

2018

Safe Home Control, Inc., Petitioner/Appellant, v. Jared Munday Respondent/Appellee : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

SAFE HOME CONTROL, INC.,

Petitioner/Appellant,

vs.

JARED MUNDAY

Respondent/Appellee.

PUBLIC

Appellate Case No. 20180155-CA

Dist. Ct. Case No. 160400579

ORAL ARGUMENT REQUESTED

BRIEF OF APPELLANT SAFE HOME CONTROL, INC

Appeal from the Fourth Judicial Court, Utah County
Honorable Christine Johnson, District Court No. 160400579

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LIST OF ALL PARTIES

The only parties are those indicated in the caption – Safe Home Control, Inc. and Jared Munday.

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[None]

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- A. Ruling & Order Granting Motion to Set Aside Judgment by Confession. [R.0984-988].
- B. Confession of Judgment. [R.001-2].
- C. 2016 Regional Manager Agreement. [R.010-30].
- D. Ruling on Defendant's Motion for Attorneys' Fees and Costs. [R.1079-1085].
- E. Summary of representative confessions of judgment entered in Utah.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction pursuant to Utah Code § 78A-4-103(2)(j).

ISSUE PRESENTED FOR REVIEW

When Respondent/Appellee Jared Munday (“Munday”) began his employment with Petitioner/Appellant Safe Home Control, Inc. (“Safe Home”), the parties agreed that Safe Home would advance Munday \$160,000. The advance was to be forgiven by Safe Home if Munday met certain conditions over the next three years of his anticipated employment. If those same conditions were not satisfied, the advance bonus immediately was to be repaid by Munday. Munday provided Safe Home with an executed confession of judgment to protect Safe Home against the risk of nonpayment.

Five months after receiving the advance bonus, Munday quit. Needless to say, he had not earned the \$160,000 advance. Nor did he repay that advance. Accordingly, Safe Home filed the confession of judgment with the trial court. Ultimately, however, the trial court refused to enter that judgment. Instead, the trial court set aside the confession of judgment, awarded Munday attorney fees, and left unresolved the dispute between the parties. This appeal followed.

Issue No. 1: Did the trial court err in interpreting and applying Utah Code section 78B-5-205 and rule 58A of the Utah Rules of Civil Procedure in its order setting aside the judgment by confession?

Standard of Review: The standard of appellate review is correctness. *Grynberg v. Questar Pipeline Co.*, 2003 UT 8, ¶ 28, 70 P.3d 1 (“We review the district court’s statutory

interpretations for correctness.”); *Nunley v. Westates Casing Servs., Inc.*, 1999 UT 100, ¶ 42, 989 P.2d 1077 (“The trial court’s interpretation of the rules of civil procedure presents a question of law which we review for correctness.”).

Preservation: This issue and the arguments herein were preserved in Safe Home’s memorandum in opposition to Munday’s Motion to Set Aside Judgment [R.0048], oral arguments on July 29, 2016 [R.0526], and Safe Home’s Supplemental Brief in Opposition to Motion to Set Aside Judgment Against Jared Munday [R.0830]. The trial court’s ruling on these issues was entered October 20, 2017. [R.0984-87].

Issue No. 2: Did the trial court err in applying Utah Code section 78B-5-826 and awarding Munday all of his attorney fees?

Standard of Review: The trial court’s award of attorney fees is reviewed for correctness. *See IHC Health Servs., Inc. v. D & K Mgmt., Inc.*, 2008 UT 73, ¶ 38, 196 P.3d 588 (“Whether a party is entitled to an award of attorney fees is a legal conclusion . . . which [the court] review[s] for correctness.”).

Preservation: This issue and the arguments herein were preserved in Safe Home’s memorandum in opposition to Munday’s Motion for Attorney Fees. [R.1036-62]. The trial court’s ruling on these issues was entered November 30, 2017. [R.1079-85].

DETERMINATIVE PROVISIONS

Utah Code § 78B-5-205 provides:

A judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by law. The judgment may be entered in any court having jurisdiction for like amounts.

Rule 58A(i) of the Utah Rules of Civil Procedure provides:

(i) If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant, as follows:

(i)(1) If the judgment is for money due or to become due, the statement must concisely state the claim and that the specified sum is due or to become due.

(i)(2) If the judgment is for the purpose of securing the plaintiff against a contingent liability, the statement must state concisely the claim and that the specified sum does not exceed the liability.

