Group shall cause to be purchased from the Drag-Along Members (along with the Interests of the Control Group) the Interests (and the Units associated therewith) provided for in Section 8.6(a) hereof. On the same date, the Drag-Along

Members shall deliver such executed certificates or other documentation to the Control Group at such place as the Control Group shall designate, and the Control Group shall cause the purchase price to be paid to the Drag-Along Members as specified in the Drag-long Notice.

(c) Any sale, exchange or other transfer by a Drag-Along Member pursuant to this Section 8.6 will be on the same terms and conditions, except that the Drag-Along Members will sell their Units at the Drag-Along Price per Unit, as the transfer by the Control Group which is the subject matter of the Drag Along Notice. The closing of all transfers by the Drag-Along Members pursuant to this Section 8.6 will occur simultaneous with the closing of the sale of the Control Group's sale of its Units.

(d) All Drag-Along Members shall enter into such agreements as are required by the purchaser of the Control Group's Units provided that the terms of such agreements are materially the same as are required of and entered into by the Control Group in connection with the same transaction.

(e) Any Class B Units that are subject to a Restricted Unit Award that are not vested at the time of, or in connection with, a closing of a transaction described in this Section 8.6 shall be cancelled and extinguished for no consideration as of the date of such closing.

8.7 Additional Provisions for Tag-Along and Drag-Along Sales.

The following provisions shall apply in the event of a sale, exchange or transfer under Section 8.5 (a "Tag-Along Sale") or in the event of a sale, exchange or transfer under Section 8.6 (a "Drag-Along Sale"):

(a) In the event of a Tag-Along Sale, all of the participating Tag-Along Members and, in the event of a Drag-Along Sale, all of the Drag-Along Members, shall (i) take such actions as may be reasonably requested by the Control Group in connection with consummating the Tag-Along Sale or the Drag-Along Sale, as the case may be, (ii) vote in favor of, consent to and raise no objections against the Tag-Along Sale or the Drag-Along Sale, as the case may be, or the process pursuant to which the Tag-Along Sale or the Drag-Along Sale, as the case may be, was arranged, (iii) waive any dissenter's, appraisal and other similar rights, (iv) if the Tag-Along Sale or the Drag-Along Sale, as the case may be, is structured as a sale of Units, agree to sell such Person's Units at the price as determined pursuant to the terms of this Agreement and on the terms and conditions of the Tag-Along Sale or the Drag-Along Sale, as the case may be, (v) execute and deliver such documents as may be reasonably requested by the Control Group in connection with any Tag-Along Sale or in connection with the Drag-Along Sale, as the case may be, including, without limitation, written consents of Members, proxies, letters of transmittal, purchase agreements and Unit transfer powers, in each case so long as the Control Group also has executed such documents on no more favorable a basis, (vi) indemnify the transferee(s) upon the same terms as are applicable to the Control Group but only so long as all indemnification obligations made to any party (including any seller representative, if any) are several, not joint and several, in proportion to the consideration paid to each and the maximum indemnification obligation of any Member or other Drag-Along Member shall not exceed the amount of the cash

proceeds actually received by such Person in such Tag-Along Sale or Drag-Along Sale, and (vii) at the closing of such Tag-Along Sale or the Drag-Along Sale, as the case may be, the participating Members or other Drag-Along Members shall deliver certificates for all Units to be sold, exchanged or otherwise transferred by such Persons, duly endorsed for transfer or termination, to the purchaser against delivery of the appropriate purchase price. Notwithstanding anything to the contrary contained in this Section 8.7, if the Control Group agrees to escrow any amount of proceeds resulting from a Tag-Along Sale or the Drag-Along Sale, as the case may be, or to accept indebtedness or other securities then each Member or Drag-Along Member shall be required to escrow a pro rata amount of its proceeds from such Tag-Along Sale or the Drag-Along Sale, as the case may be, and/or such indebtedness or other securities on the same terms as are applicable to the Control Group.

(b) In connection with any Tag-Along Sale or the Drag-Along Sale, the Control Group may, or may cause the Company or the Subsidiaries to hire legal counsel and other professional advisors as it deems necessary or desirable to effectuate the contemplated transaction on behalf of the Control Group and all participating Members or other Drag-Along Members. The Control Group and all Members and other Drag-Along Members participating in such Tag-Along Sale or Drag-Along Sale shall bear their pro rata share (based upon the number of Units sold, exchanged or transferred or to be sold, exchanged or transferred) of the reasonable costs of such Tag-Along Sale or Drag-Along Sale to the extent such costs are not otherwise paid by the Company or the acquiring Person whether or not such Tag-Along Sale or Drag-Along Sale closes. Costs incurred by the Control Group or any Member or other Drag-Along Member on his, her or its own behalf (other than the costs of the professional advisors hired by the Control Group for the benefit of the Control Group and all other participating Members and other Drag-Along Members) will not be considered costs of a Tag-Along Sale or Drag-Along Sale and shall be paid solely by the Control Group or such Member or other Drag-Along Member, as applicable.

(c) For the purposes of this Section 8.7, unless the context otherwise requires, the term "price" shall mean all consideration received by the Control Group in connection with any Tag-Along Sale or the Drag-Along Sale other than the repayment of any funds loaned by the Control Group or its services provided by the Control Group or its Affiliates, including, without limitation, reasonable fees paid to the Control Group or its Affiliates in accordance with any advisory agreement or consulting agreement.

8.8 Buy-Back Right; Put Right.

(a) Subject to any provisions set forth in an employment agreement between the Company and an Employee Member, upon the termination of any Employee Member's employment with the Company and/or its Subsidiaries for any reason whatsoever (including death), the Company (or its designee) shall have the right, but not the obligation, at any time and from time to time after the date of termination, to purchase all of the Employee Member's vested Units then owned by the Employee Member and, if the Employee Member has transferred any of his Units to a Permitted Transferee, all vested Units then owned by such Permitted Transferee. Any Units that have not vested pursuant to an applicable Restricted Unit Award will be forfeited to the Company. The Company shall exercise its right under this Section 8.8 by giving written notice (the

“Buy-Back Notice”) to the Employee Member, or, in the event of the Employee Member’s death, to the personal representative or executor of the Employee Member’s estate. The Buy-Back Notice shall specify the date of the closing, which shall not be more than thirty (30) days after the date of the Buy-Back Notice, and the purchase price of the Units subject to this Section 8.8.

(b) The purchase price of the Units purchased pursuant to Section 8.8(a) shall equal (i) if the Employee’s employment was terminated for Cause or terminated by the Employee without good reason, the lesser of Fair Value of the Units as of the date of the Buy-Back Notice or the amount paid by the Employee for his Units, if any, or (ii) if the Employee’s employment was terminated for any reason other than Cause or as specifically referenced in Section 8.8(b), the Fair Value of the Employee Member’s Units as of the date of the Buy-Back Notice. “Fair Value” of the Employee Member’s Units shall be equal to the amount the Employee Member would receive with respect to his or her Units if the Company were to sell all of its assets as a going concern for their then fair market value and, after payment and discharge of its debts and liabilities (including estimated costs of such a sale), distribute such net proceeds in accordance with Section 10.2 of this Agreement. The Board shall make all of the determinations necessary to calculate Fair Value, including, without limitation, discounts for a minority ownership position, lack of marketability, lack of control, market blockage, security law or other transfer restriction. At the Company’s option the purchase price may be paid pursuant to a note that accrues interest at the minimum annual rate necessary to avoid imputed interest and that provides for its balance to be paid in four (4) equal annual installments commencing on the first anniversary of the closing, provided that payment of any remaining balance will be accelerated in the event of (x) a sale or exchange pursuant to a private sale, merger or other transaction, or a related series of private sales, mergers or other transactions, of a majority of the Units of the Company to one or more Persons that are not Affiliates of the seller(s) of such Units or (y) the sale or exchange of all or substantially all of the assets of the Company to a Person that is not an Affiliate of the Company or the holders of a majority of the Units. The obligation to make installment payments will be evidenced by one or more non-negotiable promissory notes of the Company, which promissory notes will be subordinate to the terms of any indebtedness of the Company for borrowed money (including guarantees of such indebtedness of its Subsidiaries). The notes may be prepaid in whole or in part at any time without premium or penalty. Any prepayment shall be applied first to accrued interest and then to the installments in the inverse order in which they are due.

(c) Subject to any provisions set forth in an employment agreement between the Company and Azuara or deLoache, in the event that the employment of Azuara or deLoache is terminated by the Company for any reason other than Cause, death or disability or Azuara or deLoache retire from the Company then at any time after February 4, 2013, Azuara or deLoache may at any time during the six month period commencing on the later of February 4, 2013 or the termination of employment require the Company to purchase all of Azuara’s or deLoache’s vested Units at the Fair Value of such Units as of the date of the exercise of his or her right determined in accordance with the second and third sentences of Section 8.8(b) and, if Azuara or deLoache has transferred any of his or her Units to a Permitted Transferee, all vested Units then owned by such Permitted Transferee. Any Units that have not vested pursuant to an applicable Restricted Unit Award will be forfeited to the Company. Azuara or deLoache,

respectively, shall exercise their right under this Section 8.8(c) by giving written notice (the "Put Notice") to the Company. The Company on receipt of a Put Notice shall be obligated to purchase all of Azuara's or deLoache's, as the case may be, vested Units. The Put Notice shall specify the date of the closing, which shall not be more than thirty (30) days after the date of the Put Notice, and the purchase price of the Units subject to this Section 8.8(c) shall at the Company's option be paid in accordance with the provisions of Section 8.8(b).

8.9 Representations; Legend. Each Member hereby represents and warrants to the Company that such Member's acquisition of a Unit hereunder is made for such Member's own account and not for resale or distribution of such Unit in any manner that violates any applicable securities laws. Each Member further hereby agrees that the following legend may be placed upon any counterpart of this Agreement, the certificate, or any other document or instrument evidencing ownership of a Unit:

The Units represented by this document have not been registered under any securities laws and the transferability of such Units is restricted. A Unit may not be sold, assigned or transferred, nor will any assignee, vendee, transferee or endorsee thereof be recognized as having acquired any such Unit by the issuer for any purposes, unless (1) a registration statement under the Securities Act of 1933, as amended, with respect to such Unit will then be in effect and such transfer has been qualified under all applicable state securities laws, or (2) the availability of an exemption from such registration and qualification will be established to the reasonable satisfaction of counsel to the Company.

8.10 Distributions and Allocations with Respect to Transferred Units. If any Unit is transferred during any accounting period in compliance with the provisions of this Section 8, Profits, Losses, each item thereof, and all other items attributable to the transferred Unit for such period will be divided and allocated between the transferor and the transferee, by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Company. All distributions on or before the date of such Transfer will be made to the transferor, and all distributions thereafter will be made to the transferee. Solely for purposes of making such allocations and distributions, the Company will recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that if the Company does not receive a notice stating the date such Unit was Transferred and such other information as the Company may reasonably require within thirty (30) days after the end of the accounting period during which the Transfer occurs, then all of such items will be allocated, and all distributions will be made, to the Member who, according to the books and records of the Company, on the last day of the accounting period during which the transfer occurs, was the owner of the Unit. Neither the Company nor any Member will incur any liability for making allocations and distributions in accordance with the provisions of this Section 8.4, whether or not the Company has knowledge of any Transfer of ownership of any Unit.

SECTION 9

WITHDRAWAL OF A MEMBER

9.1 Withdrawal of a Member. Unless otherwise provided in this Agreement, a Member shall cease to be a Member upon the happening of any of the following events of "Withdrawal":

(a) In the case of a Member who is acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(b) In the case of a Member that is an entity, the dissolution and commencement of the winding up of such entity or the filing of a certificate of dissolution or its equivalent, as applicable;

(c) In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company;

(d) In the case of a Member that is an individual, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;

(e) Upon the Bankruptcy of a Member;

(f) A Member assigns or transfers all of such Member's Interest in the Company; or

(g) The redemption of all of a Member's Units by the Company.

9.2 Rights of a Withdrawing Member. In the event of a Withdrawal (other than pursuant to Section 9.1(f) or 9.1(g)) by any Member from the Company prior to the expiration of the Term:

(a) The Company shall have the option to purchase the entire Interest (*i.e.*, all of the Units) of the withdrawing Member for an amount equal to the Fair Value of such Interest; provided, however, that the foregoing option to purchase shall not apply to any Withdrawal resulting from transfers pursuant to *Sections 8.2, 8.4, 8.5, 8.6 or 8.8* hereof or pursuant to a written agreement between the Company and one or more Members. The Company shall exercise, in the sole discretion of the Board, said option to purchase by giving notice thereof to the withdrawing Member within 180 days after the later of (i) the Company's notice of Withdrawal of the Member, and (ii) if applicable, the appointment of the legal representative of the deceased, bankrupt, insane or incompetent Member. The notice shall specify the closing date of the purchase which shall be no later than thirty (30) days after the date of such notice. Until such option is exercised and/or payment made thereunder, the withdrawing Member will be entitled to receive distributions applicable to the withdrawing Member's Interest but will not otherwise be entitled to participate in the Company as a Member. The purchase price shall be paid in accordance with the terms of Section 8.8(b).

If the Company does not elect to purchase the Interest of such withdrawing Member in accordance with this Section, then the successor in interest to such withdrawing Member ("Successor in Interest") will be an assignee of the Interest of the withdrawing Member that the Company did not elect to purchase. In such event, the Successor in Interest will not become a Member unless and until the admission of the Successor in Interest as a Member is consented to in writing by the Board, which consent may be withheld by the Board in its sole and unreviewable discretion, with or without cause, and provided further that the Successor in Interest executes and delivers such documents as the Members may reasonably require to make the Successor in Interest a party to this Agreement.

(b) If a Member withdraws from the Company in contravention of this Agreement, in addition to any other remedies available to the Company under applicable law, the Company may recover from the withdrawing Member damages for breach of this Agreement and may offset the damages against the amount otherwise distributable to such member on account of its Interest.

9.3 Company to Continue Upon Withdrawal. The Company shall not dissolve upon the withdrawal of a Member but shall continue until dissolved in accordance with Section 10.

SECTION 10

DISSOLUTION OF THE COMPANY

10.1 Dissolution Events. The Company will dissolve and commence winding up and liquidation upon the first to occur of any of the following (each, a "Dissolution Event"):

- (a) The sale or other transfer of all or substantially all of the Company's assets;
- (b) A merger or consolidation of the Company with one or more other entities in which the Company is not the surviving entity;
- (c) The decision of the Board to dissolve, wind up, and liquidate the Company;
- (d) The happening of any other event that makes it unlawful, impossible or impractical to carry on the business of the Company; or
- (e) Upon entry of a decree of judicial dissolution under Section 18-802 of the LLC Law.

The Members hereby agree that, notwithstanding any provision of the LLC Law, the Company will not dissolve prior to the occurrence of a Dissolution Event.

10.2 Winding Up. Upon the occurrence of a Dissolution Event, the Company will continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. No Member will take any action that is inconsistent with, or not necessary to or appropriate for the winding up of the Company's

business and affairs. The Company's assets will be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, will be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company's debts and liabilities to creditors who are not Members or Affiliates of Members;

(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members and their Affiliates; and

(c) The balance, if any, to the Members in accordance with their positive Capital Account balances, after giving effect to all contributions, distributions, and allocations for all taxable periods, including the period during which the Dissolution Event occurs.

Any distribution to a Member pursuant to clauses 10.2(b) or (c) above will be net of any amounts owed to the Company by such Member.

No Member will receive any additional compensation for any services performed pursuant to this Section 10.

10.3 Compliance With Timing Requirements of the Regulations. In the event the Company is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, distributions will be made pursuant to this Section 10.3 to the Members who have positive Capital Accounts in compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations. If any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Member will have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit will not be considered a debt owed to the Company or to any other Person for any purpose whatsoever. In the discretion of the Board, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 10.3 may be:

(a) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the discretion of the Board, in the same proportion as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; and/or

(b) withheld to provide a reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as reasonably practicable.

10.4 Deemed Contribution and Distribution. Notwithstanding any other provision of this Section 10, in the event the Company is liquidated within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations but no Dissolution Event has occurred, the Company's assets will not be liquidated, the Company's liabilities will not be paid or discharged, and the

Company's affairs will not be wound up. Instead, except as otherwise provided in applicable Regulations, the Company will be deemed to have contributed all of its assets and liabilities to a new limited liability company and immediately thereafter to have distributed the interest in such new limited liability company to the Members in proportion to their respective interests in the Company.

10.5 Rights of Members. Each Member will look solely to the assets of the Company for the return of his Capital Contribution and will have no right or power to demand or receive property other than cash from the Company. Except as otherwise specifically provided in this Agreement, no Member will have priority over any other Member as to the return of his Capital Contribution, distributions or allocations.

10.6 Prohibition on Withdrawal. Except as otherwise provided in Section 8 or 9 of this Agreement, no Member is entitled to withdraw from the Company prior to the Company's dissolution pursuant to this Section 10. Under no circumstances, other than pursuant to the express terms of this Agreement, will the Company be required to make any distribution pursuant to Section 18-804 of the LLC Law prior to the Company's dissolution pursuant to this Section 10.

SECTION 11

MEETINGS OF MEMBERS

11.1 Meetings. Meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Board, the chief executive officer and shall be called at the request in writing of any Member or group of Members holding at least twenty percent (20%) of the Class A Units. A designee of the Board shall preside at all meetings of the Members.

11.2 Place of Meetings. The Board may designate the Company's principal place of business or any other place that is reasonably accessible, either within or outside the State of Delaware, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be at the Company's principal place of business.

11.3 Notice of Meetings. Except as provided in Section 11.4 hereof, the Board shall deliver or cause to be delivered a notice of such meeting to each Member entitled to vote at such meeting. Said notice shall be delivered not less than 5 days nor more than 30 days before the date of such meeting and shall state the place, day and hour of the meeting and the purpose or purposes for which the meeting is called.