(i)(3) The statement must authorize the entry of judgment for the specified sum.

The clerk must sign the judgment for the specified sum.

Utah Code §78B-5-826 provides:

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

STATEMENT OF THE CASE

From a factual and procedural standpoint, this is a simple case. It centers around a \$160,000 advance bonus that Safe Home paid to Munday and the judgment by confession Munday signed in order to receive the advance bonus. [R.0001-03].

According to Munday, “[o]n November 18, 2015, Munday entered into [the] 2016 Regional Manager Agreement with Safe [Home]” (the “2016 Agreement”) [R.0005; *see also* R.0010]. The 2016 Agreement allowed for Munday to receive an advance bonus of \$160,000, “provided that, [Munday] shall repay the gross amount of the Signing Bonus if, prior to the end of the Term of [the] Agreement, [Munday] terminate[d] th[e] Agreement.” [R.0013]. The Agreement’s term began on November 18, 2015 and continued until August 31, 2018. [R.0010].

In order to ensure the repayment of the \$160,000 if Munday failed to satisfy the conditions of the advance, the 2016 Agreement contained a provision titled “Consent to Judgment.” [R.0014]. In that section of the contract Munday “agree[d] to execute the Judgment attached [to the agreement] as Exhibit 3, which w[ould], in the event [Munday] breach[ed] th[e] Agreement, allow [Safe Home] to obtain an immediate judgment against [Munday] for . . . (ii) any Bonus monies paid by [Safe Home] to [Munday] pursuant to th[e] Agreement, which ha[d] not been repaid to [Safe Home] . . . [Safe Home’s] costs and attorneys’ fees incurred with respect thereto, and any interest.” [*Id.*]. There is no dispute that Munday executed both the 2016 Agreement and the confession of judgment attached as Exhibit 3 to that agreement. [*See* R.0002; R.0016; *see also* R.0005 (Munday acknowledging “[o]n November 18, 2015, Munday entered into a 2016 Regional Manager

Agreement” and attaching the Agreement along with the Confession as “Exhibit A”); *see also* R.0984 (the trial court finding “Munday signed a Judgment by Confession.”)]. Munday’s confession of judgment also was notarized. [See R.0002].

About five months after receiving the \$160,000 advance bonus – “[o]n or about April 16, 2016” – “counsel for Munday forwarded to Safe [Home] via email and U.S. mail a letter terminating the contractual relationship between the parties.” [R.0005]. Munday’s termination was more than two years before the end of term set forth in the 2016 Agreement. Accordingly, Munday was contractually obligated to, but did not, “repay the gross amount of the [advance] Bonus.” [R.0013]. Safe Home was authorized to file Munday’s notarized confession of judgment and “obtain an immediate judgment.” [R.0014]. Accordingly, on April 18, 2016, Safe Home filed the confession of judgment with the trial court. [R.0003, *see also* R.0005-06)].

On April 27, 2016, Munday filed a motion to have the judgment set aside. [R.0004-08]. On October 20, 2017, the trial court issued its Ruling and Order setting aside the judgment by confession. The trial court held “the Judgment signed by Munday fail[ed] in two regards. First, it lack[ed] the necessary verification. . . . Second, the Judgment [did] not state the required ‘specified sum.’” [R.0985]. Both of the court’s findings incorrectly applied the relevant law.

Shortly after the trial court entered its order setting aside the judgment, Munday filed a motion for attorney fees pursuant to Utah Code section 78B-5-826. [R.0989-1035] Safe Home opposed Munday’s request, arguing that Munday was not a prevailing party and that the proceedings did not trigger the applicable attorney fee statute. Safe Home also

challenged the amount of fees Munday claimed on the basis that Munday did not prevail on several of the arguments he presented. [R.0467]. On January 2, 2018, the trial court granted and entered Munday's motion without modification and awarded Munday \$48,200.50 in attorney fees. [R.1097-1100].

SUMMARY OF THE ARGUMENTS

I. The Confession Contained the Proper Verification.

The trial court set aside the confession of judgment based on its conclusion that the confession "signed by Munday. . . lack[ed] the necessary verification." [R.0985]. The trial court reasoned that while "Munday signed [the] Judgment by Confession" and while "the Confession of Judgment was indeed signed in front of a notary," "there [was] no written oath or affirmation and no indication that the statement was voluntarily signed" and "there is no indication that the signer of the document produced evidence of his identity." [R.0985]. That analysis is wrong for at least three reasons.

First, neither rule 58A nor Utah Code section 78B-5-205 requires a defendant's verification be made under oath or affirmation, as the trial court required. *See generally* Utah Code Ann. § 78B-5-205; Utah R. Civ. P. 58A. "Oath or affirmation" is a defined phrase in Utah law. *See, e.g.*, Utah Code § 46-1-2(9). There are instances where the Utah Rules of Civil Procedure require an oath or affirmation. *See, e.g.*, Utah R. Civ. P. 33(b); *id.* R.30(b)(3). Rule 58A is not one of those instances. Nor does Utah Code section 78B-5-205 impose that standard. Thus, the trial court erred when it required compliance with an inapplicable "oath or affirmation" standard.

Second, even if judgments by confession required the type of verification indicated by the trial court, the confession at issue still meets that standard. The verification that the trial court found lacking is as follows: “SUBSCRIBED AND SWORN to before me this ___ day of _____, 20___” with the blanks being filled-in by hand. [R.0002]. That notarization is sufficient under Utah law. *See, e.g., White v. Heber City*, 82 Utah 547, 26 P.2d 333, 335 (1933) (“Subscribed and sworn to before me” fairly and reasonably means not only that the claimant subscribed the claim in the presence of the notary, but also that the notary administered an oath to the claimant, and that he under oath in substance and effect stated that the statements contained in the instrument or document subscribed by him were true. No other effect or meaning may fairly or reasonably be given such language.”).

Third, even if the Munday’s verification was deficient, that deficiency does not relieve Munday from his obligations. “[T]he historically accepted rule” is that “a debtor cannot avoid an otherwise valid signed confession based on his failure to verify the statements he subscribed.” *Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC*, 226 P.3d 605, 609 (Nev. 2010) *see also Los Angeles Adjustment Bureau, Inc. v. Noonan*, 181 Cal. App. 2d Supp. 834, 839 (1960) (“A verification is seldom for the benefit of the one who verifies, but is for the purpose of discouraging the individual from uttering false statements, such as in pleadings and criminal complaints. The omitted requirement was never intended for respondent's benefit. The important consideration for this court is whether or not the confession was in fact signed by the respondent as an intended confession.”). There is no dispute that, “[a]s part of his employment agreement, Munday signed a Judgment by Confession.” [R.0984]; *see also* R.0953 (Munday

acknowledging he signed the confession)]. Munday cannot now rely on an allegedly improper verification of his own undisputed signature to avoid an obligation freely entered.

II. The Confession of Judgment Contained a “Specified Sum.”

Munday expressly “authorize[d] and consent[ed] to entry of Judgment by Confession . . . in the principle amount of \$160,000,” which was then defined as the “Judgment Amount.” [R.0001]. Thereafter, the Confession indicated that the “Judgment Amount may be augmented” including to account for “attorneys’ fees and costs incurred by Plaintiff in collecting on the Judgment” or to give Munday credit for any amounts paid (there were none). [*Id.*]. The trial court reasoned that because the Judgment Amount contained in the confession “may be augmented” “[t]here was no final specified amount [] for Munday to verify.” [R.0986]. Accordingly, the court found that the confession did not “state the required ‘specified sum’” set by rule 58A(i)(1). [*Id.*]. Its ruling is incorrect.

The fact that a specified sum of \$160,000 can be augmented to include attorneys’ fees or credit the debtor for his payments on the debt, does not violate rule 58A(i)(1)’s requirement that the “statement . . . concisely state the claim and that the specified sum is due or to become due.” There is no authority from Utah defining the phrase “specified sum” as used in rule 58A. Indeed, the trial court cited no authority from any jurisdiction in its ruling. [*See* R.0986]. Thus, insight must be gleaned from the other rules and common usage. Thus, for example, a default judgment must similarly be for “a sum certain” and yet it still allows for a “deduct[ion] [of] all credits to which the defendant is entitled.” *See* Utah R. Civ. P. 55(b)(1). Moreover, Munday himself admitted that “the sum that is specified [in the confession] as the Judgment Amount shall be deemed to be ‘justly due’ and *shall be*

deemed to constitute[] a ‘specified sum’ within the scope of Rule 58A.” [R.0002 (emphasis added)]. The trial court’s contrary ruling ignores both the analogous standards and Munday’s own stipulation and agreement.