11.4 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of Delaware, and consent to or waive notice of the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

11.5 Record Date. For the purpose of determining Class A Members entitled to notice of, or to vote at, any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any

other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Class A Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

11.6 Quorum. Class A Members holding a majority of all Units entitled to vote on the matters to be presented at a meeting of the Members, whether represented in person or by proxy, shall constitute a quorum at such meeting. In the absence of a quorum at any such meeting, the Class A Members holding at least two thirds (2/3) of the Class A Units so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Class A Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Class A Units whose absence would cause less than a quorum.

11.7 Manner of Acting. The affirmative vote of Class A Members holding at least a majority of all Class A Units held by such Class A Members shall be the act of the Class A Members, unless the vote of a greater or lesser proportion or number or separate class vote is otherwise required by the LLC Law, the Certificate of Formation or this Agreement. For purposes of determining which Class A Members can vote, all Class A Units shall be able to vote on a one Unit, one vote basis; provided, however that transferees of Class A Units that are not admitted as Class A Members shall not be entitled to vote on any matter and that the Class A Units held by such transferees shall not count as part of the calculation of the amount of Class A Units outstanding. The Class B Units are not entitled to vote on any matter unless otherwise specifically required by law.

11.8 Proxies. At all meetings of the Members, a Class A Member may vote in person or by written proxy executed by the Class A Member or by such Class A Member's duly authorized attorney in fact. Such proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after eight (8) months from the date of its execution, unless otherwise provided in the proxy.

11.9 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of the Members may be taken without a meeting if such action is approved by the Class A Members holding a majority of the Units entitled to vote on the action, unless the approval of a greater or lesser proportion or number or separate class approval is required, and such approval is evidenced by one or more written consents describing the action taken, signed by the requisite number of qualified Class A Members and delivered to the Company for inclusion in the minutes of the Company or for filing with the Company records. Action taken under this Section 11.9 is effective when the requisite number of qualified Class A Members have signed the consent, unless the consent specifies a different effective date. The record date for determining Class A Members entitled to take action without a meeting shall be the date the first Class A Member signs a written consent. Notice of any action taken under this Section 11.9

shall be given to each Class A Member who did not sign a written consent with respect to such action.

11.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

SECTION 12

AMENDMENTS

12.1 Authority to Amend. Except as set forth in Section 2.1, amendments to this Agreement shall require the approval of the holders of a majority of the Class A Units plus the approval of the Board, provided, however, that if any amendment would adversely and materially alter the interest of a Member in the Profits, Losses, or distributions of the Company (other than as a result of the sale or issuance of additional Units), then such amendment shall also require the consent of a majority (measured by Percentage Interests) of the Members who would be similarly adversely affected by such amendment.

12.2 Notice of Amendments. Every Member shall have the right to propose amendments to this Agreement. A copy of any amendment to be approved by the Members pursuant to Section 12.1 hereof shall be mailed in advance to each Member.

SECTION 13

ACKNOWLEDGMENT AND NO WAIVER

13.1 Acknowledgment.

(a) Each Member hereby represents and covenants that such Member is acquiring such Member's Units solely for investment purposes and not with a view to the distribution or resale thereof in any manner that violates any applicable securities laws. Notwithstanding statements contained in other Sections of this Agreement, no Unit may be offered or sold and no transfer of an Interest will be made either by the Company or the Members unless: (i) such Unit is registered under the Securities Act of 1933, as amended from time to time, and is registered under the applicable state securities laws, as amended, or (ii) an opinion of counsel (including from in-house counsel), reasonably satisfactory to the Board as to form, substance and counsel, is delivered to the Company by the Member desiring to offer, sell or transfer a Unit, to the effect that no such registration is necessary; provided that such requirement may be waived by the Board.

(b) Each of the parties hereto and each of the substitute Members hereinafter becoming a signatory hereto, acknowledge that each such party or substitute Member has been advised of and hereby approves of the application of Company funds to pay all expenses incurred in connection with the formation of the Company and admission of the Members, including, without limitation, legal fees, registration fees and filing and recording charges.

SECTION 14

MISCELLANEOUS

14.1 Notices. All notices, requests, demands and other communications under this Agreement must be in writing and will be deemed duly given, unless otherwise expressly indicated to the contrary in this Agreement, (a) when personally delivered, (b) three (3) days after having been deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, (c) one (1) business day after having been dispatched by a nationally recognized overnight courier service, addressed to the parties or their permitted assigns with an acknowledgment of receipt requested at the following addresses, or (d) upon receipt of confirmation of a telephonic facsimile transmission:

(a) If to the Company, to the Company at the address set forth in Section 1.4 hereof, and

(b) If to a Member, to the address set forth on Exhibit A to this Agreement.

Any Person may from time to time specify a different address by written notice to the Company.

14.2 Binding Effect. Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement will be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferees and permitted assigns.

14.3 Construction. Every covenant, term and provision of this Agreement will be construed simply according to its fair meaning and not strictly for or against any Member.

14.4 Waiver of Appraisal. Notwithstanding any provision which may be contained in the Last Will and Testament of a deceased Member, there shall be no inventory and appraisalment of the Company assets or a sale of a deceased Member's Interest therein as a result of the death of a Member, and the Interest of a deceased Member shall be settled and disposed of exclusively in accordance with the terms of this Agreement.

14.5 Entire Agreement. This Agreement, together with the Certificate of Formation, as each of the foregoing may be amended in writing from time to time, and any Restricted Unit Awards (the "Organizational Documents"), contains the entire understanding among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements or undertakings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed in the Organizational Documents.

14.6 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope or extent of this Agreement or any provision hereof.

14.7 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, such illegality or invalidity will not affect the validity or legality of the remainder of this Agreement.

14.8 Incorporation by Reference. Every appendix, exhibit, schedule, and other document attached to this Agreement and referred to herein is hereby incorporated into this Agreement by reference.

14.9 Further Action. Each Member agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

14.10 Variation of Pronouns. All pronouns and any variations will be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require.

14.11 Governing Law, Consent to Jurisdiction and Service of Process. The Company, the Board, and each officer and Member irrevocably (a) agrees that this Agreement shall be governed by the laws of the State of Delaware, (b) consents to the jurisdiction of the state and Federal courts located in the State of Ohio sitting in Franklin County and State of Ohio, (c) agrees that any action, suit or proceeding by or among the Company, Board, officers or Members (or any of them) shall be brought exclusively in a court in the State of Ohio sitting in Franklin County and State of Ohio, (d) waives any objection which he may now or hereafter have to the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground, (e) consents to the service of process outside of the territorial jurisdiction of said courts by mailing copies thereof by registered or certified United States mail, postage prepaid, to such Person's last known address as shown in the records of the Company with the same effect as if such Person was a resident of the State of Ohio and had been lawfully served in such state, and (f) agrees that final judgment against him in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the State of Ohio by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of such judgment. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.12 Specific Performance. The parties acknowledge that it is impossible to measure, in money, the damages that would accrue to a party or to the personal representative of a decedent from a failure of a party to perform any of the obligations under this Agreement. Therefore, if any party or the personal representative or executor of any party enters into any action or proceeding to enforce the provisions of this Agreement, any Person (including the Company) against whom the action or proceeding is brought waives the claim or defense that the moving party or representative has or shall have an adequate remedy at law, and the Person shall not urge in the action or proceeding the claim or defense that an adequate remedy at law exists.

14.13 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts will be construed together and will constitute one agreement.

14.14 Individual Members; Community Property. Each individual Member or transferee required to become a party hereto whose Interests now are or become "community property", shall at the later of the date of this Agreement or the time when his or her spouse first has a "community property" interest in any of such Interests, cause such spouse to execute a counterpart of this Agreement and any amendment hereto executed by such Member, or another writing in form and substance satisfactory to the Company, subjecting such spouse and the

spouse's "community property" interest in such Interest to the applicable provisions of this Agreement and such amendment. No spouse executing this Agreement or any such writing solely by reason of his or her "community property" interest in Interests and the immediately preceding sentence, shall be considered to be a Member for any purposes whatsoever.

IN WITNESS WHEREOF, the parties have entered into this Limited Liability Company Agreement of First Source Electrical, LLC as of the date first above written.

MEMBERS:

FIRST SOURCE ACQUISITION COMPANY, LLC

DATED:

By: *Mark Johnson*
Its: *President & CEO*

October 1, 2008

Don Orzoff

October 1, 2008

Phil Dyfack

October 1, 2008

IN WITNESS WHEREOF, the parties have entered into this Limited Liability Company Agreement of First Source Electrical, LLC as of the date first above written.

MEMBERS:

FIRST SOURCE ACQUISITION COMPANY, LLC

DATED:

By: Muhammad Zaman

October 1, 2008

Its: owner

_____, 2008

_____, 2008

EXHIBIT A

MEMBERS' NAMES, ADDRESSES,
CAPITAL CONTRIBUTIONS, NUMBER AND CLASS
OF UNITS AND SHARING PERCENTAGES*

<u>Names and Addresses of Members</u>	<u>Capital Contributions</u>	<u>Number of Units*</u>	<u>Percentage Interest</u>	<u>Class</u>
First Source Acquisition Company, LLC 2027 North Street Granville, Ohio 43023	<u>\$6,804,141</u>	<u>852</u>	<u>91.59%</u>	Class A
[Management Investors]	<u>\$ 625,000</u>	<u>78</u>	<u>8.41%</u>	Class A
TOTAL	<u>\$7,429,141</u>	<u>930</u>	<u>100%</u>	

*A total of 70 additional Class B Units will be allocated to Employee Members.

Management Investors

Mark Jenson	\$ 325,000	41	4.37%
Phil DeLoache	\$ 200,000	25	2.69%
Irma Azuara	\$ 100,000	12	1.35%
TOTAL	\$ 625,000	78	8.41%

EXHIBIT A

MEMBERS' NAMES, ADDRESSES,
CAPITAL CONTRIBUTIONS, NUMBER AND CLASS
OF UNITS AND SHARING PERCENTAGES*

<u>Names and Addresses of Members</u>	<u>Capital Contributions</u>	<u>Number of Units*</u>	<u>Percentage Interest</u>	<u>Class</u>
First Source Acquisition Company, LLC 2027 North Street Granville, Ohio 43023	\$ _____	_____	_____%	Class A
[Management Investors]	\$ _____	_____	_____%	Class A
TOTAL	<u>[\$6,600,000]</u>	<u>930</u>	<u>100%</u>	

*A total of 70 additional Class B Units will be allocated to Employee Members.

Limited Liability Company Agreement of First Source Electrical, LLC

APPENDIX A

TAX MATTERS

1.1 **Definitions.** Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in Appendix B of the Agreement.

1.2 **Profits and Losses.**

(a) After giving effect to the special and curative allocations set forth in Sections 1.3 and 1.4 of this Appendix A, Profits or Losses, other than Profits or Losses from a Sale Event, for any taxable year (or portion thereof) shall be allocated among the Members in the following order and priority:

(i) First, to the Class A Members (in proportion to their Unpaid Preferred Returns) until the Unpaid Preferred Return of such Class A Members has been reduced to zero;

(ii) Second, to the Class A Members (in proportion to their Unreturned Capital Contributions) until the Unreturned Capital Contributions of such Class A Members has been reduced to zero;

(iii) Thereafter, to the Class A Members in proportion to their Class A Percentage.

(b) After giving effect to the special and curative allocations set forth in Sections 1.3 and 1.4 of this Appendix A, Profits or Losses from a Sale Event shall be allocated among the Members in the following order and priority:

(i) First, to the Class A Members, in proportion to their Unpaid Preferred Return until each Class A Member has a positive balance in its capital account equal to its Unpaid Preferred Return;

(ii) Second, to the Class A Members (in proportion to their Unreturned Capital Contributions) until each Class A Member has a positive balance in its Adjusted Capital Account equal to the sum of its Unreturned Capital Contributions and its Unpaid Preferred Return;

(iii) Thereafter, to the Members in such amounts as are necessary to cause the positive balance in each Member's Adjusted Capital Account to equal, to the greatest extent possible, the amount that would be distributed to each Member were the Company to dissolve and terminate at the end of the taxable year in question, assuming for this purpose that the Company's assets are liquidated for their Gross Asset Value and that the proceeds of such liquidation are distributed to the Members in accordance with Section 5.1(b) of the Agreement.

1.3 **Special Allocations.** The following special allocations will be made in the following order:

(a) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Appendix A and subject to the exceptions set forth in Sections 1.704-2(f)(2),(3),(4) and (5) of the Regulations, if there is a net decrease in Company Minimum Gain during any fiscal year, each Member will be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence will be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated will be determined in accordance with Section 1.704-2(f) of the Regulations. This Section 1.3(a) is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and will be interpreted consistently therewith.

(b) **Partner Minimum Gain Chargeback.** Notwithstanding any other provision of this Appendix A except Section 1.3(a) and subject to the exception in Section 1.704-2(i)(4) of the Regulations, if there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any Company fiscal year, each Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5), will be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Member's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations. Allocations pursuant to the previous sentence will be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated will be determined in accordance with Section 1.704-2(i)(4) of the Regulations. This Section 1.3(b) is intended to comply with the minimum gain chargeback requirement in such Section of the Regulations and will be interpreted consistently therewith.

(c) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain will be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in such Member's Adjusted Capital Account as quickly as possible, provided that an allocation pursuant to this Section 1.3(c) will be made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Section 1.3 have been tentatively made as if this Section 1.3(c) were not in this Appendix A.

(d) **Gross Income Allocation.** In the event any Member has a deficit balance in its Adjusted Capital Account at the end of any fiscal year, each such Member will be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 1.3(d) will be

made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Section 1.3 have been made as if Section 1.3(c) hereof and this Section 1.3(d) were not in this Appendix A.

(e) **Nonrecourse Deductions.** Nonrecourse Deductions for any fiscal year or other period will be specially allocated among the Members in accordance with their then Class A Percentage Interests.

(f) **Partner Nonrecourse Deductions.** Any Partner Nonrecourse Deductions for any fiscal year or other period will be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i) of the Regulations.

(g) **Section 754 Adjustments.** To the extent the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

(h) **Imputed Interest Income.** Any interest income imputed to the Company by reason of characterization of any payment of taxes by the Company as an interest-free loan to a Member pursuant to Section 5.3 of the Agreement shall be specially allocated to the Member who is treated as having received such interest-free loan.

1.4 **Curative Allocations.**

(a) The “Regulatory Allocations” consist of the “Basic Regulatory Allocations,” as defined in Section 1.4(b) hereof, the “Nonrecourse Regulatory Allocations,” as defined in Section 1.4(c) hereof, and the “Partner Nonrecourse Regulatory Allocations,” as defined in Section 1.4(d) hereof.

(b) The “Basic Regulatory Allocations” consist of all allocations pursuant to Sections 1.3(c), 1.3(d) and 1.3(g) hereof and the last sentence of Section 1.2 hereof. Notwithstanding any other provision of this Appendix A, other than the Regulatory Allocations, the Basic Regulatory Allocations will be taken into account in allocating items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Basic Regulatory Allocations to each Member will be equal to the net amount that would have been allocated to each such Member if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 1.4(b) will only be made with respect to allocations pursuant to Sections 1.3(c), 1.3(d) or 1.3(g)

hereof to the extent the Board reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the parties to the Agreement.

(c) The “**Nonrecourse Regulatory Allocations**” consist of all allocations pursuant to Sections 1.3(a) and 1.3(e) hereof. Notwithstanding any other provision of this Appendix A, other than the Regulatory Allocations, the Nonrecourse Regulatory Allocations will be taken into account in allocating items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Nonrecourse Regulatory Allocations to each Member will be equal to the net amount that would have been allocated to each such Member if the Nonrecourse Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence (i) no allocations pursuant to this Section 1.4(c) will be made prior to the fiscal year during which there is a net decrease in Company Minimum Gain, and then only to the extent necessary to avoid any potential economic distortions caused by such net decrease in Company Minimum Gain, and (ii) allocations pursuant to this Section 1.4(c) will be deferred with respect to allocations pursuant to Section 1.3(e) hereof to the extent the Board reasonably determines that such allocations are likely to be offset by subsequent allocations pursuant to Section 1.3(a) hereof.

(d) The “**Partner Nonrecourse Regulatory Allocations**” consist of all allocations pursuant to Sections 1.3(b) and 1.3(f) hereof. Notwithstanding any other provision of this Appendix A, other than the Regulatory Allocations, the Partner Nonrecourse Regulatory Allocations will be taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Partner Nonrecourse Regulatory Allocations to each Member will be equal to the net amount that would have been allocated to each such Member if the Partner Nonrecourse Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence (i) no allocations pursuant to this Section 1.4(d) will be made with respect to allocations pursuant to Section 1.3(f) relating to a particular Partner Nonrecourse Debt prior to the fiscal year during which there is a net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, and then only to the extent necessary to avoid any potential economic distortions caused by such net decrease in Partner Minimum Gain, and (ii) allocations pursuant to this Section 1.4(d) will be deferred with respect to allocations pursuant to Section 1.3(f) hereof relating to a particular Partner Nonrecourse Debt to the extent the Board reasonably determines that such allocations are likely to be offset by subsequent allocations pursuant to Section 1.3(b) hereof.

(e) The Board will have reasonable discretion, with respect to each taxable year, to (i) apply the provisions of Sections 1.4(b), 1.4(c), and 1.4(d) hereof in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations, (ii) divide all allocations pursuant to Sections 1.4(b), 1.4(c), and 1.4(d) hereof among the Members in a manner that is likely to minimize such economic distortions and (iii) make any other allocations necessary to properly reflect the interests of the Members in the Company (within the meaning of Regulations Section 1.704-1(b)(3)).

1.5 Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period of time, Profits, Losses, and any such other items will be determined on a daily, monthly, or other basis, as determined by the Board using any permissible method under Code Section 706 and the Regulations thereunder.

(b) Except as otherwise provided in this Appendix A, all items of Company income, gain, loss, deduction, and any other allocations (including allocations of credits) not otherwise provided for will be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the year.