III. The Trial Court Erred in Awarding Munday His Attorney Fees.

Even if the trial court’s ruling is upheld, it still erred in awarding Munday his attorney fees under Utah Code section 78B-5-826. That statute only applies if a party “prevails in a civil action.” Utah Code Ann. §78B-5-826. A motion to set aside a confession of judgment does not qualify as a “civil action” under established Utah law.

“‘Civil action’ is a term of art, and a rather precise one at that.” *Thorpe v. Washington City*, 2010 UT App 297, ¶15, 243 P.3d 500. “A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint.” *Id.*; *see also Foil v. Ballinger*, 601 P.2d 144, 149 (Utah 1979) (same). “The term does not expansively include any and all filings having a civil character” *Thorpe*, 2010 UT App 297, ¶15.

The Legislature’s use of “civil action” was intentional. Indeed, if the Legislature intended Utah Code section 78B-5-826 to apply to every proceeding having a civil character, it would have included language similar to that used in a different section of the same chapter and part. For example, section 78B-5-805 applies to “any civil action *or proceeding*” and 78B-5-813 applies to “any civil *proceeding*.” The Legislature’s use of “civil action” and exclusion of “proceeding” should be given meaning. *See, e.g., Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 14, 267 P.3d 863.

ARGUMENT

The trial court erred in setting aside the judgment by confession and awarding Munday his attorney's fees associated with his motion.

I. THE CONFESSION CONTAINS THE PROPER VERIFICATION.

Utah R. Civ. P. 58A(i) provides that “[i]f a statement by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant” that “concisely state[s] the claim and that the specified sum is due or to become due.” Utah R. Civ. P. 58A(i)(2). Safe Home complied with that rule. The confession concisely described the claim at issue. [*See* R.0001 (“This amount is owed pursuant to a loan agreement between the parties memorialized in a written promissory note.”)]. Munday then verified that “the sum that is specified as the Judgment Amount shall be deemed to be ‘justly due’” and “that the Judgment . . . may be entered against [him] in favor of [Safe Home] in that specified sum.” [R.0002]. Indeed, it is undisputed that Munday personally executed both the 2016 Agreement and the confession of judgment. [*See* R.0002; R.0016; *see also* R.0005; R.0984]. Likewise, there is no dispute that Munday’s signature on the confession of judgment was notarized. [*See* R.0002, R.0985 (“[T]he Confession of Judgment was indeed signed in front of a notary....”)].

Although the confession of judgment complied with Rule 58A, the trial court found that it “lacks the necessary verification” and refused to enter the stipulated judgment. [*Id.*]. Specifically, the trial court cited authority that applies when an “oath or affirmation” is

required. [See R.0985]. The court briefly examined that authority and then determined that in this case “there is no written oath or affirmation.” [*Id.*]. However, the trial court’s analysis was wrong. There is no requirement in either Rule 58A or Utah Code section 78B-5-205 that a defendant’s verification be made under oath or affirmation. *See generally* Utah Code Ann. § 78B-5-205; Utah R. Civ. P. 58A. Said differently, the court analyzed the confession of judgment under a standard that does not apply.

“‘Oath’ or ‘affirmation’” is a defined term in Utah law. Utah Code section 46-1-2(9) defines “‘oath’ or ‘affirmation’” as “a notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.” Utah Code Ann. § 46-1-2(9); *see generally In re General Determination of Rights to Use Water*, 2008 UT 25, ¶18, 182 P.3d 362 (“Verification on oath is distinguished from a mere notarization in that verification requires that ‘the applicant swears to the truthfulness of the representations made in the application.’”); Utah Code Ann. § 46-1-6 (identifying functions notary provides other than an oath or affirmation). There are times when the Utah Rules of Civil Procedure explicitly require an oath or affirmation. For example, rule 33(b) requires that interrogatories “be answered . . . under oath or affirmation.” Utah R. Civ. P. 33(b). Likewise, rule 30(b)(3) requires the “administration of the oath or affirmation to the witness” being deposed. *Id.* In contrast, neither rule 58A nor Utah Code section 78B-5-205 impose any requirement that a confession of judgment be provided under oath or affirmation. *See* Utah R. Civ. P. 58A(i); Utah Code Ann. §78B-5-205; *see also Marion Energy*, 2011 UT 50, ¶14 (“We therefore seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.”).

Without identifying any authority that imposed an oath or affirmation standard to confessions of judgment, the trial court nevertheless analyzed this case under that standard. Indeed, the only case cited by the trial court was *Mickelsen v. Craigco, Inc.*, 767 P.2d 561, 564 (Utah 1989). [See R.0985-96]. In that case, however, the court was addressing the mechanic's lien act and its requirement that the statement ““must be verified *by the oath of* [the claimant].”” *Mickelsen*, 767 P.3d at 563 (emphasis added) (quoting Utah Code Ann. § 38-1-7 (1974)). There is no similar requirement for a confession of judgment. See Utah Code Ann. § 78B-5-205; Utah R. Civ. P. 58A. The trial court erred when it imposed an oath or affirmation standard that is not supported by the applicable rule or statute.

Furthermore, the trial court failed to give proper credit to notarization in this case. Rule 58A requires that a confession include “a statement, verified by the defendant.” See Utah R. Civ. P. 58A. That rule is similar to the one addressed in *White v. Heber City*, 82 Utah 547, 26 P.2d 333 (1933). In that case, the Utah Supreme Court addressed a statute that required a claim be “properly . . . verified as to correctness by claimant.” See *White*, 26 P.2d at 334. The notarization at issue in *White* likewise indicated it was “[s]ubscribed and sworn to” and then contained the notary's signature and seal. *Id.* at 334. The Utah Supreme Court was required to determine “whether the jurat may be regarded as a sufficient recital of a verification of the claim.” *Id.* at 335. The court found it was. It explained as follows:

Such phrase or language, “Subscribed and sworn to before me.” fairly and reasonably means not only that the claimant subscribed the claim in the presence of the notary, but also that the notary administered an oath to the claimant, and that he under oath in substance and effect stated that the statements contained in the instrument or document subscribed by him were

true. No other effect or meaning may fairly or reasonably be given such language. If by such phrase, the claimant did not in substance and effect declare, under oath, that the statements contained in the document or instrument signed by him were true, it is difficult to conceive for what other purpose or effect the oath was or could have been administered to him.

Id. at 335; *see also In re Williamson*, 43 B.R. 813, 823 (Bankr. D. Utah 1984) (“The first phrase of the jurat is ‘subscribed and sworn to before me...’ The purpose of this language is to certify that the person making the foregoing acknowledgment did, in fact, appear before the official and did subscribe to the acknowledgement and oath. . . In other words, it is to certify that the signatory voluntarily signed . . . in the presence of the certifying official under penalty of perjury.”).

The long-standing ruling set forth in *White* has not been overturned and continues to accurately describe Utah law. Indeed, the Notaries Public Reform Act declares that a jurat indicating that a document is “Subscribed and sworn to” “is sufficient for the completion of a notarization.” *See* Utah Code Ann. § 46-1-6.5(1) & (2)(b). Likewise, Utah Code Ann. § 57-3-101 declares that a document “containing the words ‘subscribed and sworn’ or their substantial equivalent” is sufficient for the recording of an interest in real property. Put simply, even if formal verification of Munday’s undisputed signature were required, that standard is satisfied in this case.

Finally, even if there were a problem with Munday’s verification of the confession of judgment, Munday still could not escape his own, undisputed agreement. “[T]he historically accepted rule” is that “a debtor cannot avoid an otherwise valid signed confession based on his failure to verify the statements he subscribed.” *Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC*, 226 P.3d 605, 609 (Nev. 2010);

see also Los Angeles Adjustment Bureau, Inc. v. Noonan, 181 Cal. App. 2d Supp. 834, 839 (1960) (“A verification is seldom for the benefit of the one who verifies, but is for the purpose of discouraging the individual from uttering false statements, such as in pleadings and criminal complaints. The omitted requirement was never intended for respondent's benefit. The important consideration for this court is whether or not the confession was in fact signed by the respondent as an intended confession.”); *Mullin v. Bellis*, 90 N.Y.S. 2d 27, 28 (City Ct. 1949) (“[D]efendant cannot impeach a judgment which is based upon his signed statement even though it be unverified or unacknowledged.”).

There is no dispute that Munday executed the confession of judgment at issue. Munday admitted to having signed it. [See e.g. R.0005, R.0082, R.0474, R.0954]. And the trial court specifically found that “[a]s part of his employment agreement, Munday signed a Judgment by Confession.” [R.0984].

The trial court’s rejection of the confession of judgment because “there is no written oath or affirmation” was in error. [R.0985]. The trial court imposed a standard that is absent from both Utah Code section 78B-5-205 and rule 58A. Moreover, even if the standard the trial court utilized properly applied, the court still erred because the notarization in this case was sufficient. Finally, the court erred when it allowed Munday to benefit from his own failures. Any one of these reasons is sufficient to reverse the trial court’s ruling.