(c) The Members are aware of the income tax consequences of the allocations made by this Appendix A and hereby agree to be bound by the provisions of this Appendix A in reporting their shares of Company income and loss for income tax purposes.

(d) To the extent permitted by Sections 1.704-2(h) and 1.704-2(i)(6) of the Regulations, the Board will endeavor to treat distributions of Distributable Cash as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account deficit for any Member.

(e) Upon the exercise of any option or warrant (an "option") to acquire Units, the Board shall make other allocations or effect a shift of Capital Account balances of the Members as the Board, in its sole discretion, shall determine to be necessary in order to properly reflect the interests of any option holder in the Company and to preserve the value of such option holder's option (i.e., by preserving the option holder's ability to realize the appreciation in value of a Unit over the option price applicable to his option). Any allocations or Capital Account shifts determined by the Board to be necessary under the immediately preceding sentence shall be made over such period as the Board determines to be reasonable. To the extent applicable, any such adjustments or allocations shall be made in a manner consistent with any applicable proposed, temporary or final Regulations promulgated under Code Sections 704 or 721 or other applicable law then in effect with respect to partnership convertible obligations or options. Except as otherwise provided in any temporary or final Regulations under Code Sections 83, 704 or 721 or other applicable law if, in connection with the exercise of an option to acquire Units granted to an employee or consultant of the Company for services rendered to the Company, the Board determines that it is necessary to effect a Capital Account shift in order to properly reflect the interest of the person (the "optionholder") exercising the option in the Company, then the following shall occur: (A) the Company shall be deemed to have distributed an amount of cash to the optionholder equal to the amount of the Capital Account balances of the other Members that are shifted to the optionholder, and (B) the optionholder shall be deemed to have contributed such amount to the capital of the Company.

1.6 Tax Allocations. Code Section 704(c).

(a) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company will, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

(b) In the event the Gross Asset Value of any Company asset is adjusted, subsequent allocations of income, gain, loss, and deduction with respect to such asset will take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Any elections or other decisions relating to such allocations will be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 1.6 are solely for purposes of federal, state, and local taxes and will not affect, or in any way be taken into account in computing any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

APPENDIX B

DEFINITIONS

“Additional Member” means any Person admitted as a Member pursuant to Section 2.3 hereof.

“Adjusted Capital Account” means, with respect to any Member, the balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and will be interpreted consistently therewith.

“Affiliate” means, with respect to any Person: (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any person owning or controlling 10% or more of the outstanding voting securities of such Person; (iii) any officer, director, manager, trustee or general partner of such Person; or (iv) any Person who is an officer, director, manager, trustee or general partner or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (i) through (ii).

“Agreement” means this Agreement, as originally executed and as amended from time to time. Terms such as “hereof,” “hereto,” “hereby,” “hereunder” and “herein” refer to this Agreement as a whole, unless the context otherwise requires.

“Azulara” means Irma Azulara.

“Bankruptcy” means (i) the entry of a decree or order for relief against the Member by a court of competent jurisdiction in any involuntary case brought against the Member under any bankruptcy, insolvency or other similar law (“Debtor Relief Laws”) generally affecting the rights of creditors and relief of debtors now or hereafter in effect, (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property, (iii) the ordering of the winding up or liquidation of the Member’s affairs, (iv) the filing of the petition in any such involuntary bankruptcy case, which petition remains undismissed for a period of 180 days or which is not dismissed or suspended pursuant to Section 305 of the United States Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law), (v) the commencement by the Member of a voluntary case under any applicable Debtor Relief Law now or hereafter in effect, (vi) the consent by the Member to the entry of an order for relief in an involuntary case under any such law or to the appointment of or the taking of possession by

a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent under any applicable Debtor Relief Law for the Member or for any substantial part of its assets or property, or (vii) the making by a Member of any general assignment for the benefit of its creditors.

“Board” means the Board of Managers.

“Capital Account” means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(i) To each Member’s Capital Account there will be credited such Member’s Capital Contributions, such Member’s distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 1.3 or Section 1.4 of Appendix A to this Agreement, and the amount of any Company liabilities assumed by such Member or which are secured by assets distributed to such Member.

(ii) To each Member’s Capital Account there will be debited the amount of cash and the Gross Asset Value of any assets distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 1.3 or Section 1.4 of Appendix A to this Agreement, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(iii) In the event all or a portion of an Interest is transferred in accordance with the terms of this Agreement, the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(iv) In determining the amount of any liability for purposes of clauses (i) and (ii) above, there will be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and will be interpreted and applied by the Board in a manner consistent with such Regulations. In the event the Board determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed assets or which are assumed by the Company or Members) are computed in order to comply with such Regulations, the Board may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Section 10 of the Agreement upon the dissolution of the Company. The Board also will (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of the Company’s balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause the Agreement or Appendix A to the Agreement not to comply with Regulations Section 1.704-1(b).

“**Capital Contributions**” means, with respect to any Member, the amount of money and the initial Gross Asset Value of any assets (other than money) contributed to the Company with respect to the Interest held by such Person.

“**Cause**” shall mean, except as otherwise defined in an employment agreement between the Company and an Employee Member, the termination of the Employee Member’s employment as a result of any of the following events: (i) the Employee Member’s breach of any of the provisions of any confidentiality and non-compete agreement or any written employment agreement or Restricted Unit Award with the Company or its Subsidiaries; (ii) the Employee Member’s breach of any of his fiduciary duties to the Company and its Subsidiaries; (iii) the Employee Member’s commission of a felony, act of fraud, embezzlement or theft; (iv) the Employee Member’s failure to follow or comply with the rules and policies of the Company and its Subsidiaries; or (v) an intentional disregard by Employee of a material lawful directive given to Employee by the Board or by a designee of the Board.

“**Class A Member**” means any Member holding Class A Units and any transferee of a Class A Member with respect to one or more Class A Units who is admitted to the Company as a substitute Class A Member pursuant to the terms of this Agreement. Solely for purposes of the allocation, distribution and transfer provisions of Appendix A and Sections 4, 5, 8, and 10 of the Agreement (and any definitions related thereto), a Class A Member shall be deemed to include an assignee or transferee of a Class A Member with respect to one or more Class A Units who has not been admitted to the Company as a Class A Member pursuant to the terms of this Agreement. “Class A Members” means all such persons.

“**Class A Percentage**” means with respect to any Class A Member, the amount expressed as a percentage that the number of Class A Units owned by such Class A Member at any given time as set forth in Exhibit A hereto bears to the total number of Class A Units owned by all Class A Members as of such date, as set forth on Exhibit A.

“**Class A Unit**” means any Unit held by a Member and designated as a Class A Unit on Exhibit A to this Agreement.

“**Class B Member**” means any Member holding Class B Units and any transferee of a Class B Member with respect to one or more Class B Units executing this Agreement as a Class B Member, and any transferee of a Class B Member who is admitted to the Company as a substitute Class B Member pursuant to the terms of this Agreement. Solely for purposes of the allocation, distribution and transfer provisions of Appendix A and Sections 4, 5, 8 and 10 of the Agreement (and any definitions related thereto), a Class B Member shall be deemed to include an assignee or transferee of a Class B Member with respect to one or more Class B Units who has not been admitted to the Company as a Class B Member pursuant to the terms of this Agreement. “Class B Members” means all such Persons.

“**Class B Unit**” means any Unit held by a Class B Member and designated as a Class B Unit on Exhibit A to this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

“Commencement Date” has the meaning set forth in Section 1.1.

“Company” means First Source Electrical, LLC.

“Company Minimum Gain” has the meaning set forth for “partnership minimum gain” in Section 1.704-2(b)(2) of the Regulations.

“Covered Person” means (i) the Managers, the Tax Matters Member, or a liquidating trustee, in each case in his or its capacity as such; (ii) an officer of the Company; (iii) any officer of the Company serving as an officer, director, shareholder, partner, member, employee, representative or agent of another Person at the request of the Board; (iv) in the Board’s discretion, any employee of the Company that is not an officer.

“deLoache” means Philip deLoache.

“Depreciation” means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes as of the beginning of such year or other period, Depreciation will be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation will be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

“Employee Member” means any Member who is, or was at any time, an employee of the Company or any of the Company’s Subsidiaries.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company will be the gross fair market value of such asset, as determined by the Board;

(ii) The Gross Asset Values of all Company assets will be adjusted to equal their respective gross fair market values, as determined by the Board, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Company to a Member of more than a *de minimis* amount of assets as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (a) and (b) above will be made only if the Board reasonably determines that such adjustments are necessary to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Member will be the gross fair market value of such asset as determined by the Board as of the date of distribution; and

(iv) The Gross Asset Values of Company assets will be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Section 1.3(g) hereof; provided, however, that Gross Asset Values will not be adjusted pursuant to this clause (iv) to the extent the Board determines that an adjustment pursuant to clause (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to clauses (i), (ii), or (iv) above, such Gross Asset Value will thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

“Interest” means a Member’s entire ownership interest in the Company represented by one or more Units, including any and all benefits to which the holder of such an Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

“LLC Law” has the meaning set forth in the preamble.

“Manager” means a member of the Board. “Managers” means all such members of the Board.

“Member” means any Person who (i) is referred to as such in the first paragraph of this Agreement or has become a Member pursuant to the terms of this Agreement, and (ii) has not ceased to be a Member pursuant to the terms of this Agreement. Solely for purposes of the allocation, distribution and transfer provisions of Appendix A and Sections 4, 5, 8 and 10 of the Agreement (and any definitions relating thereto), a Member shall also be deemed to include an assignee or transferee of a Unit who has not been admitted to the Company as a Member. “Members” means all such Persons.

“Net Cash from Operations” means the gross cash from Company operations, including, without limitation, operating income, fees, interest, and other income attributable to the Company’s business, less the portion thereof used to pay or establish reserves for all Company expenses, payments, capital improvements, replacements and contingencies, all as determined by the Board in its sole discretion; provided, however, Net Cash from Operations shall not be reduced by depreciation, amortization, cost recovery deductions, or similar non-cash allowances.

“Nonrecourse Deductions” has the meaning set forth in Section 1.704 2(b)(1) of the Regulations. The amount of Nonrecourse Deductions for any fiscal year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year over the aggregate amount of any distributions during that fiscal year of proceeds of a

Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Sections 1.704-2(c) and (d) of the Regulations.

“Nonrecourse Liability” has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

“Offered Interest” has the meaning set forth in *Section 8.4(a)(i)*.

“Other Property” means net cash or property arising from the sale, exchange or other disposition of all or substantially all of the Company’s assets or from a series of sales, exchanges or other dispositions that collectively result in the sale, exchange or other disposition of all or substantially all of the Company’s assets that is available to be distributed to Members in their capacity as such.

“Partner Minimum Gain” means an amount, with respect to each Partner Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

“Partner Nonrecourse Debt” has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

“Partner Nonrecourse Deductions” has the meaning set forth in Section 1.704-2(i)(2) of the Regulations. The amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for any fiscal year equals the excess, if any, of the net increase, if any, in the amount of Partner Minimum Gain attributable to such Partner Nonrecourse Debt during that fiscal year over the aggregate amount of any distributions during that fiscal year to the Member that bears the economic risk of loss for such Partner Nonrecourse Debt to the extent such distributions are from the proceeds of such Partner Nonrecourse Debt and are allocable to an increase in Partner Minimum Gain attributed to such Partner Nonrecourse Debt, determined in accordance with Sections 1.704-2(i)(2) and (3) of the Regulations.

“Percentage Interests” means, with respect to any Member, the amount, expressed as a percentage, that the number of Units owned by such Member at any given time as set forth in Exhibit A hereto bears to the total number of Units owned by all Members as of such date, as set forth on Exhibit A.

“Permitted Transferee” means any Person who receives Units from a Member pursuant to a Permitted Transfer in accordance with Sections 8.2 and 8.3.

“Person” means any individual, partnership, corporation, trust, limited liability company, or other entity.

“Preferred Return” means, with respect to each Class A Member, an amount equal to an annual seven percent (7%) cumulative non-compounding return, determined on the basis of the actual number of days for which such Preferred Return is being determined on such Class A Member’s average daily Unreturned Capital Contributions with respect to the Class A Units commencing on the date such Class A Units were issued through the date of calculation.

“Profits” or “Losses” mean, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses will be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(1), and not otherwise taken into account in computing Profits or Losses, will be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted, the amount of such adjustment will be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of assets with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Gross Asset Value of the assets disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account Depreciation for such fiscal year or other period; and

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 1.3 or 1.4 of Appendix A of this Agreement will not be taken into account in computing Profits or Losses.

“Regulations” means regulations proposed or promulgated by the United States Department of the Treasury under the provisions of the Code.

“Restricted Unit Award” means an agreement pursuant to which any Class B Unit is subject to time or performance based vesting provisions pursuant to which such Class B Unit will only vest upon the passage of time and/or the achievement of certain performance vesting requirements as set forth in a Restricted Unit Award Agreement or similar agreement between the Company and a Member.

“Sale Event” shall mean the closing of (i) a sale or exchange pursuant to a private sale, merger or other transaction, or a series of related private sales, mergers or other transactions, of a majority of the Class A Units of the Company to one or more persons or entities which are not directly or indirectly related to, or affiliated with, the seller(s) of such Units or any other Member, or (ii) a sale or exchange of substantially all of the assets of the Company, or a series of related sales or exchanges that together result in a sale of substantially all of the assets of the

Company, to a person or entity that is not related to, or affiliated with, the Company or the holders of a majority of the Class A Units.

“Subsidiary” means an entity the majority of the ownership interests of which are owned, directly or indirectly, by the Company. **“Subsidiaries”** means all such entities.

“Transfer” (whether or not such term is capitalized) means, as a noun, any voluntary or involuntary transfer, sale, encumbrance, pledge, hypothecation, assignment or other disposition by a Member and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, encumber, hypothecate, assign or otherwise dispose of a Member’s Interest or Units.

“Unit” means a unit of ownership interest of whatsoever class as may be designated by the Company in the Company and shall represent an undivided interest in the holder’s Capital Account balance. **“Unit”** means collectively, all Class A Units and Class B Units.

“Unpaid Preferred Return” means with respect to each Class A Member, such Member’s Preferred Return through the date of calculation, less the aggregate amount of distributions previously made to such Member pursuant to Sections 5.1(a)(i) or 5.1(b)(i) (including any distributions pursuant to Section 5.2 treated as a distribution pursuant to Section 5.1(a) or 5.1(b) of this Agreement).

“Unreturned Capital Contribution” means, with respect to any Class A Member, as of a particular date, such Class A Member’s Capital Contributions (provided that for purposes of this definition the per Class A Unit Capital Contribution and, with respect to any Class A Unit issued after the date of this Agreement shall not exceed the per Class A Unit Capital Contributions made by the Class A Members as of the date of this Agreement with respect to the Class A Unit issued to such Class A Members as of the date of this Agreement) less the aggregate amount of distributions previously made to such Class A Member pursuant to Section 5.1(a)(ii) and Section 5.1(b)(ii) of this Agreement.

“White Oak” means First Source Acquisition Company, LLC.

EXHIBIT F

MODIFICATION OF EMPLOYMENT AGREEMENT

THIS MODIFICATION OF EMPLOYMENT AGREEMENT (this "Modification Agreement") is made and entered to be effective as of the 1st day of January, 2010 by and between IRMA AZUARA, an individual ("Employee"), and FIRST SOURCE ELECTRICAL, LLC, a Delaware limited liability company ("Company"), to modify and amend certain terms and conditions of that certain Employment Agreement dated February 7, 2008 by and between Employee and Company (the "Employment Agreement").

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employee and Company hereby covenant and agree to modify and amend the Employment Agreement as follows:

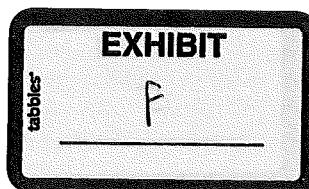
1. Definitions. All capitalized words used herein that are not otherwise defined shall have the meaning given to such words in the Employment Agreement.
2. Compensation. Section 3 of the Employment Agreement is hereby amended as follows:
 - a. Base Salary. Section 3(a) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

"The Company shall pay Executive a base salary at the annual rate of One Hundred Twelve Thousand Three Hundred Ninety-Four and 14/100 Dollars (\$112,394.14), which shall be payable in accordance with the standard payroll practices of the Company (the "*Base Salary*")."

Employee acknowledges and agrees that prior the date of this Modification Agreement Employee voluntarily reduced his Base Salary on two separate occasions, the first by 6.25% and the second by 8.75%, and Employee hereby irrevocably waives any and all rights and/or claims to Base Salary amounts for work performed prior to the date of this Modification Agreement. Additionally, to the extent the additional 5.0% reduction in Employee's Base Salary set forth herein affects amounts owed to Employee for work performed prior to the execution of this Modification Agreement for which Employee has not yet been paid, Employee waives any and all rights and/or claims to such amounts for all periods prior to the date of this Modification Agreement.

- b. Bonus. Section 3(b) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

"Executive shall be eligible to receive a bonus (the "*Bonus*") based upon the annual Profitability of the Company. For purposes of determining Executive's Bonus eligibility, "*Profitability*" shall mean the Company's earnings before interest, taxes, depreciation and amortization (EBITDA) after subtracting therefrom all actual expenses accrued during each calendar year, including, without



limitation, any and all interest and other expenses related to that certain Loan and Security Agreement dated December 31, 2009 (the "*Loan Agreement*") and other related loan documents by and between the Company and FCC, LLC, d/b/a FIRST CAPITAL (collectively, the "*First Capital Loan*").

As soon as reasonably practicable at the conclusion of each calendar year the Company's Chief Financial Officer shall determine the Company's Profitability for such calendar year. Once determined, that Profitability figure shall be used to determine the amount of Executive's Bonus by locating the Profitability figure in the "*Profit Thresholds*" set forth on the Bonus Accrual Table attached hereto as Exhibit "A" and the corresponding "*Potential Annual Bonus*". Subject to the operation of the next paragraph, Executive shall be entitled to the Potential Annual Bonus which corresponds with the Profitability of the Company for such calendar year as the same falls within the Profit Thresholds on Exhibit "A", and such amount shall be computed and payable within sixty (60) days after the end of the calendar year in which it is earned.

Notwithstanding the foregoing, Executive hereby acknowledges and agrees that (i) Executive is not eligible for the Bonus in any given calendar year until such time as the Company's cumulative Profitability for such year exceeds the minimum Profitability Threshold set forth on Exhibit "A", (ii) if the Company is in breach of any of the provisions of the First Capital Loan in any given calendar year, including without limitation, the financial covenants imposed upon the Company pursuant to Section 6 of the Loan Agreement, Executive shall not be eligible to receive the Bonus for such calendar year, (iii) if at any time after the first quarter of any calendar year the Company is not cumulatively Profitable for such calendar year, Executive shall not be eligible to receive the Bonus for such calendar year, and (iv) in the event of Executive's breach, non-observance or failure to comply with the terms and conditions of any financing agreement by which the Company is bound, including, without limitation, the First Capital Loan, Executive shall not be eligible to receive the Bonus for such calendar year. Executive further acknowledges and agrees that both Exhibit "A" and the Profitability Thresholds and Potential Annual Bonus amounts set forth thereon are only applicable to calendar year 2010 and are intended to be, and shall be, adjusted and amended at the beginning of each successive calendar year in the sole and absolute discretion of the Board.

3. Termination for Cause. Section 4(c)(ii) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

"For purposes of this Agreement, "Cause" shall mean (1) in connection with his employment by the Company, an act by Executive of fraud, dishonesty, misappropriation, gross negligence, or willful misconduct; (2) Executive's breach or non-observance of any agreement or covenant of this Agreement, but only if such breach or non-observance shall continue for a period of thirty (30) days after delivery to Executive of notice of such breach and if such breach is susceptible to cure; (3) conviction of, or plea of guilty to, any felony or first degree misdemeanor; (4) drug abuse; (5) Executive's failure to observe or perform his duties under this Agreement if such failure is not cured within thirty (30) days after notice from the Company thereof and if such failure is susceptible to cure; or (6) Executive's failure or refusal to fully and timely comply with a material lawful directive given to Executive by the Board or by a designee of the Board; (7) the Company's failure to observe, breach of, or non-observance of any provision of any financing agreement by which the Company is bound, including, without limitation, the First Capital Loan; and (8) the material non-performance or underperformance of Executive in the execution and carrying out of his duties and responsibilities under this Agreement as reasonably determined by the Board in its sole and absolute discretion, prima facie evidence of which shall include, but not be limited to the failure of the Company to achieve a net positive cash flow in any two (2) calendar quarters in a given calendar year and the failure of the Company to achieve a cumulative net positive cash flow in any given calendar year."

4. Compensation Payable Upon Termination. Section 5 of the Employment Agreement is hereby amended as follows:

a. Section 5(a) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

"If the Term of Employment expires by its own terms, the Company shall pay to Executive (i) any of the Base Salary accrued but not yet paid on the date Executive's employment terminates, such payment to be made within sixty (60) days after the date of such termination, (ii) the pro rata portion of the Bonus, if earned, accruing through the date of such termination, with the same being computed and payable within sixty (60) days after the end of the Company's fiscal year, and (iii) reimbursement of business expenses incurred by Executive but not yet paid."

b. Section 5(e) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

"If, prior to the end of the Term of Employment, Executive's employment is terminated by the Company without Cause (other than

due to death or Disability), Executive shall be entitled to any (i) Base Salary accrued and earned but not yet paid through the date of termination, (ii) the pro rata portion of the Bonus, if earned, accruing through the last day of the month in which the termination occurred (computed and payable within sixty (60) days after the end of the Company's fiscal year), (iii) reimbursement of business expenses incurred by Executive but not yet paid, and (iv) the continuation of Base Salary and benefits (to the extent allowed under the benefit plans of the Company), payable on a monthly basis, for a period of one (1) year from the date of termination. The receipt of any payment set forth in this Section 5(e) shall be contingent upon Executive's execution of an agreement acceptable to the Company that (i) waives any rights Executive may otherwise have against the Company and its affiliates, and (ii) releases the Company and its affiliates from any and all actions, suits, claims, proceedings and demands of Executive related to the Term of Employment and/or the termination of Executive's employment with the Company."

5. Non-Competition and Non-Solicitation. Section 6 of the Employment Agreement is hereby amended as follows:

a. Section 6(b)(i) is hereby deleted in its entirety and replaced with the following:

"Executive will not, directly or indirectly, for the benefit of Executive or any third party, during the Term of Employment and for a period of one (1) year thereafter (the "*Restriction Period*"), and, with respect to (b)(i)(E) below at any time during the Term of Employment and for all periods thereafter, do any of the following:"

b. Section 6(b)(i)(A) is hereby amended to delete the bolded language "[description of business]" and to replace it with "business of manufacturing and/or distributing of electrical products".

6. Award of Class B Units. Company hereby provides Employee a profit interest through the award of Class B Units under the terms and in the manner set forth in the Restricted Unit Award Agreement attached hereto as Exhibit "B".

7. Entire Agreement; Amendment. This Modification Agreement, including terms and conditions set forth in any and all exhibits attached hereto constitutes the entire agreement between the parties with respect to the subject matter hereof, and this Modification Agreement supersedes all prior agreements between Employee and Company concerning such matters. This Modification Agreement cannot be modified except in a written document signed by each of the parties hereto.

8. Voluntary Act. Employee and Company acknowledge and agree that they are knowingly and voluntarily signing this Modification Agreement with full knowledge of its consequences.

9. Governing Law. This Modification Agreement shall be governed and construed in accordance with the laws of the State of Delaware.

10. Ratification of Employment Agreement. Employee and Company hereby ratify, confirm and reconfirm the Employment Agreement and agree that the Employment Agreement is now and shall remain in full force and effect, subject to the terms of the Employment Agreement, as modified by this Modification Agreement.

11. Relationship to Employment Agreement. From and after the execution and delivery of this Modification Agreement, the Employment Agreement shall be read and construed as modified and amended by this Modification Agreement, and the Employment Agreement and this Modification Agreement shall constitute one integrated document.

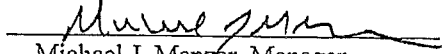
12. Counterparts. This Modification Agreement may be executed simultaneously in two (2) or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, Employee and Company have executed and delivered this Modification Agreement as of the date first set forth above.

COMPANY:

EMPLOYEE:

First Source Electrical, LLC, a Delaware
limited liability company

By: 
Michael J. Menzer, Manager

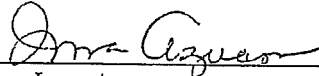

Irma Azuara

EXHIBIT "A"

Bonus Accrual Table

EXHIBIT "B"

Restricted Unit Award Agreement

EXHIBIT G

RESTRICTED UNIT AWARD AGREEMENT

This Restricted Unit Award Agreement (this "Agreement") is made as of the 21 day of April, 2010 by and between First Source Electrical, LLC, a Delaware limited liability company (the "Company"), and Irma Azuara, an individual ("Employee").

WHEREAS, the Company believes that the ownership of an interest in the Company will provide Employee a strong incentive to put forth maximum effort for the success and growth of the Company; and

WHEREAS, the Company desires to grant to Employee a "profits interest" in the Company within the meaning of Revenue Procedure 93-27, as modified by Revenue Procedure 2001-43, in consideration for services to be rendered to or for the benefit of the Company or one or more entities the majority of the ownership interests of which are owned by the Company (individually, a "Subsidiary", and collectively, the "Subsidiaries").

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto have agreed, and do hereby agree as follows:

1. Award of Class B Units. The Company hereby grants to Employee an award of 2.4 Class B Units (as defined in the Company's Amended and Restated Limited Liability Company Agreement dated as of October 1, 2008, as amended from time to time (the "LLC Agreement")) in the Company (the "Restricted Units"); provided, however, that such grant is conditioned upon Employee executing a counterpart signature page to the LLC Agreement agreeing to be bound by the terms and conditions thereof. It is the intent of the parties that the grant of the Restricted Units constitutes a "profits interest" in the Company. Accordingly, (a) Employee's initial Capital Account balance with respect to the Restricted Units granted to him pursuant to this Agreement shall be zero, (b) Employee shall not share in the fair market value of the Company's net equity as of the date hereof with respect to the Restricted Units granted to him pursuant to this Agreement, and (c) the parties agree to treat the grant of the Restricted Units as a "profits interest" within the meaning of Revenue Procedure 93-27, as modified by Revenue Procedure 2001-43 for tax reporting purposes.
2. Admission as Class B Member. Upon Employee's execution of this Agreement and a counterpart signature page to the LLC Agreement, Employee shall be admitted as a Class B Member in the Company and shall have all of the rights, benefits, restrictions, obligations and other rights of a Class B Member with respect to the Restricted Units awarded to him hereunder as provided in this Agreement and the LLC Agreement, and Employee irrevocably agrees to be bound by the terms and conditions of the LLC Agreement and this Agreement
3. Additional Restrictions on Restricted Units. In addition to the restrictions set forth in the LLC Agreement, the Restricted Units granted to Employee pursuant to this Agreement shall be subject to the following terms and conditions:
 - (a) Notwithstanding anything to the contrary in the LLC Agreement, and except for forfeitures as provided in this Agreement, neither Employee nor any other person shall

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voluntarily or involuntarily transfer, sell, encumber, pledge, hypothecate, assign or otherwise dispose of (any of such events, a "Transfer") any of the Restricted Units subject to this Agreement (or any interest therein) that have not previously vested in accordance with Section 3(b) of this Agreement. In the event Employee purports or attempts to Transfer any of his Restricted Units in contravention of the previous sentence, then (i) such purported Transfer shall be null and void, and (ii) all of such purportedly disposed Restricted Units (and any Capital Account balance allocable to such Restricted Units) shall be immediately forfeited to the Company without notice for no consideration.

(b) The Restricted Units subject to this Agreement that have not previously been forfeited to the Company as provided in this Agreement shall vest as follows:

- (i) On the first anniversary of the date of this Agreement, one-fourth (1/4) of the Restricted Units originally subject to this Agreement shall vest;
- (ii) On the second anniversary of the date of this Agreement, an additional one-fourth (1/4) of the Restricted Units originally subject to this Agreement shall vest;
- (iii) On the third anniversary of the date of this Agreement, an additional one fourth (1/4) of the Restricted Units originally subject to this Agreement shall vest; and
- (iv) On the fourth anniversary of the date of this Agreement, the remaining one-fourth (1/4) of the Restricted Units originally subject to this Agreement shall vest.

(c) Notwithstanding anything to the contrary contained herein, to the extent not previously forfeited, the Restricted Units subject to this Agreement shall become vested in full immediately prior to the closing of either (i) a sale, merger or other transaction (which, for avoidance of doubt, shall not include the sale or issuance of equity securities by the Company in an initial public offering of the Company) pursuant to which the Company's equity holders sell or exchange more than fifty percent (50%) of the then outstanding Units in the Company to a person or entity which is not directly or indirectly related to, or affiliated with, the seller(s) of such Units or (ii) a sale or exchange of substantially all of the assets of the Company to a person or entity which, immediately prior to such sale or exchange, is not directly or indirectly related to, or affiliated with, the Company or its equity holders (other than to a wholly-owned subsidiary of the Company or pursuant to a recapitalization or other capital restructuring or refinancing of the Company in which the holders of the Company's outstanding Units immediately prior to such transaction continue to own a majority of the outstanding Units in the Company immediately after such transaction) (each, a "Sale Event"), but only if the Employee is employed by the Company immediately prior to such Sale Event.

(d) If the Company makes a distribution to its Members pursuant to Section 5.1 of the LLC Agreement prior to a Sale Event, the Employee hereby authorizes the Company, in its sole discretion, to cause any amounts distributable to the Employee pursuant to said

Section 5.1 of the LLC Agreement with respect to any of the Restricted Units (the "Restricted Distributions") to be held by the Company or deposited by the Company into an escrow account administered by the Company or its designee for the benefit of the Employee (the "Escrow Fund"). Upon the subsequent vesting of any of the Restricted Units, the Company shall cause the portion of the Restricted Distributions, if any, then held in the Escrow Fund with respect to such subsequently vested Restricted Units to be released from the Escrow Fund and paid to the Employee. In the event that any of the Restricted Units are subsequently forfeited pursuant to the terms of this Agreement, any Restricted Distributions held in the Escrow Fund, if any, with respect to such forfeited Restricted Units shall be immediately forfeited to the Company without notice and for no consideration.

4. Restrictions on Transfers. The Restricted Units subject to this Agreement shall not be transferable other than as set forth in this Agreement or the LLC Agreement.

5. Forfeiture Upon Termination of Employment. Except as otherwise provided herein, in the event of the complete termination of the Employee's employment with the Company and its Subsidiaries for any reason whatsoever, then any Restricted Units that have not vested as of the date of such termination of employment (and any Capital Account balance allocable thereto) shall be immediately and automatically forfeited to the Company without notice and without consideration. So long as the Employee shall continue to be an employee of the Company or one or more of its Subsidiaries, the vesting of the Restricted Units shall not be affected by any change of duties or position. Nothing in this Agreement shall confer upon the Employee any right to continue in the employ of the Company or any of its Subsidiaries or interfere in any way with the right of the Company or any such Subsidiary to terminate his employment at any time.

6. Acknowledgments.

(a) Employee acknowledges and agrees that: (i) neither the Company nor any of the Company's affiliates, officers, managers, employees, agents or representatives (each, a "Related Person") has provided or is providing the undersigned with tax advice regarding the receipt and ownership of the Restricted Units subject to this Agreement (including whether to make an election under Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to the Restricted Units subject to this Agreement) or any other matter, and the Company has urged Employee to consult Employee's own tax advisor with respect to the income taxation consequences of receiving, holding and disposing of the Restricted Units subject to this Agreement (including whether to make an election under Section 83(b) of the Code with respect to the Restricted Units subject to this Agreement); and (ii) neither the Company nor any Related Person has advised Employee to rely on any determination by it or its representatives as to the current fair market value of the Restricted Units subject to this Agreement, or that the grant of such Restricted Units will constitute a "profits interest" within the meaning of Revenue Procedure 93-27, (as modified by Revenue Procedure 2001-43), and will have no liability to Employee if the actual fair market value of any Restricted Units granted to Employee exceeds the amount that the Company intends to use for tax reporting purposes.

(b) Employee further acknowledges and agrees that neither the Company nor any Related Person has made any representation or warranty, express or implied, as to the future performance of the Company or the present or future value of Employee's Restricted Units. Employee further acknowledges that: (i) all forecasts, projections or illustrations of amounts that might be realized as a result of the Employee's Restricted Units that the Company or a Related Person shared with Employee (collectively, "Illustrations"), if any, were purely hypothetical; and (ii) neither the Company nor any Related Person intended for the undersigned to rely upon such Illustrations in the process of deciding to receive the Restricted Units or making an investment decision.

(c) Employee further acknowledges and agrees that the Restricted Units awarded by this Agreement have not been registered under any securities laws and the transferability of such Restricted Units is restricted. Restricted Units may not be sold, assigned or transferred, nor will any assignee, vendee, transferee or endorsee thereof be recognized as having acquired such Restricted Units by the issuer for any purposes, unless (i) a registration statement under the Securities Act of 1933, as amended, with respect to such Restricted Units will then be in effect and such transfer has been qualified under all applicable state securities laws, or (ii) the availability of an exemption for such registration and qualification will be established to the reasonable satisfaction of counsel to the Company.

7. Deductions for Taxes. The Company shall have the right to deduct, from any amounts payable now or any time hereafter to Employee, the amount of any taxes which the Company is or will be required by law to withhold, as and when required by law, with respect to Employee's receipt, vesting and/or ownership of the Restricted Units.

8. Entire Agreement. The parties agree that this Agreement and the LLC Agreement contain the entire understanding of the parties and supersedes any prior understandings or agreements (including any employment agreement) between them respecting the grant of the Restricted Units subject to this Agreement.

9. Severability of Provisions. The invalidity or unenforceability of any provision of this Agreement as a result of a violation of any state or federal law, or of the rules or regulations of any governmental regulatory body, shall not affect the validity or enforceability of the remainder of this Agreement.

10. Waiver and Modification. The provisions of this Agreement may not be waived or modified unless such waiver or modification is in writing and signed by the parties hereof.

11. Incorporation of Defined Terms. Any capitalized terms not defined herein shall have the meanings ascribed to them in the LLC Agreement.

12. Counterparts. This Agreement may be signed in multiple counterparts, all of which together shall constitute an original agreement. The execution by one party of any counterpart shall be sufficient execution by that party, whether or not the same counterpart has been executed by any other party.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware.

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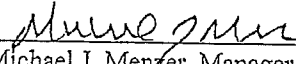
Signature Page to Follow

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed, and Employee has hereunto set his hand, all as of the day and year first above written.

COMPANY:

EMPLOYEE:

First Source Electrical, LLC, a Delaware
limited liability company

By: 
Michael J. Menzer, Manager

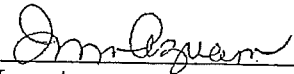

Irma Azuara

EXHIBIT H

IRMA AZUARA,

Plaintiff,

V.