II. THE CONFESSION CONTAINS A SPECIFIED SUM.

When Munday executed the confession of judgment, he “authorize[d] and consent[ed] to the entry of Judgment by Confession against him . . . in the principal amount of \$160,000” and defined that as the “Judgment Amount.” [R.0001]. Munday further

recognized that the judgment “may be augmented by . . . attorneys’ fees” and reduced by “such amounts as [Munday] shall have paid.” [*Id.*]. Finally, Munday “expressly stipulate[d] and agree[d] that the sum that is specified as the Judgment Amount . . . shall be deemed to constitute a ‘specified sum’ within the scope of Rule 58A[(i)] of the Utah Rules of Civil Procedure.” [R.0002]. *See generally* Utah R. Civ. P. 58A (indicating a confession of judgment should include a “specified sum”).

Although the confession contained a defined judgment amount and Munday expressly stipulated the confession complied with rule 58A, the trial court found that it failed to comply with rule 58A’s “specified sum.” [R.0986]. The trial court found that because the confession allowed the Judgment Amount to be “augmented” to include attorney fees and to account for any amounts Munday paid towards the judgment, “[t]here was no final specified amount [] for Munday to verify.” [*Id.*].¹ Its interpretation and application of rule 58A was incorrect.

A. The Trial Court Erred in Interpreting Rule 58A’s Requirement for a “Specified Sum” to Mean a Fixed, Unchanging, Amount.

The trial court misinterpreted rule 58A’s “specified sum.” Among other errors, the trial court defined that phrase to require a “final specified amount,” which it determined necessarily precludes any augmentation. [R.0986]. That interpretation was flawed.

When a court “interpret[s] a rule of civil procedure, [it] should look at the express language of the rule and to cases interpreting it” and interpret “each term in the rule

¹ While the confession of judgment allowed for augmentation, no such augmentation was ever sought by Safe Home. Safe Home requested judgment be entered for the “Judgment Amount” of \$160,000.

according to its ordinary and accepted meaning.” *Drew v. Lee*, 2011 UT 15, ¶ 16, 250 P.3d 48. Likewise, a rule should be interpreted in a manner consistent with the other rules. *See Aequitas Enterprises, LLC v. Interstate Inv. Grp., LLC*, 2011 UT 82, ¶ 17, 267 P.3d 923 (Utah courts “read the plan language of [the] rules of civil procedure as a whole and interpret their provisions in harmony with other rules”). The trial court’s interpretation of “specified sum” ignored the ordinary and accepted meaning of that phrase and further applied it in a manner that was inconsistent with the other rules.

There is no authority from Utah defining the phrase “specified sum” as used in rule 58A. Indeed, the trial court cited no authority from any jurisdiction in its ruling. [*See* R.0986]. Thus, insight must be gleaned from the other rules and common usage.

A judgment by confession is similar in nature and outcome to a default judgment. For example, both allow for judgment to be entered by the clerk rather than the judge. *Compare* Utah Rule Civ. P. 55 *with* R. 58A(i). Also, both amount to a confession of liability. *See Heartland Res., Inc. v. Bedel*, 903 N.E.2d 1004, 1008 (Ind. Ct. App. 2009) (A “default judgment [] has been defined as a confession of the complaint”); *Union Oil Co. of California v. Bd. of Equalization of Beckham Cty.*, 913 P.2d 1330, 1337 (Okla. 1996) (“A default judgment is supported either by a party's failure to defend against the claim or a party's confession of judgment.”). Finally, both rule 55 and rule 58A require a measure of certainty in the amount of the judgment that is being entered. Rule 55 anticipates a “sum certain”; rule 58A references a “specified sum.” *Compare* Utah Rule Civ. P. 55 *with* R. 58A(i).

Although a default judgment requires a “sum certain,” rule 55 does not require or anticipate a fixed and unchanging amount. For example, rule 55(b)(1) declares that the “sum certain” can be increased by the plaintiff’s costs. *See* Utah R. Civ. P. 55(b)(1) (allowing judgment “for a sum certain . . . and costs.”). Moreover, a default judgment not only allows for application of any amounts paid by a defendant, it requires it. In order for a plaintiff to obtain a default judgment on a “sum certain” he must “establish the amount of the claim, after deducting all credits to which the defendant is entitled.” Utah R. Civ. P. 55(b)(1)(D). Thus, rule 55 anticipate the very same type of adjustments to the “sum certain” that the trial court refused to allow in this case.