FIRST SOURCE ELECTRICAL, LLC,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

61ST JUDICIAL DISTRICT

AFFIDAVIT OF DAVID KLESHINSKI

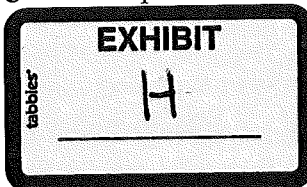
STATE OF OHIO

COUNTY OF FRANKLIN

§
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On this day, personally appeared before me, the undersigned authority, David Kleshinski, who upon his oath, deposes and states:

1. My name is David Kleshinski. I am over the age of 21, competent to make this affidavit, and have personal knowledge that everything stated herein is true and correct.
2. Since March 2010, I have been employed by White Oak Partners, Inc., a small private equity firm, located in Westerville, Ohio. I serve as a Group Controller for building products at White Oak Partners, Inc. In this role, I oversee three building products companies, including First Source Electrical. I maintain the completeness, accuracy, and timeliness of the financial statements of these companies.
3. Shortly after being hired by White Oak Partners, Jim Cramer, the Chief Financial Officer of White Oak Partners, and I traveled to Houston, Texas to become familiar with the personnel and financial documents at First Source Electrical. We met with the President of First Source Electrical, Mark Jenson, as well as the Controller, Irma Azuara. Upon inspection of the books at First Source Electrical, it was immediately apparent to me that First Source Electrical had been carrying, for almost a year, a massive inventory variance. By May 2010, the carrying value of the inventory remained overstated and had increased to approximately \$275,000.
4. When I asked about the variance, Jenson and Azuara claimed that the variance was caused by a malfunction in the Activant/Eclipse accounting software system. Because Mr. Cramer and I were new to the Company, we researched their explanation by consulting with representatives from the software company.



Activant explained that there was nothing wrong with the software; instead, there had been had been manual manipulation to the system.

5. Subsequently, it was determined that a write-down adjustment would have to be made. Thereafter, we notified First Source Electrical's lender, First Capital, of the write-down adjustment.
6. This write-down, coupled with other breaches of the loan agreement, caused First Capital to charge First Source Electrical a waiver fee in the amount of \$7,500 as well as a waiver documentation fee of \$500. Additionally, First Capital increased the interest margin from 100 bps to 50 bps. First Capital visited the shop often at First Source Electrical with audit fees ranging approximately \$6,000 per fiscal quarter. Moreover, First Capital highly scrutinized all requests of First Source Electrical.
7. In June 2010, Jenson, the President of First Source Electrical, was fired; however, Azuara remained employed as the Controller. With Jenson gone, Azuara was the only person that had any knowledge of the finances of First Source Electrical. In light of the write-down issue, I closely monitored the financial information Azuara sent to White Oak Partners.
8. I quickly learned that Azuara's financial reports were not reliable, forcing me to request all back up documentation and double check everything provided.
9. On many occasions, Azuara failed to accurately project weekly cash forecasts as well as the borrowing base certificates. This information is very important as it demonstrates to First Capital that First Source Electrical is in compliance with its loan and sets forth the weekly amount of cash First Source Electrical will be able to receive from the lender. Receiving this information both timely and accurately is important to White Oak Partners in the event additional funds will be needed to cover First Source Electrical expenses and payroll.
10. I made a couple of trips to Houston to review financial documentation with Phil deLoache, the new President of First Source Electrical, and Azuara. Additionally, I participated in weekly "cash call" teleconferences with First Source Electrical management (including Azuara) to review cash forecasts. I also exchanged several e-mails throughout the week with Azuara, pointing out errors in cash forecasting as well as numerous other questionable entries related to month-end closing.
11. Given Azuara's length of service as a Controller in the industry combined with her high salary, the errors she made and continued to make were unacceptable.
12. In the Spring of 2011, Azuara was fired. Since that time, I have worked with the new Controller for First Source Electrical, Kristi Blashke. Unlike Azuara, Ms. Blashke possesses the ability to work independently with minimal oversight. I have greater confidence in the accuracy and completeness in her financial reports related to First Source Electrical.

13. I have personal knowledge of the fact that the documents attached to Defendant's Motion for Summary Judgment as Exhibits I, J, M, and N are from records kept by White Oak Partners, Inc. in the regular course of business, and it was the regular course of business of White Oak Partners, Inc. for an employee or representative of White Oak Partners, Inc., with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are true and correct copies of the originals.

Further, Affiant sayeth not.

David Kleshinski
David Kleshinski

SUBSCRIBED AND SWORN TO before me on this the 17TH day of December, 2012, certify which witness my hand and seal of office.



Annette G. Hanna
Notary Public in and for
The State of OHIO COUNTY OF FRANKLIN
Printed name: Annette G. Hanna
My commission expires: 2/13/16

EXHIBIT I

From: Lee Elmore [<mailto:LElmore@firstcapital.com>]
Sent: Wednesday, September 01, 2010 4:55 PM
To: Jim Cramer
Cc: John Curtis
Subject: RE: Waiver and Amemdment

Jim

Good afternoon.

I apologize for the delay.

Below is what we have approved regarding the fees/interest:

- Decrease the Waiver Fee from \$10,000 to \$7,500
- The increase in the interest margin will be 50 bps instead of the 100 bps.

I have been in meetings yesterday and today.

Can we discuss further tomorrow?

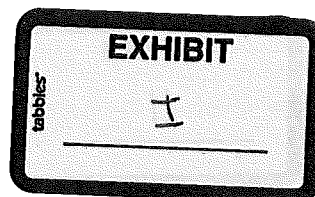
Please advise.

Lee Elmore
Senior Vice President
Direct Number - 405.917.1135
Cell Number - 405.255.4162
Fax Number - 405.917.9660

First Capital
3520 NW 58th Street
Oklahoma City, OK 73112
405.917.9600
www.firstcapital.com

From: Jim Cramer [<mailto:JCramer@WhiteOakPartners.com>]
Sent: Wednesday, September 01, 2010 3:42 PM
To: Lee Elmore
Subject: RE: Waiver and Amemdment

Lee,



Can you provide me with an update and timeline on the loan mod?

I appreciate it.

From: Lee Elmore [LElmore@firstcapital.com]
Sent: Wednesday, August 25, 2010 7:35 AM
To: Jim Cramer
Cc: John Curtis; Steven Loeffler
Subject: Waiver and Amemdment

Jim

Good morning.

Attached are the agreements associated with the terms of the Waiver and Amendment.

Give me a call upon your review of the agreements. If possible, I would like to get the agreements finalized and executed by month-end.

Regards,

Lee Elmore
Senior Vice President
Direct Number - 405.917.1135
Cell Number - 405.255.4162
Fax Number - 405.917.9660

First Capital
3520 NW 58th Street
Oklahoma City, OK 73112
405.917.9600
www.firstcapital.com

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EXHIBIT J

From: DeLoache, Phil [mailto:Phil.DeLoache@fs-electrical.com]
Sent: Tuesday, February 01, 2011 2:02 PM
To: Dave Kleshinski
Subject: RE: FSE Cash Forecast_01-28-11_6Weeks.xls

Dave,

Wow I just can't stand working with bad numbers... Ok, well while it's always possible to delay another vendor payment I believe doing so will likely result in impairment of the business which will negatively impact future operating results so there is a difficult decision to make. I will be sending you the updated 6 week forecast shortly and I corrected the error you found in it as well as making other changes.

Phil

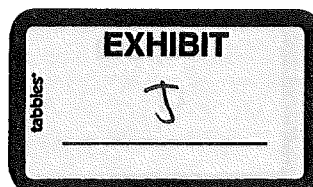
From: Dave Kleshinski [mailto:DKleshinski@WhiteOakPartners.com]
Sent: Tuesday, February 01, 2011 11:37 AM
To: DeLoache, Phil
Cc: Azuara, Irma
Subject: FSE Cash Forecast_01-28-11_6Weeks.xls

Phil,

There is a unfavorable error on the cash forecast. Irma's has the line called Available to Borrow. It's \$340,00 this week and consists of \$280,000 funding from BBC plus anticipated \$60,000 wire by Mike. Since the \$280,000 already represents the line at its max, you don't pick up any more cash in the RLOC Bal - Prior Week and RLOC Bal - This Week Area. I set the RLCO balances at the line max of \$2,250,000. Unfortunately, you have \$40,000 less to work with this week.

I am glad I thought of this before presenting to Jim which I will do now. Perhaps Mike will fund \$100,000. If you absolutely need wire to be \$100,000, please let me know.

Dave



From: Dave Kleshinski
Sent: Tuesday, February 08, 2011 12:38 PM
To: Azuara, Irma
Subject: RE: bbc for we 020711

Irma,

Please check the loan information section. FCC only wired \$274,000 last week (we requested \$280,000 but loan balance issues caused less to be wired.) You are showing a wire of \$435,000. Also, the beginning loan balance is significantly less from where we ended last week. Hopefully, correcting these still gives us the \$203,000 we are anticipating.

Dave

From: Azuara, Irma [<mailto:Irma.Azuara@fs-electrical.com>]
Sent: Tuesday, February 08, 2011 12:22 PM
To: Dave Kleshinski
Cc: DeLoache, Phil
Subject: bbc for we 020711

Thanks and Have a Great Day!

Irma Azuara

Source: [redacted]
Office: 713-300-7777
Direct: 713-300-7813
E-Fax: 713-300-7781
Cell: 713-817-3283

From: Dave Kleshinski
Sent: Wednesday, February 09, 2011 1:54 PM
To: Azuara, Irma
Subject: RE: Workers Comp Payments - Difference In Reported Payroll for Class Codes

Irma,

Here are the two payments for WC under this year's policy. Notice the large differences in reported payrolls for each of the class codes. For example, code 8107 only had \$31,583 for the 1st filing. It then jumps to \$176,886 for the 2nd filing. These numbers show tie to payroll paid for the date ranges. Can you explain the differences? I am trying to figure out which one is most correct. I want to make sure we have neither over or under paid through the November.

I would think there would still be a yearend audit at the end of the policy period. Any error we may have made would become evident at that time. Therefore, if we need to correct we should do so. If applicable, we would make a 2010 entry to properly state our expense.

When you have the time, let me know your thoughts on this.

INTERIM POSTING RECEIPT

Policy 0001212886
 Remit Prior To 09/15/2010
 Document ID 1 519 078 6

Bill Number 1

Effective Date 06/02/2010 -
 Audit Period From 06/02/2010 To

1 FIRST SOURCE ELECTRICAL LLC

Class Code	Sub Class	Class Description	Reported Payroll	Rate	Postev
8107	33	CONTRACTOR'S HEAVY EQUIPMENT REPAIR & DRIVERS	31,583	4.0	
8742	1	SALESPERSONS, COLLECTORS OR MESSENGERS- OUTSIDE	251,479	0.41	
8809	1	EXECUTIVE OFFICERS NOC-PERFORMING CLERICAL OR OUTSIDE SALESPERSONS DUTIES ONLY	146,817	0.35	
8810	1	CLERICAL OFFICE EMPLOYEES NOC	31,698	0.26	
Location Sub-totals				461.577	

**** Location Total

INTERIM POSTING RECEIPT

Policy Number 0001212886
Effective Date 06/02/2010 - 06/02/2011
Bill Period 2

Audit Period 09/01/201
Due Date 12/15/201
Document ID 1 651 701

1 FIRST SOURCE ELECTRICAL LLC

Class Code	Sub Class	Class Description	Reported Payroll	Rate	Po
8107	033	CONTRACTOR'S HEAVY EQUIPMENT REPAIR & DRIVERS	176,886		4
8742	001	SALESPERSONS, COLLECTORS OR MESSENGERS- OUTSIDE	100,422	0.41	
8809	001	EXECUTIVE OFFICERS NOC-PERFORMING CLERICAL OR OUTSIDE SALESPERSONS DUTIES ONLY	36,759	0.35	
8810	001	CLERICAL OFFICE EMPLOYEES NOC	201,110	0.26	
Location Sub-totals			515,177		
****	Location Total				

From: Azuara, Irma [<mailto:Irma.Azuara@fs-electrical.com>]
Sent: Wednesday, February 09, 2011 12:50 PM
To: Dave Kleshinski
Subject:

Mail Premium payments to:
Texas Mutual Insurance Company
Attn: Policy Accounting
P.O. Box 841843
Dallas, Texas 75284-1843

Texas

INTERIM POSTING RECEIPT

Policy 0001212886
Remit Prior To 09/15/2010
Document ID 1 651 078 6

Bill Number 1

1 FIRST SOURCE ELECTRICAL LLC

Class Code	Sub Class	Class Description
8107	33	CONTRACTOR'S HEAVY EQUIPMENT REPAIR & DRIV
8742	1	SALESPERSONS, COLLECTORS OR MESSENGERS- OUTSIDE
8809	1	EKECUTIVE OFFICERS NOC-PERFORMING CLERICA OUTSIDE SALESPERSONS DUTIES ONLY
8810	1	CLERICAL OFFICE EMPLOYEES NOC
****	Location Total	

INVOICE

Class Code	State Level Premium Adjustment Description
****	Sub-total Earned Premium
0930	WAIVER OF SUBROGATION
9812	INCREASED LIMITS 1000/1000/1000
9898	EXPERIENCE MOD
9887	SCHEDULE RATE MODIFIER
9874	HEALTH CARE NETWORK DISCOUNT
0063	PREMIUM DISCOUNT

Or

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<https://compnow.texasmutual.com/InterimAuditWeb/inte>

Thanks and Have a Great Day!

Irma Azuara

AD&T Source

Office: 713-300-7777

Direct: 713-300-7813

E-Fax: 713-300-7781

Cell: 713-817-3283

-----Original Message-----

From: Dave Kleshinski

Sent: Wednesday, February 09, 2011 5:33 PM

To: Azuara, Irma

Subject: RE: Year End Prepaid - Activant (Sales Tax Subscription) - Final Recommendation

Irma,

I would like to go with my calculation on this one as it then ties directly to the documentation.

Original invoice of \$10,825 minus credit of \$2,706.25 equals net annual cost of \$8,118.75. \$8,118.75 divided by 12 equals \$676.56. Subscription runs through April so yearend prepaid is \$676.56 times four or \$2,706.24.

We currently show \$1,127.44 in Prepaid for Eclipse. Debit prepaid \$1,578.80 and credit computer expense. You do not have to provide any revised statements, trial balance or balance sheet at this time. We have to work through the other possible additional entries for 2010. The next group of reports will then be our final ones!

Be sure to update the Eclipse column on the Prepaid tab in the Month End file to the \$2,706.24.

Thanks!

Dave

-----Original Message-----

From: Azuara, Irma [<mailto:Irma.Azuara@fs-electrical.com>]

Sent: Wednesday, February 09, 2011 3:02 PM

To: Dave Kleshinski

Subject: RE: Year End Prepaid - Activant (Sales Tax Subscription)

WE rec'v a software bill from Activant at the beginning of each quarter. WE just rec'd one in the month of January. As far as the amortization of the sales tax fee, Activant had charged us for too many states and gave us a credit for the difference. The amortization should be only 11 months since I expensed one month in May so the prepaid amortization would begin in June. I took the 9922.92 which is 10825 minus the 902.08 that I expensed in May and subtracted the 2706.25 which left a balance to amortize of 7216.66. Does this make sense?

Thanks and Have a Great Day!

Irma Azuara
FIRST Source ELECTRICAL, LLC
Office: 713-300-7777
Direct: 713-300-7813
E-Fax: 713-300-7781
Cell: 713-817-3283

-----Original Message-----

From: Dave Kleshinski [mailto:DKleshinski@WhiteOakPartners.com]
Sent: Wednesday, February 09, 2011 1:53 PM
To: Azuara, Irma
Subject: Year End Prepaid - Activant (Sales Tax Subscription)

My thoughts on this. We must get a monthly, quarterly or annual invoice from Activant for using their software. Since you are only referencing the sales tax when discussing the year end prepaid balance, we must have fully expensed the "software fee" as of 12/31/10. Is this correct? If so, for my documentation, how often do we pay the Activant software fee?

In regards to sales tax, it looks like we signed up for an annual subscription to a sales tax database. The amortization period looks to be May through April as four months are what is left in Prepaid at year end. I see your proposed Prepaid ending balance is \$2,624.24.

I calc it as follows:
Original invoice of \$10,825 minus credit of \$2,706.25 equals net annual cost of \$8,118.75. \$8,118.75 divided by 12 equals \$676.56. Assuming subscription runs through April, yearend prepaid is \$676.56 times four or \$2,706.24. Which \$ should it be at year end?

Also, I am curious. Did Activant just lower the cost of the sales tax service so as to refund 1/4 of the original price in July?

What are your thoughts?

Dave

-----Original Message-----

From: Azuara, Irma [mailto:Irma.Azuara@fs-electrical.com]
Sent: Wednesday, February 09, 2011 2:20 PM
To: Dave Kleshinski
Subject: FW:

Dave,
Attached is the eclipse invoice that makes up the 1231 balance.
We need to make a je for 1496.80..the balance currently showing is 1127.44 and should be 2624.24 so credit to computer expense.

7216.66
-656.06 June
-656.06 July
-656.06 Aug

-656.06 Sept
-656.06 Oct
-656.06 Nov
-656.06 Dec
2624.24

Thanks and Have a Great Day!

Irma Azuara
FIRST Source ELECTRICAL, LLC
Office: 713-300-7777
Direct: 713-300-7813
E-Fax: 713-300-7781
Cell: 713-817-3283

-----Original Message-----

From: ricoh@fs-electrical.com [mailto:ricoh@fs-electrical.com]
Sent: Wednesday, February 09, 2011 12:08 PM
To: Azuara, Irma
Subject:

This E-mail was sent from "RNPD559F3" (Aficio MP 3350).

Scan Date: 02.09.2011 13:07:49 (-0500)
Queries to: ricoh@fs-electrical.com

From: Dave Kleshinski
Sent: Thursday, February 10, 2011 4:13 PM
To: Azuara, Irma
Subject: FW: First Source - December Balance Sheet Review - Item 6 - Prepaid Insurance

In regards to prepaids, we are currently showing Chubb at \$12,026.91. Our monthly amortization of Property, Casualty and Liability insurance is correct at \$3,261.33 per month. Our policy year ends in February so we should have two months of prepaid at 12/31/10. This equals \$6,522.66.

You need to credit Prepaid by \$5,504.25 and debit workers comp insurance by the same amount. The equals our WC coverage for the period from 2/21/10 through 5/31/10 from Chubb. The actual Chubb invoice is for \$5,451. Although our entry does not exactly agree the difference is minimal and most likely related to small service charges on our account.

This entry will correct the prepaid insurance to Chubb to the correct amount as of yearend. As always, be sure to update the Prepaid tab on the Monthly Recon file.

Only the final review of WC remains. I will have that to you shortly.

If you have any questions, please let me know.

Dave

From: Dave Kleshinski
Sent: Wednesday, February 09, 2011 3:48 PM
To: 'Azuara, Irma'; 'DeLoache, Phil'
Cc: Patti Riordan; Jim Cramer
Subject: First Source - December Balance Sheet Review - Possible Additional Entries

As a standard monthly closing process, Irma and I have been reviewing all balance sheet accounts this throughout last year. With yearend, we make additional efforts to assure all balance sheet items are correct. I have completed my first pass of the December balance sheet and there are a few items that need addressed. In order of importance, they are as follows:

1. Vendor Rebate Receivable – Yearend balance of \$506,00. Condumex rebate check of \$23,644 subsequently received in Jan 2011. It would be ideal if we could support the remaining \$482,000. First, Irma might have received other rebates in 2011 as many come in as credits rather than

- checks. Irma, if you have additional rebates received so far this year, let me know the amounts. Second, IMark had sent a report around October showing approximate \$ due us. Has anyone seen a report as of year end from IMark? Ideally the combination of subsequent receipts and documentation of IMark's pending rebate will be sufficient to support the receivable.
2. Tennessee Sales Tax – AR Other and Accrued Liabilities show \$8,590.94. TN does not recognize out of state certificates so Siemens has to charge us sales tax. In theory, the debit should go on to the various customer's AR who bought the related products. However, this may not be practical given the time that has elapsed since these transactions. Please decide if these \$ are going to the customer's AR or not. If not, we should expense this amount. This may be still outstanding with Siemens as we have the payable in Accrued Liabilities as yearend,
 3. Proforma – AR Other has \$3,555.35 from this vendor and has been in the account since October. I believe this to be promotional merchandise that was going to be reimbursed in some way by a vendor(s). Is this reimbursement ever going to happen? Please determine if this is a true receivable or let's expense it in 2010.
 4. Prepaid Construction Software – We are amortizing an August purchase over 12 months. Year end prepaid is \$1,161.85 (7 months @ \$165.99). We could write the remaining balance off in December. Not a significant amount but it would keep the expense out of 2011.
 5. Workers Comp – Our policy has us actually reporting payroll every three months and paying related premium. I will determine if the deposit paid at policy inception is just that. It might be applied to first or last payment. Irma and I also found reporting discrepancies between our two filings this policy year. This results in additional liability of approximately \$1,100 which needs to be accrued. Finally, our last payment was for the Sep to Nov three month period. We should accrue for December based on previous payments. Irma and I will resolve this and adjust prepaid as needed.
 6. Prepaid Insurance- I believe our amortization of property, casualty and liability insurance to be accurate. However, I will reconfirm policy periods and year end prepaid amounts.
 7. EZ Tag- This prepaid has carried a minimal negative balance most months of 2010. I will defer to Irma as to any required entry. Since its yearend, if this item should no longer be tracked through prepaid, now is the best time to clear it out. 12/31/10 negative balance is \$196.91.

Irma I will confirm any entries resulting from the above before you actually enter them in Eclipse.

I am looking forward to finalizing the above open items for 2010! Onward! Finally!

Dave Kleshinski
Accounting Manager
White Oak Partners, Inc.
5150 E. Dublin Granville Road, Suite One
Westerville, Ohio 43081
Phone: 614-855-6793
Fax: 614-855-6795

From: Dave Kleshinski
Sent: Friday, February 18, 2011 2:08 PM
To: Azuara, Irma
Subject: FSE Trial Balance 123110

Irma,

Can you produce a 12/31/10 trial balance with the accounts in a more logical order. First assets, then liabilities, equity, sales, expenses, etc.? It would flow like the balance sheet presentation and then the income statement presentation.

Also, are the numbers in the left column our account numbers?

Deloitte is going to upload our year end trial balance into their tax software for more efficient tax prep work.

Thanks and have a great weekend. We're almost to 60 up here! Snow is gone. Really windy!

Dave Kleshinski
Accounting Manager
White Oak Partners, Inc.
5150 E. Dublin Granville Road, Suite One
Westerville, Ohio 43081
Phone: 614-855-6793
Fax: 614-855-6795

"First Source Electrical, LLC"
 Trial Balance First Source E "lectrical, LLC"
 As of 12/31/10 Branche s: ALL

	Description	Debit	Credit	
4	Operating Account	"13,582"	0	
5	Cash Box	"54,317"	0	
11	Accounts Receivable - Trade		"4,154,729"	0
15	Inventory	"1,862,815"	0	
33	Accounts Payable - Unbilled	0	"33,498"	
34	Accounts Payable - Trade	0	"2,740,475"	
40	Sales Tax Payable -	0	"96,591"	
47	Retained Earnings - Computed		"4,488,996"	0
58	Sales - Counter	0	"3,993,633"	
59	Sales - Inside	0	"11,038,770"	
66	Purchases	"16,500,757"	0	
67	Clear Purchases To Inventory	0	"16,500,757"	
70	Inventory Adjustments	"20,793"	0	
82	Cost of Goods Sold - Counter		"3,350,117"	0
84	Cost of Goods Sold - Inside		"9,560,107"	0
86	Clear Comm-Cost Difference to P&L		0	"169,070"
87	Comm-Cost/COGS Difference		"169,070"	0
91	Over / Short Cash Receipts		0	71
93	Sales - Direct	0	"3,180,237"	
94	Cost of Goods Sold - Direct		"2,783,527"	0
101	COGS - Handling In and Out		0	"8,640"
121	Bank Fees	"18,613"	0	
129	Deposits	"39,130"	0	
130	Annual Vendor Rebate Programs		"506,340"	0
132	Machinery & Equipment	"633,353"	0	
133	Furniture & Fixtures	"53,102"	0	
134	Leasehold Improvements	"84,634"	0	
135	Accumulated Depreciation		0	"317,059"
136	Accrued Liabilities	0	"147,871"	
138	Sales Returns & Allowances		"30,421"	0
139	Rebates Earned	0	"387,045"	
140	Salaries Outside		"312,397"	0
141	Commissions-Outside		"151,772"	0
142	Payroll Tax-Outside		"38,296"	0
143	Benefits-Outside		"25,738"	0
145	Salaries-Inside	"263,576"	0	
146	Overtime-Inside	"29,442"	0	
147	Commissions-Inside	"60,018"	0	
148	Payroll Tax-Inside	"26,427"	0	
149	Benefits-Inside	"38,296"	0	
151	Advertising	"1,670"	0	

153	Auto Allowance	"39,596"	0	
154	Entertainment Expense	"16,788"	0	
155	Meals Expense	908	0	
156	Promotional Expense	"7,912"	0	
157	Travel-Lodging	"1,382"	0	
158	Tolls Expense	"2,611"	0	
159	Salaries-Drivers	"92,840"	0	
160	Overtime-Drivers	"28,651"	0	
161	Payroll Tax-Drivers	"9,688"	0	
162	Benefits-Drivers	"7,810"	0	
164	Auto-Truck Gas	"21,931"	0	
166	Auto-Truck Repairs	"1,276"	0	
167	Auto-Truck License Fees	949	0	
168	Freight-Delivery Expense	"45,907"	0	
169	Freight Charged-Warehouse	0		"16,737"
170	Salaries-Warehouse	"310,089"	0	
171	Overtime-Warehouse	"35,451"	0	
172	Payroll Tax-Warehouse	"26,874"	0	
173	Benefits-Warehouse	"19,484"	0	
175	Warehouse Equipt-Lease-Repairs	905	0	
176	Warehouse Supplies Expense	"29,122"	0	
178	Insurance-Gl-Other	"43,978"	0	
179	Janitor-Yard Expense	"10,800"	0	
180	Rent-Lease Expense	"403,384"	0	
181	Repairs-Maintenance Expense	"28,108"	0	
182	Security Expense	702	0	
183	Property Taxes-Other	"53,864"	0	
184	Telephone Expense	"57,020"	0	
185	Utilities Expense	"38,751"	0	
190	Computer Expense	"55,228"	0	
191	Salaries-Admin	"511,969"	0	
194	Payroll Tax-Admin	"36,935"	0	
195	Benefits-Admin	"53,200"	0	
197	Contract Labor	"15,620"	0	
198	Medical Fees	484	0	
199	W/C Insurance	"11,772"	0	
200	Accounting Fees	"19,836"	0	
201	Credit Card Fees	"82,754"	0	
202	Bad Debt Expense	"275,491"	0	
203	Depreciation Expense	"121,181"	0	
204	Donations	375	0	
205	Dues & Subscriptions	"17,096"	0	
207	Equipment Lease	"8,547"	0	
208	Postage	"11,000"	0	
209	Legal Expense	"124,068"	0	
210	License Fees Expense	"2,275"	0	

211	Office Supplies Expense	"13,674"	0	
212	Interest Expense	"115,210"	0	
213	Interest Income	0	678	
214	Other Income-Expense	0	"10,954"	
216	Sales Discounts	"108,086"	0	
217	Freight Expense-Warehouse		"12,771"	0
218	Discounts Earned-AP	0	"139,823"	
220	Notes Payable	0	"598,685"	
221	Money Market Account	"151,182"	0	
222	PPV Account	0	"9,268"	
223	Accounts Receivable-Other		"1,282"	0
225	Petty Cash	"1,150"	0	
226	MAC Adjustment	"1,068"	0	
227	Printing Expense	"4,778"	0	
230	Auto Truck Lease	"77,505"	0	
232	Flexible Spending Account	0	658	
235	Allowance for Bad Debts	0	"375,000"	
236	Inventory Reserve	0	"10,000"	
237	Inventory Reserve Expense	0	306	
239	Professional Fees	"195,824"	0	
240	Maryland Sales Tax Payable	0	190	
242	Prepaid Expenses	"21,488"	0	
243	Sales - Ecomm	0	"351,109"	
244	Cost of Goods Sold - Ecomm		"312,730"	0
245	PCP Program	"13,431"	0	
251	Owners Equity	0	"7,275,315"	
266	Salaries-Marketing	"88,403"	0	
269	Payroll Tax-Marketing	"7,227"	0	
270	Benefits-Marketing	"13,118"	0	
272	Auto Allowance-Whse	"7,800"	0	
273	Fuel Expense-Operations	"3,662"	0	
274	Meals Expense-Whse	540	0	
276	Tolls Expense-Whse	911	0	
277	Auto Allowance-Admin	"27,650"	0	
278	Entertainment Exp-Admin	"4,054"	0	
279	Fuel Expense-Admin	"10,704"	0	
280	Meals Expense-Admin	"1,305"	0	
281	Travel Expense-Admin	"7,688"	0	
282	Tolls Expense-Admin	"2,234"	0	
285	Tolls Expense-Delivery	"4,936"	0	
286	Fuel Expense-Delivery	"75,502"	0	
291	Management Fees	"134,088"	0	
292	Marketing Expense	404	0	
304	RL0C Payable	0	"2,072,886"	
309	Loan Costs	"36,000"	0	
319	Amortization of Loan Fees		"29,500"	0

325	Sales Incentive Bonus-Inside	"35,747"	0
332	Notes Payable Accrued Interest	0	"9,736"
337	Contract Labor Admin	"6,763"	0
	Total for Trial Balance:	"49,485,062"	"49,485,062"

First Soc Electrical
 Cash Forecast as of February 18, 2011
 Rolling Four Weeks

	Week Ended Friday:				Four Week
	2/18/11 Week 1	2/25/11 Week 2	3/4/11 Week 3	3/11/11 Week 4	RECAP
Collections					
A/R	\$ 591,377	\$ 352,000	\$ 450,000	\$ 275,000	\$ 1,668,377
Other					
Total Receipts	591,377	352,000	450,000	275,000	1,668,377
Available to Borrow	473,000				1,550,000
FC Fees	-	15,000			15,000
Net Available To Borrow	473,000	(15,000)	-	-	1,535,000
Requirements					
Payroll	68,000		103,000		171,000
Fixed Payables	29,139	51,093	3,844	131,803	215,880
Strategic Suppliers	322,038	341,190	251,668	50,069	964,965
Critical Vendors	25,827	25,736	40,108	57,182	148,854
Subtotal	445,004	418,020	398,620	239,055	1,500,699
Other AP	27,152	38,944	43,861	154,051	264,008
Total Requirements	472,156	456,964	442,482	393,105	1,764,707
Cash Flow Surplus (Deficit)	844	(119,964)	7,518	(118,105)	(229,707)
RLOC Bal-Prior Week	(2,250,000)	(2,249,156)	(2,250,000)	(2,242,482)	(2,250,000)
RLOC Bal-This Week	\$ (2,249,156)	\$ (2,250,000)	\$ (2,242,482)	\$ (2,250,000)	\$ (2,250,000)
RLOC Availability (Shortfall)	\$ 844	\$ (119,120)	\$ 7,518	\$ (110,587)	\$ (109,743)

From: Dave Kleshinski
Sent: Monday, February 21, 2011 11:53 AM
To: Azuara, Irma
Subject: FW: Copy of FSE Cash Forecast_02-18-11_Rev2.xlsx

Cell I38, RLOC Availability (Shortfall) should be (\$229,707). It would be cell E38 + G38. This formula changes each week based on the availability or shortfall.

Dave

From: DeLoache, Phil [<mailto:Phil.DeLoache@fs-electrical.com>]
Sent: Monday, February 21, 2011 11:45 AM
To: Azuara, Irma
Cc: Dave Kleshinski
Subject: Copy of FSE Cash Forecast_02-18-11_Rev2.xlsx

Irma,

This is the final revision to the cash forecast for this week that includes Sarah's corrected collection forecast (reduced by \$118K) and a couple of payment revisions from my meeting with Jimmy and Michael. We'll need to get availability to more of our cash next week or have Sarah beat her collections forecast.

From: Dave Kleshinski
Sent: Thursday, March 24, 2011 12:04 PM
To: Azuara, Irma
Subject: Chubb Amortization Should Begin In March

Irma,

With the policy period running from Feb 21, 2011 to Feb 21, 2012, the first month of amortization should be March. Since the date is past mid month, we are treating insurance as if on a 3/1/11 to 2/28/12 policy period. Could you correct this for February? The prepaid tab will then show the payment in full added to the Chubb column for February.

Could you then send updated actual vs. budget, monthly income statement and balance sheet for February?

PREMIUM/CHARGES

CUSTOMARQ PACKAGE POLICY - 35889664
PAYMENT PLAN: 1PAY

POLICY RENEWED - TERM DATES: FEB 21 2011 - FEB 21 2012

\$2:

WORKERS COMPENSATION POLICY - 71738537
PAYMENT PLAN: QUARTERLY

PAYMENT PLAN: QUARTERL - TERM DATES: FEB 21 2010 - FEB 21 2011

\$(1:

COMMERCIAL AUTO POLICY - 73560909
PAYMENT PLAN: 1PAY

POLICY RENEWED - TERM DATES: FEB 21 2011 - FEB 21 2012
STATE SURCHARGE

\$:

UMBRELLA POLICY - 79854162
PAYMENT PLAN: 1PAY

POLICY RENEWED - TERM DATES: FEB 21 2011 - FEB 21 2012

\$1

SERVICE CHARGE

TOTAL PREMIUM/CHARGES

\$2.

Dave Kleshinski
Accounting Manager
White Oak Partners, Inc.
5150 E. Dublin Granville Road, Suite One
Westerville, Ohio 43081
Phone: 614-855-6793
Fax: 614-855-6795

EXHIBIT K

DeLoache, Phil

From: Prudence Thompson [pt@egretconsulting.com]
Sent: Friday, August 13, 2010 10:09 AM
To: DeLoache, Phil
Cc: jcramer@whiteoakpartners.biz
Subject: RE: New Confidential Search

Thanks Phil...we're going to lose our phones/server/email in about 2 minutes so I'll call Jim on Monday to introduce myself and spec out the search. Eclipse shouldn't be an issue, it's widely used, not sure of the local Houston market but there's only one way to find out!

Prudence

Friday, August 13 we will be updating and expanding our servers. We may experience interruptions in email service and possibly phone service. Bear with us as we continue to expand and improve our service.

From: DeLoache, Phil [mailto:Phil.DeLoache@fs-electrical.com]
Sent: Friday, August 13, 2010 9:46 AM
To: Prudence Thompson
Cc: Jim Cramer (jcramer@whiteoakpartners.biz)
Subject: New Confidential Search

Prudence,

As we discussed First SOURCE and White Oak Partners would like to begin a confidential search for a finance person who generally would have the duties of a company controller (title to be determined). The specifics of the position and your contact on this search will be Jim Cramer who is the CFO at White Oak Partners and I have copied him on this email.

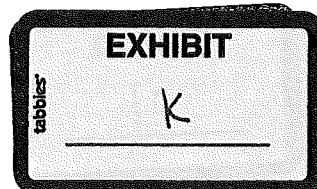
Although most of the duties and needed skill sets will be provided by Jim, we will have a strong preference for someone out of distribution who is already familiar with the Eclipse business system we run here at First SOURCE. As Activant Eclipse is a system widely used in all types of wholesale distribution I don't believe this requirement should significantly narrow the candidate pool.

So that you two can begin discussion I have provided Jim's contact information below. We'll of course use the recruitment agreement we already have in place between First SOURCE and Egret Consulting.

Thanks!