Rules 54, 58B, and 73 also confirm that it is proper to enter judgment for an established amount and then augment the judgment to account for attorney fees, payments made, or both. Rule 54 defines a “judgment” as an order “that adjudicates all claims and the rights and liabilities of all parties.” Utah R. Civ. P. 54(a). Nevertheless, rule 54 anticipates that a “judgment” will be augmented to account for “costs or attorney fees.” *Id.* R.54(e). Likewise, rule 73 provides a process for accounting for attorney fees. Again, that process occurs “after the judgment is entered.” *See* Utah R. Civ. P. 73(a). Similarly, rule 58B imposes an obligation to file a satisfaction of a judgment including “[i]f the satisfaction is for part of the judgment.” Utah R. Civ. P. 58B(a).

In summary, regardless of whether a judgment is entered by default (rule 55) or otherwise (rule 54) the standard practice is to subsequently augment the judgment amount to reflect costs, attorney fees, and/or any payments that have been made. That is the same general process outlined in the confession of judgment at issue in this case. First, Munday

“authorize[d] and consente[d] to the entry of Judgment by confession against him or her in the principal amount of \$160,000,” which Munday defined as the “Judgment Amount.” [R.0001]. Second, the parties acknowledged – as is the typical process for a judgment – that the Judgment Amount could be augmented to reflect attorney fees and costs and any payments made by Munday.

Allowing a confession of judgment to be augmented for fees and payments received is not only consistent with the other rules, it comports with common sense. For example, it would be unjust if the specified amount of a confession of judgment could *not* be reduced to reflect payments a defendant already made. Likewise, it would invite an injustice if parties were required to guess the amount of attorney fees associated with enforcing a confession of judgment before that issue actually arose. Yet the trial court’s interpretation of “sum certain” would impose both those results. *But see* Utah R. Civ. P. 1 (“[Rules] shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action.”).

Not surprisingly given the analogous rules and common sense, the augmentation contemplated by the confession of judgment at issue in this case is consistent with accepted practice. *See Drew v. Lee*, 2011 UT 15, ¶16 (declaring courts should interpret “each term in the rule according to its ordinary and *accepted* meaning” (emphasis added)). Attorneys, plaintiffs, and judges have all interpreted and accepted rule 58A’s “specified sum” requirement to allow for augmentation for attorney fees and for payments made by the defendant. Indeed, every district court in the state has entered judgments based on verified

statements allowing for that type of augmentation. [See Representative Confessions of Judgment entered in Utah, attaches as Tab E].²

Finally, even if augmenting the judgment amount in the confession is contrary to rule 58A, the specific provisions allowing for augmentation should be deemed unenforceable, not the entire confession. *See Neilson v. Neilson*, 780 P.2d 1264, 1270 (Utah Ct. App. 1989) (“Where the offending provision is separable from the rest of the contract, the nonoffending provisions are enforceable.”); *see also* Restatement (Second) of Contracts § 184 (1981) (stating “[i]f less than all of an agreement is unenforceable [on grounds of public policy] a court may nevertheless enforce the rest of the agreement”).

B. Munday Waived His Right to Challenge the “Specified Sum”.

Regardless of how Rule 58A is interpreted, Munday “expressly stipulate[d] and agree[d] that the sum that is specified as the Judgment Amount . . . shall be deemed to constitute a ‘specified sum’ within the scope of Rule 58A[(i)] of the Utah Rules of Civil Procedure” and therefore waived the current issue. [R.0002]. *See generally IHC Health*

² While the argument relating to the meaning of “specified sum,” was preserved, the confessions contained in the summary were not presented to the trial court. However, this Court can take judicial notice of these filings because they represent “the general practice and procedure that prevails in the courts of this jurisdiction.” *Perrin v. Union Pac. R. Co.*, 59 Utah 1 (1921) (“This court, as a matter of course, takes judicial notice of the general practice and procedure that prevails in the courts of this jurisdiction.”); *Brough v. Ute Stampede Ass’n*, 105 Utah 446 (1943) (“[C]ourts should take notice of whatever is or ought to be generally known, within the limits of their jurisdiction, for justice does not require that courts profess to be more ignorant than the rest of mankind.”); *State v. One 1988 Chevrolet Camaro*, 813 P.2d 1186, 1187 (Utah 1991) (“[W]e take judicial notice of the common usage of ‘simple possession’ in this jurisdiction to distinguish mere possession from possession with intent to distribute.”); *Albertson’s, Inc. v. Hansen*, 600 P.2d 982, 986 (Utah 1979) (noting that the appellate court could take judicial notice of the “common” practice for raffle drawings).