Phil

James P. Cramer
Chief Financial Officer
White Oak Partners, Inc.
5150 E. Dublin Granville Rd. Ste One
Westerville, OH 43081
614.855-1155
jcramer@whiteoakpartners.com



DeLoache, Phil

From: Prudence Thompson [pt@egretconsulting.com]
Sent: Monday, August 16, 2010 4:20 PM
To: jrcramer@whiteoakpartners.com; DeLoache, Phil
Subject: finance role
Attachments: First Source EGRET CONSULTING AGREEMENT.pdf; 1728R1-10028 First Source 8-16-2010 consulting.doc

Jim,

Thank you for your time this morning. As requested, I've included a copy of my contract with First Source and the invoice for the engagement fee. I assume this will be paid by First Source, so included Phil in this email. Based on the declining fee scale, this search would be a fee of 28%. As always the engagement fee will be applied to the final payment. I've submitted the invoice under consulting services due to the confidentiality of the search and the fact that I don't know if Irma would see it. Once received I'll craft your marketing plan and begin the recon on the search. I am confident you will have the quality and caliber of candidate you need within the timeframe you've outlined. I'm available for any questions at my direct number 847-307-7126 or cell anytime at 847-373-0386 Thanks again and I look forward to continuing to help First Source in their growth!

Prudence Thompson
The FIRST choice in recruiting for the electrical distributor

Recruiter, Egret Consulting Group
847-307-7126 pt@egretconsulting.com
<http://www.linkedin.com/in/electricaldistributorrecruiter>



25687 Hillview Court
Mundelein, IL 60060
(847) 970-5949
Fax: (847) 970-5958
www.egretconsulting.com

INVOICE

Bill to:

First Source Electrical
7930 Blankenship Drive
Houston, TX 77055
Attn: Phil DeLoache

Please refer questions to servicing office:

25687 Hillview Court
Mundelein, IL 60060
Phone: 847-970-5949
Fax: 847-970-5958

Authorized By	Customer Ref. #
Phil DeLoache	JO 1728

Today's Date	Invoice #
8/13/2010	1728R1-10028

Service	Position	Site
Retainer	Consulting Fee	Houston

Candidate	Start Date	Amount
	8/16/2010	\$3,500.00

TOTAL DUE \$3,500.00

Terms: Due Upon Receipt

Remit to:

Egret Consulting Group
25687 Hillview Court
Mundelein, IL 60060

Thank you for the privilege of serving you.
We look forward to working with you again.

Please reference invoice number on payment.
Our Federal ID Number is 36-4323115

Item # ~~011~~ 12

DeLoache, Phil

From: DeLoache, Phil
Sent: Wednesday, January 05, 2011 3:22 PM
To: Patti Riordan
Cc: 'Jim Cramer'
Subject: Recruiter

Patti,

Just finished meeting with Haydn of the Mergis Group and I believe he will be able to help us. He said because White Oak was a client they would work with us for a 25% of annual compensation fee on this search. He indicated he had identified a couple of candidates with experience working with our business system already and that he would have candidates for me to interview the week of January 17th.

The only question where I would like some guidance is he inquired what beyond a college degree in accounting / finance and relevant experience we required? If you or Jim have any specific requirements you would like to see on education, certifications or experience let me know so I can advise Haden.

Thanks for the referral...

Phil

DeLoache, Phil

From: DeLoache, Phil
Sent: Thursday, January 13, 2011 8:04 AM
To: 'Jim Cramer'; Patti Riordan
Subject: FW: Candidates
Attachments: Joseph Vrecenar resume 1.doc; George Fletcher resume 1.doc

Jim & Patti:

I received a number of resumes yesterday from the search firm Patti connected me with here in Houston and attached are the top two they recommend. I would like for us to do this hire in partnership since I have little expertise in this area and this position is a primary interface and will have lots of contact with White Oak Partners. Perhaps we can review the resumes of all the candidates and have a short call tomorrow to discuss which ones to interview? I'm thinking an initial phone interview with you guys and then I'll do personal interviews with the top 2 to 3 candidates...

I will be forwarding additional emails and resumes in the next few hours.

Thanks!

Phil

From: Ditto, Haydn [<mailto:HaydnDitto@mergisgroup.com>]
Sent: Wednesday, January 12, 2011 5:16 PM
To: DeLoache, Phil
Subject: Candidates

Phil,

How are you sir? Here are the first of the candidates I would like you to look at. I have a few that I'm sending. Joseph V. has strong background with the (Activant) software that (FS) operates on. He has been with Bison for a while and they were just bought out so he was laid off in the end of 2010 and he worked on Activant the entire time. He has great references. Everyone loved him at the company. George is also a great candidate. He's sharp, has excellent accounting skills and I also like his personality. Very direct, yet easy to get along with. Let me know what you think. There are more emails on the way.

HD

Joseph Vrecenar

15+ years' experience as a Controller/Accounting Manager
15+ years' Activant Software experience
Activant Implementation management experience
Excellent tenure – not a job hopper
Hands on Manager
Process Improvement specialist
Small company experience
Distribution experience
Seeking 78-80k

George Fletcher

15+ years' experience as an accounting manager/controller
Extensive software experience – Excel specialist

Small company experience
Great personality – very direct – strong management experience
Very hands on
Extensive work with Payroll and Tax
Strong work with all aspects of the financials
Seeking 75-77k

Haydn Ditto
Recruitment Manager

The Mergis Group

Your Bridge for the Best Hire

10111 Richmond Ave.

Suite 100

Houston, Texas 77042

CELL (832) 264-2008

TEL (713) 273-7437

FAX (713) 975-7922

haydnditto@mergisgroup.com

EXHIBIT L



7930 Blankenship ~ Houston TX 77055

_____ (date)

VIA HAND DELIVERY

Ms. Irma Azuara
First Source Electrical
7930 Blankenship
Houston, Texas 77055

Re: Notice of Termination for Cause of that Certain Employment Agreement Dated February 7, 2008, as Amended by that Certain Modification of Employment Agreement Dated January 1, 2010 (collectively, the "Employment Agreement") by and Between Irma Azuara and First Source Electrical, LLC (the "Company")

Dear Ms. Azuara:

Effective immediately, your employment with the Company is hereby terminated for cause pursuant to the terms and conditions of the Employment Agreement. Your material non-performance and underperformance of your duties and responsibilities constitute grounds for termination "for Cause" pursuant to Sections 4(c)(ii)(7) and (8) of the Employment Agreement.

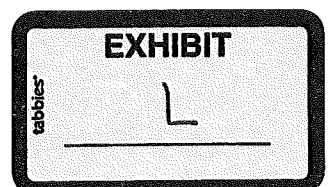
As you are being terminated for Cause, you are entitled to accrued and unpaid Base Salary through the date of this letter; provided, however, that the Company may offset any such amount to the extent of any losses resulting, directly or indirectly, to the Company from your conduct outlined above.

You are hereby advised that you shall continue to be bound by the confidentiality, non-competition, non-disparagement and invention assignment provisions set forth in Section 6 of the Employment Agreement for the applicable time periods set forth therein. Please recall that pursuant to such provisions, you shall not at any time hereafter, under any circumstances, use, distribute, reproduce, disseminate or otherwise disclose Confidential Information (as such term is defined in Section 6(a)(1) of the Employment Agreement) in any manner contrary to the best interest of, detrimental to, or in competition with the Company.

This letter shall also serve as the Company's request pursuant to Section 6(a)(iv) of the Employment Agreement that you promptly return all tangible forms of Confidential Information in your possession or control, including any copies thereof, including, without limitation, all documents, memoranda, notes, analyses, compilations, studies and other writings whatsoever prepared by your or on your behalf based upon, in any manner, Confidential Information.

You are hereby further advised that, for a period of one (1) year from the date of this letter, you shall not engage in any of the competitive actions enumerated in Section 6(b)(i) of the

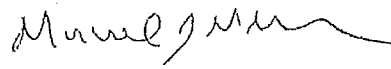
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Employment Agreement, including, without limitation, engage in any business which is competitive with the Company, or engage in any business which is engaged, directly or indirectly, in the business of manufacturing and/or distributing of electrical products, in both instances within or about the area of Houston, Texas. Further, you shall not at any time hereafter make any statement, whether oral, in print, through electronic communication or otherwise, relating or referring to the Company or its officers, managers or members, or any products or services offered by the Company, that could be reasonably expected to disparage or impair the goodwill, reputation or business of the Company, all as more fully set forth in Section 6(b)(ii) of the Employment Agreement.

We regret that this action was necessary, and we wish you success in your future endeavors.

Very truly yours,

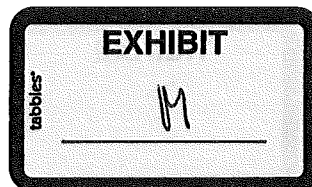
A handwritten signature in cursive script, appearing to read "Michael J. Menzer".

Michael J. Menzer

EXHIBIT M

From: Michele Souder
Sent: Thursday, May 13, 2010 9:50 PM
To: Jim Cramer
Cc: Dave Kleshinski
Subject: FSE Copper/Aluminum Wire

Jim:



You and I went over the events that transpired in some detail, but just to summarize:

FSE over-purchased wire during late 2008 and/or early 2009.

We recognized the swing in inventory and actually inspected the warehouse at the time.

We assessed the decline in value and asked management to make an accounting entry.

Management did not make the entry.

It is possible that current pricing could mitigate the adjustment necessary, depending on what is actually in inventory and what we paid for it. Prices have recovered a great deal in 2010.

See attached.

Michele

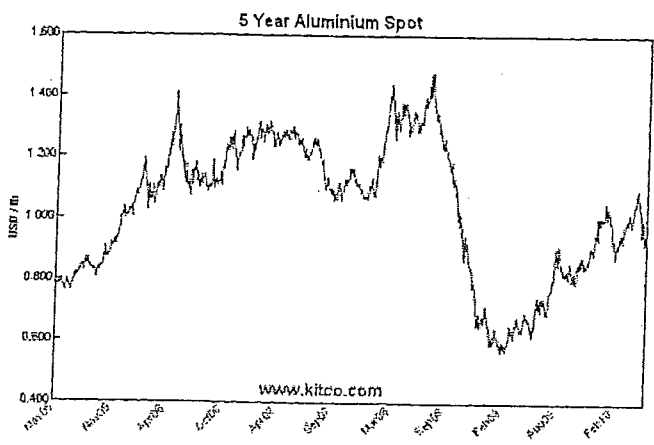
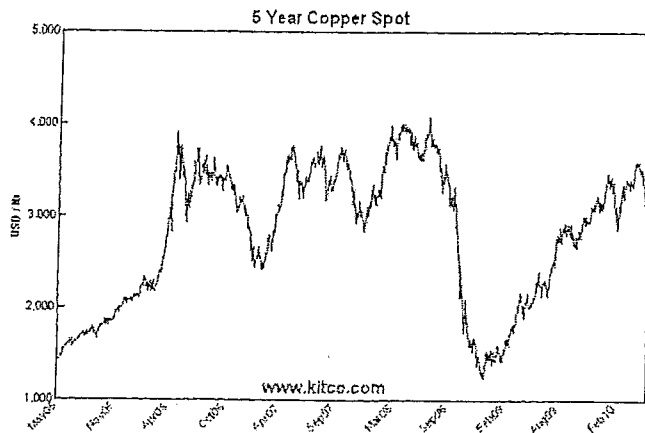
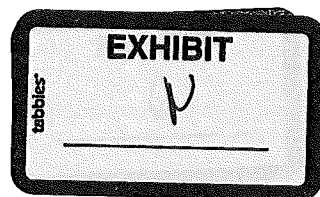


EXHIBIT N

From: Dave Kleshinski
Sent: Friday, May 21, 2010 10:13 AM
To: Jim Cramer
Subject: Revised FSE Inventory Summary with Reports

Here you go!



Dave Kleshinski

Accounting Manager

White Oak Partners, Inc.

5150 E. Dublin Granville Road, Suite One

Westerville, Ohio 43081

Phone: 614-855-6793

Fax: 614-855-6795

First Source Electrical – Houston, Texas
 Inventory Reconciliation Summary
 May 21, 2010

Summary

On Tuesday, May 11, 2010, a visit was made to First Source Electrical to review the monthly GL closing process and related issuance of financial statements. For this process, supporting documentation was reviewed for balance sheet accounts. For the inventory account, the GL balance was compared to the Summary Inventory Value report produced from Eclipse. This report was run on May 11, 2010.

For the month of April, the GL balance was \$268,000 higher than the inventory valuation report. February 2009 and April 2010 inventory valuation reports are enclosed. When asked about the large discrepancy, Irma Azuara stated there has been a significant variance since January 2009. A summary of monthly variances is shown below.

First Source Electrical
 Inventory Reconciliation

Month End	Per GL	Per Subledger	Difference	Comment
12/31/2008	2,614,284	2,651,642	(37,359)	Preliminary -Mac Adjustment for entire amount
12/31/2008	2,651,642	2,651,642	0	Final
1/31/2009				Reconciliation not available
2/28/2009	2,572,022	2,373,085	198,936	
3/31/2009	2,716,823	2,520,770	196,053	
4/30/2009	2,500,294	2,350,143	150,150	
5/31/2009	2,363,207	2,181,741	181,465	
6/30/2009	2,105,573	1,913,769	191,804	
7/31/2009	2,228,211	2,024,210	204,001	
8/31/2009	2,450,114	2,241,108	209,005	
9/30/2009	2,245,792	2,008,943	236,848	
10/31/2009	2,473,955	2,242,141	231,814	
11/30/2009	2,286,930	2,052,455	234,475	
12/31/2009	2,018,421	1,742,205	276,215	
3/31/2010	1,775,637	1,498,327	277,310	
4/30/2010	2,093,104	1,824,937	268,167	

Additional Detail

Per Mark Jenson, approximately 40% of First Source Electrical sales are in copper wire so we carry a significant amount of copper inventory. In January 2009, copper fell to around \$1.50 per pound from \$3 per pound around September 2008. Our sales pricing for copper wire is set based on current market conditions. This resulted in low or negative margins as inventory on hand carried a higher average cost. To resolve the margin issue, the average weighted costs used to value inventory for select copper products was adjusted down. While this may have corrected the margin issue, the result was lowering the value of copper inventory which created the variances detailed above.

Contributing to the magnitude of this variance was the quantity of copper wire on hand during this period. On December 31, 2008, we had on hand 2,999,315 feet of product category CUROMEX-Copper Wire-Romex. A review of the eleven available month end inventories for 2009, show the next highest on hand amount was 2,263,372 feet in March 2009. The CUROMEX-Copper Wire-Romex product summary account historically has a significant value on the inventory summary reports. This is one of eight copper wire summary product accounts.

The correct method to lower inventory value would have been to perform a physical inventory of the select items, compute the difference between current average costs and revised average costs and apply the difference to the inventory to arrive at an inventory write down and resulting change to cost of goods sold.

By only adjusting the average cost, the total amount of the decrease in inventory value remains on our balance sheet.

In speaking with the Support Group at Activant Eclipse, manual changes or overrides to average cost are noted in the system with an asterisk. However, you must look for these by product so research can be done but is tedious. A formal request has been made to Activant Eclipse for a quote to write a report that will show all manual adjustments or overrides to average costs for any given period of time. The report request will also include the Eclipse sign on of the person making the changes. A quote has not been received at this time.

Conclusion

- As a result of average cost changes, inventory was overstated on our balance sheet and cost of goods sold was understated by approximately \$200,000 in the first quarter of 2009.
- The inventory variance continued to increase throughout 2009 to be approximately \$275,000 by December 2009.
- We are working with Activant to further understand the Eclipse software and the impact of changes to average costs.
- Either a prior period adjustment or a current year charge to earnings is necessary.

EXHIBIT 0

ROSENBERG & SPROVACH

ATTORNEYS AT LAW

3555 TIMMONS LANE, SUITE 610

HOUSTON, TEXAS 77027

(713) 960-8300

TELECOPIER: (713) 621-6670

GREGG M. ROSENBERG
GREGG@ROSENBERGLAW.COM
BOARD CERTIFIED: LABOR & EMPLOYMENT LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

May 3, 2011

Mr. Phil DeLoache
First Source Electrical, LLC
7930 Blankenship Drive
Houston, Texas 77055

(Via CM/RRR – 70102780000286156605)

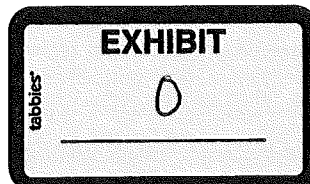
Re: Irma Azuara

Dear Mr. DeLoache:

I am counsel to Irma Azuara and write in accordance with Section 38.001 of the Texas Civil Practice and Remedies Code to advise of her demand against First Source Electrical, LLC, ("First Source" or "the company") in an amount of at least \$120,104.00. This amount represents one year worth of salary and her gas card allowance but is subject to revision to account for other components of compensation. These other forms of compensation are outlined in paragraph 4 (b) of the *Modification of Employment Agreement* ("the agreement") effective January 1, 2010.

Ms. Azuara is also an investor in the company; having invested \$100,000.00 of her personal funds in Exchange for Class B stock as documented in the *Restricted Unit Award Agreement* ("the stock agreement") dated April 21, 2010. Despite repeated demand, Ms. Azuara has never been tendered her shares. Instead, she was advised that because of her termination, she forfeited her stock.

Demand is hereby made for the payment of \$120,104.00, repayment of her investment in the company of \$100,000.00 as well as the value of her Class B stock, same to be payable no later than 30 days after your receipt of this letter. If you fail to make this tender within this proscribed timeframe I will immediately take whatever measures I deem appropriate to insure that my client's interests are fully and adequately protected. If litigation commences, in addition to the principal amount due to Ms. Azuara, she will also seek to recover all reasonable and necessary court costs and attorneys fees incurred in the process.

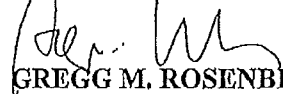


ROSENBERG & SPROVACH

Mr. Phil DeLoache
May 3, 2011
Page Two

I look forward to hearing from you or your representative as soon as reasonably possible following your receipt and review of this letter.

Very truly yours,



GREGG M. ROSENBERG

GMR/dim

EXHIBIT P



207 North Fourth Street Columbus, Ohio 43215
p: 614.469.1882 f: 614.469.1887
Christopher D. Adkinson
chrisadkinson@kephartfisher.com

May 12, 2011

Via Certified Mail

Mr. Gregg M. Rosenberg
Rosenberg & Sprovach
3555 Timmons Lane, Suite 160
Houston, TX 77027

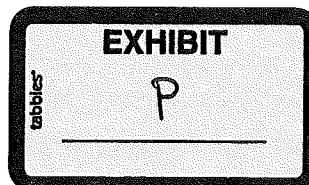
Re: Demand for Compensation for Ms. Irma Azuara

Dear Mr. Rosenberg:

Please be advised that this firm represents First Source Electrical, LLC (the "Company"). We have received a copy of your letter to Mr. Phil DeLoache dated May 3, 2011 wherein you demanded "the payment of \$120,104.00, repayment of [Ms. Azuara's] investment in the Company of \$100,000.00 as well as the value of her Class B stock." While we find no merit in your demands, we feel compelled to respond certain claims in your letter so that you may be better informed about the events requiring the termination of your client should you choose to take any additional measures against the Company on her behalf.

Though your letter never states as such, we can only assume by your demands that you intend to dispute the fact that Ms. Azuara was properly terminated for Cause under the Employment Agreement. Any such argument is wholly erroneous. It is simply indisputable that the Company failed to achieve a net positive cash flow for two consecutive calendar quarters and for the last full calendar year of Ms. Azuara's employment therewith, events that by definition gave the Company the requisite authority to terminate her for Cause. Events related to such underperformance of Ms. Azuara in carrying out her duties also caused the Company to be in breach of the First Capital Loan (as defined in the Employment Agreement), which also constituted grounds for her termination for Cause. Additionally, Ms. Azuara's role in the falsifying of the Company's financial reporting information and fraudulent manipulation of the Company's automated accounting and management systems, and her subsequent failure and refusal to rectify the same despite notice from the Company and multiple specific directives given to her from the Company to do so, also constituted grounds for her termination for Cause as well as grounds for actions against her personally which, to date, the Company has not pursued. Given the totality of the circumstances that occurred during her employment with the Company, there can be no question that Ms. Azuara was properly terminated for Cause. Given such a clear determination of Cause, your demands for any amount of compensation for Ms. Azuara are entirely baseless. Nevertheless, we will respond to each such demand.

With respect to your demand for payment of \$120,104.00 for one year worth of salary and Ms. Azuara's gas card allowance, Ms. Azuara is not entitled to any such amount. Pursuant
{00051564-2}



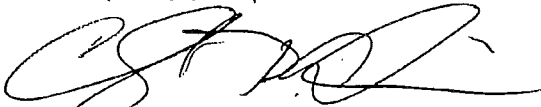
to Section 5(d) of that certain Employment Agreement dated February 7, 2008 by and between Ms. Azuara and the Company (as amended by that certain Modification of Employment Agreement dated January 1, 2010, collectively, the "Employment Agreement"), because Ms. Azuara was terminated for Cause (as such term is defined in the Employment Agreement), she was entitled only to accrued and unpaid Base Salary through the date of her termination, which amount has been paid to Ms. Azuara. Your claim for compensation for Ms. Azuara under Section 5(e) of the Employment Agreement (Section 4(b) of the Modification) is wholly without merit due to the facts and circumstances necessitating Ms. Azuara's termination.

With respect to your demand for the repayment of Ms. Azuara's investment in the Company of \$100,000.00 "in [e]xchange for Class B stock," Ms. Azuara is similarly not entitled to any such amount. Ms. Azuara's initial capital contribution to the Company of \$100,000.00 entitled her to 12 Class A Units of the Company. Despite your assertions to the contrary, Ms. Azuara has not demanded to be tendered her shares, though she has no right to make such a demand of the Company in the first place, nor was she advised that she forfeited her "stock". Ms. Azuara remains a member of the Company pursuant to that certain Amended and Restated Limited Liability Company Agreement of the Company dated October 1, 2008 (as amended to date, the "Operating Agreement"), and she remains entitled to the benefits, and bound by the obligations, accorded to her interest therein, as the same has been modified and amended to date. Though Ms. Azuara has no right under the Operating Agreement to demand the return of her investment or to demand that the Company purchase her Units, the Company has the right, but not the obligation, under the Operating Agreement to buy her Units back. In such event, the purchase price the Company would pay for such interest would be equal only to the "Fair Value" of her Units (as defined in the Operating Agreement), less discounts for minority ownership, lack of marketability, lack of control and other transfer restrictions, which is a figure far less than the amount of her initial investment.

With respect to your demand for the repayment to Ms. Azuara of "the value of her Class B stock," again she is entitled to no such repayment. The Class B Units referenced in your letter were granted to Ms. Azuara pursuant to that certain Restricted Unit Award Agreement dated April 21, 2010 (the "Class B Agreement") and not purchased by her in connection with her initial investment in the Company as stated in your letter. Pursuant to the Class B Agreement, Ms. Azuara's Class B Units were immediately and automatically forfeited upon her termination of employment with the Company "for any reason whatsoever." Regardless of any attempted insinuation that Ms. Azuara was not properly terminated for Cause, your demand for any amount related to the Class B Units is untenable and without merit.

Thank you for your attention to this matter. Please direct any and all future correspondence on this matter to my attention.

Very truly yours,



Christopher D. Adkinson

cc: Phil DeLoache

{00051564-2}

EXHIBIT Q

EXHIBIT Q-1



207 North Fourth Street Columbus, Ohio 43215
p: 614.469.1882 f: 614.469.1887

Christopher D. Adkinson
chrisadkinson@kephartfisher.com

August 30, 2012

VIA Federal Express

Ms. Irma Azuara
5324 Trout Line Lane
Rosenberg, TX 77471

Re: Buy-Back Notice Pursuant to Section 8.8 of the Amended and Restated Limited Liability Company Agreement of First Source Electrical, LLC dated October 1, 2008 (the "Operating Agreement")

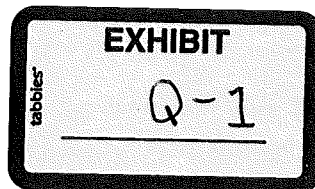
Dear Ms. Azuara:

On behalf of First Source Electrical, LLC (the "Company"), you are hereby advised that the Company is exercising its right, granted to it by Section 8.8 of the Operating Agreement, to purchase all of your 12 outstanding Class A Units of the Company for their Fair Value, as determined by the Board of the Company pursuant to Section 8.8.

In determining the Fair Value of your Units under Section 8.8(b) of the Operating Agreement, the Board is authorized to "... make all of the determinations necessary to calculate Fair Value, including, without limitation, discounts for a minority ownership position, lack of marketability, lack of control, market blockage, security law or other transfer restriction." And further, "[a]t the Company's option the purchase price [i.e., the Fair Value as determined by the Board] may be paid pursuant to a note that accrues interest at the minimum annual rate necessary to avoid imputed interest and that provides for its balance to be paid in four (4) equal annual installments commencing on the first anniversary of the closing ...". Enclosed herewith please find the Board's determination of the Fair Value of your Units which, after a discount factor of thirty percent (30%), is Two Thousand Sixty-Seven and No/100 Dollars (\$2,067.00) (the "Discounted Value").

In lieu of paying you the Discounted Value for your Units in equal installments over the next five (5) years, the Company is prepared to pay you the full value of your Units (Two Thousand Nine Hundred Fifty-Three and No/100 Dollars (\$2,953.00) (the "Full Value") in one lump sum payment in exchange for your execution of the enclosed Transfer, Assignment and Assumption Agreement (the "Transfer Agreement") which will serve to evidence the purchase of your Units by the Company pursuant to this notice. We have enclosed a self-addressed, stamped envelope for you to return the executed Transfer Agreement to my attention. The Company will deliver a check to you for the Full Value and an executed counterpart of the Transfer Agreement within five (5) business days of my receipt of the executed Transfer Agreement.

(00097322-2)

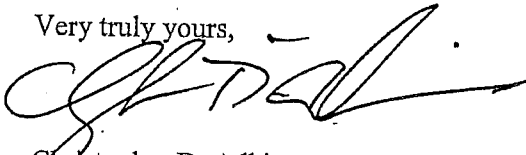


Please note that, under Section 8.8(a) of in the Operating Agreement, the closing of the Company's purchase of your Units is required to occur within thirty (30) days from the date of this letter. As such, please execute the Transfer Agreement and return it to my attention in the enclosed envelope on or before September 29, 2012. The closing date shall be the date on which we receive back from you an executed copy of the Transfer Agreement.

In the event that we do not hear from you and/or receive the executed Transfer Agreement by September 29, 2012, the Company, at its option, may send to you a promissory note in the amount of the Discounted Value for the purchase of your Units, payable in four (4) equal annual installments commencing on September 29, 2013. In that event, the Company's purchase of your Units will be deemed to be closed as of September 29, 2012.

Please feel free to contact me if you have any questions or concerns.

Very truly yours,



Christopher D. Adkinson

Enclosures.

cc: Michael J. Menzer
James P. Cramer

First Source Electrical, LLC Schedule of Dilution - Proforma As of June 2012	Capitalization as of 12/31/11 (Class A)			Additional Capitalization- Conversion of Member Loans Michael Member - June 2012			Capitalization as of June 2012 Assuming No Minority Member Funding
Member	Capital Contribution	No. Units	% Interest	Member Loans Converted to Equity June-12	WOP Fees June-12	Additional Capital Contributions	
First Source Acquisition Co	\$ 7,128,820	1,060	93.15%	\$ 1,000,000	\$ 623,470	\$ 1,623,470	
Mark Jensen	325,000	41	3.60%	-	-	Proforma 62,795	
Philip DeLoache	200,000	25	2.20%	-	-	38,289	
Irma Azuara	100,000	12	1.05%	-	-	18,379	
Total Capitalization	\$ 7,753,820	1,138	100.00%	\$ 1,000,000	\$ 623,470	\$ 1,747,933	

Required in order
to remain
proforma

SUMMARY OF VALUATION AND ISSUANCE OF ADDITIONAL CLASS A UNITS:
Current fair market value of the business, equal to net book value
Value per unit
Units issued to First Source Acquisition for June 2012 Capital Conversion

\$ 828,726
\$ 728
2,729

TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into to be effective as of September ____ 2012 (the "Effective Date") by and between FIRST SOURCE ELECTRICAL, LLC, a Delaware limited liability company (the "Company"), and IRMA AZUARA, an individual ("Assignor"), under the following circumstances:

RECITALS:

WHEREAS, Assignor is a former employee of the Company and a current member of the "Company" holding 12 Class A Units of the Company;

WHEREAS, the Company's members, business and affairs are governed by that certain Amended and Restated Limited Liability Company Agreement dated as of October 1, 2008, as amended to date (collectively, the "Company Agreement");

WHEREAS, pursuant to the Company Agreement, the Company has the right to purchase all of Assignors Units for their Fair Value (the "Buy-Back Right");

WHEREAS, pursuant to that certain written notice from the Company to Assignor dated August 24, 2012 (the "Buy-Back Notice"), the Company exercised its Buy-Back Right; and

WHEREAS, the Company and Assignor now desire to evidence the transfer and assignment by Assignor, and the assumption by the Company, of all of Assignor's Units of the Company (the "Assigned Units") pursuant to the Buy-Back Notice.

NOW, THEREFORE, for and in consideration of the mutual representations and agreements herein set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The parties hereby acknowledge and agree that the recitals set forth above are true, accurate and complete in all respects, and the same are hereby incorporated into this Agreement in their entirety as if fully rewritten herein.
2. Definitions. All capitalized words not otherwise defined herein shall have the meanings assigned to such words in the Company Agreement.
3. Transfer and Assignment of the Assigned Units. Assignor hereby irrevocably grants, bargains, sells, transfers, assigns, conveys and sets over to the Company all of Assignor's right, title, and interest in and to the Assigned Units, including, without limitation, all of Assignor's right to receive distributions, assets, profits, losses, income, gain, deductions or credits, and all voting, consent and other rights associated with the Assigned Units under the Company Agreement.
4. Assumption of the Assigned Units. Assignee hereby accepts the Assigned Units and assumes and agrees to perform all of the obligations and liabilities associated therewith.
5. Representations and Warranties. Assignor hereby represents and warrants to the Company that she owns the Assigned Units free and clear of all liens, pledges, charges and encumbrances of every kind, character or description whatsoever, and that she has the legal right and authority to transfer the Assigned Units to the Company.

6. Payment for the Assigned Units. Within five (5) business days of the Company's receipt of a copy of this Agreement executed by Assignor, the Company shall deliver a check to Assignor in the amount of Two Thousand Nine Hundred Fifty-Three and No/100 Dollars (\$2,953.00).

7. Authorization and Consent. The parties hereby irrevocably consent to, and authorize the Company to undertake, all actions necessary to accomplish the transfer and assignment to, and the assumption by, the Company of the Assigned Units as of the Effective Date, and to have such transfer, assignment and assumption reflected in the books and records of the Company.

8. Waiver of Non-Compliance. The parties to this Agreement hereby irrevocably waive any non-compliance with the terms of this Company Agreement and/or the Delaware Limited Liability Company Act, as amended and applicable, in connection with the foregoing transfer, assignment and assumption of the Assigned Units.

9. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by a writing executed by all parties hereto.

b. Binding Effect. This Agreement shall be binding upon the legal representatives, heirs, successors, and assigns of the respective parties.

c. Counterparts; Facsimiles. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Facsimile and/or email signatures shall be binding upon the parties and have the same effect as original signatures.

d. Severability. The parties agree that if any part, term, or provision of this Agreement shall be found illegal and unenforceable by any court of law, the remaining provisions shall be severable, valid, and enforceable in accordance with their terms.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

ASSIGNOR:

Irma Azuara

COMPANY:

FIRST SOURCE ELECTRICAL, LLC, a Delaware
limited liability company

By: _____
Michael J. Menzer, Manager

EXHIBIT Q-2



207 North Fourth Street Columbus, Ohio 43215
p: 614.469.1882 f: 614.469.1887

Christopher D. Adkinson
chrisadkinson@kephartfisher.com

October 10, 2012

VIA Federal Express

Ms. Irma Azuara
5324 Trout Line Lane
Rosenberg, TX 77471

Re: Payment in Full for all Units Pursuant to Section 8.8 of the Amended and Restated Limited Liability Company Agreement of First Source Electrical, LLC dated October 1, 2008 (the "Operating Agreement")

Dear Ms. Azuara:

On behalf of First Source Electrical, LLC (the "Company"), enclosed herewith please find a check in the amount of Two Thousand Sixty-Seven and No/100 Dollars (\$2,067.00). As we informed you in our letter dated August 30, 2012 (the "Buy-Back Notice"), this amount represents the Fair Value of all of your Units of the Company, as determined by the Board of the Company pursuant to Section 8.8 of the Operating Agreement.

In lieu of delivering you the promissory note, as such right is reserved to the Company in Section 8.8, and as we referenced in the Buy-Back Notice, the Company has determined to pay you the full Fair Value amount in one lump sum. With your receipt of this notice and payment, the Company considers this matter closed and your Units transferred.

Please feel free to contact me if you have any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. D. Adkinson', written over a horizontal line.

Christopher D. Adkinson

Enclosures

cc: Michael J. Menzer
James P. Cramer

{00102643-1}



FIRST SOURCE ELECTRICAL LLC

15318

Invoice Date	Invoice Number	Invoice Amount	Debit Amount	Cash Dsct	Net Amount
08/22/12	Stock Buy-Back	2,067.00	0.00	0.00	2,067.00

Check# 00015318 Totals : 2,067.00 0.00 0.00 2,067.00
 IRMA AZUARA Check Date: 10/08/12

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

FIRST SOURCE ELECTRICAL LLC
 7930 BLANKENSHIP DRIVE
 HOUSTON, TEXAS 77055


Hummer
 Banks
 COLUMBUS, OHIO
 25-2/440

15318
 DATE
 10/08/12

AMOUNT
 \$ *****2,067.00

TWO THOUSAND SIXTY SEVEN AND 00/100 DOLLARS

PAY TO THE ORDER OF:
 IRMA AZUARA
 5324 TROUTLINE LANE
 ROSENBERG TX 77471

AUTHORIZED SIGNATURE

 PRESIDENT / VICE PRESIDENT / MANAGER

SECURE 349323
 SCORE 5492000
 MP

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑆015318⑆ ⑆044000024⑆ 01892936019⑆

EXHIBIT Q-3

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH INK-BLEED THROUGH BORDER

FIRST SOURCE ELECTRICAL LLC
7930 BLANKENSHIP DRIVE
HOUSTON, TEXAS 77066

Huntington Bank
COLUMBUS, OHIO

25-2440 15318

DATE
10/08/12

AMOUNT
*****2,067.00

TWO THOUSAND SIXTY SEVEN AND 00/100 DOLLARS

FAY TO THE ORDER OF:
IRMA AZUARA
5324 TROUTLINE LANE
ROSENBERG TX 77471

Phil deLoach
PRESIDENT / VICE PRESIDENT / MANAGER
AUTHORIZED SIGNATURE

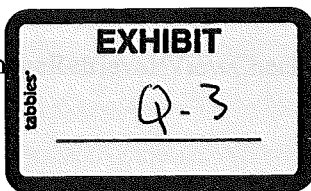
10/08/12 15318

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DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

ENDORSE HERE

10/08/12 15318



CAUSE NO. 2011-70575

IRMA AZUARA,

Plaintiff,

V.

FIRST SOURCE ELECTRICAL, LLC,

Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

61ST JUDICIAL DISTRICT

ORDER

Pending before the Court is Defendant’s Motion for Summary Judgment. After considering the pleadings, the motion, brief in support, any response thereto, affidavits, and legally competent summary judgment evidence, the Court **GRANTS** Defendant’s Motion for Summary Judgment in its entirety, and Plaintiff’s suit is **DISMISSED WITH PREJUDICE** to the refiling of the same, and Plaintiff Irma Azuara is directed to take nothing by way of her claims in this suit.

All relief not specifically granted is hereby **DENIED**.

SIGNED THIS _____ DAY OF _____, 2013.

JUDGE PRESIDING