Servs., Inc. v. D & K Mgmt., Inc., 2008 UT 73, ¶16, 196 P.3d 588 (addressing waiver); *Youngblood v. Auto-Owners Ins. Co.*, 2007 UT 28, ¶14, 158 P.3d 1088 (addressing equitable estoppel).

A “waiver is the intentional relinquishment of a known right.” *IHC Health Servs.*, 2008 UT 73, ¶ 16. To establish waiver, Safe Home must show that Munday “had (1) an existing right, (2) knowledge of its existence, and (3) an intent to relinquish the right.” *Id.* Likewise, equitable estoppel requires three elements: “first, a statement [or] admission . . . by one party inconsistent with a claim later asserted”; second “reasonable action . . . by the other party . . . on the basis of the first party’s statement [or] admission”; and third “injury to the second party that would result from allowing the first party to contradict or repudiate such statement [or] admission.” *Youngblood v. Auto-Owners Ins. Co.*, 2007 UT 28, ¶ 15, 158 P.3d 1088.

Here, Munday relinquished his right to contest the amounts described in the confession and is estopped from making arguments to the contrary. To induce Safe Home to give Munday a \$160,000 advance, Munday “expressly stipulate[d] and agree[d] that the sum that is specified as the Judgment Amount . . . shall be deemed to constitute a ‘specified sum’ within the scope of Rule 58A[(i)] of the Utah Rules of Civil Procedure.” [R.0002]. He should be held to that agreement. *See Russell v. Park City Utah Corp.*, 548 P.2d 889, 891 (Utah 1976) (“[P]arties are free to contract according to their desires in whatever terms they can agree upon; and further, that the contract should be enforced according to its terms . . .”).

III. The Trial Court Erred in Awarding Munday Attorney Fees.

For the reasons already stated, the trial court erred when it refused to enforce the confession of judgment Munday freely entered. Accordingly, the trial court's ruling should be reversed. For the same reasons, the Court should also reverse the trial court's determination that Munday was the prevailing party entitled to recover his attorney fees. [See R.1079-85]. Even if the Court affirms the trial court's general ruling on the confession of judgment, however, the trial court's award of attorney fees to Munday was still flawed.

The trial court awarded Munday attorney fees pursuant to Utah Code section 78B-5-826. [See *id.*]. However, that statute is inapplicable because it only applies to a party "that prevails in a *civil action*." Utah Code Ann. §78B-5-826 (emphasis added). A motion to set aside a confession of judgment does not qualify as a civil action under established Utah law.

"'Civil action' is a term of art, and a rather precise one at that." *Thorpe v. Washington City*, 2010 UT App 297, ¶15, 243 P.3d 500. "A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint." *Id.*; see also *Foil v. Ballinger*, 601 P.2d 144, 149 (Utah 1979) (same). "The term does not expansively include any and all filings having a civil character" *Thorpe*, 2010 UT App 297, ¶15.

In *Thorpe*, the plaintiff challenged the trial court's finding that he failed to meet a 180-day deadline to challenge an administrative decision. *Id.* at ¶ 16. At the time, the relevant Utah code declared that "an employee who alleges a violation of this chapter may bring a civil action . . . within 180 days." *Id.* see also Utah Code § 67-21-4. The plaintiff

argued that his notice of claim under the Governmental Immunity Act satisfied this requirement. *Thorpe*, 2010 UT 297, ¶¶ 14-15. The Court of Appeals disagreed. It noted that “the Legislature consciously selected the term ‘civil action’ and intended that it be used in accordance with its common and accepted meaning.” *Id.* at ¶ 15. Because the proceeding at issue in that case was not “commenced” by “filing a complaint with the court” or “by service of a summons,” it did not meet the “precise” meaning of the phrase “civil action.” *Id.*

Likewise, in *Brigham Young University v. Tremco Consultants, Inc.* 2007 UT 17, 156 P.3d 782, the Utah Supreme Court again addressed the meaning of “civil action.” *Id.* at ¶ 47. In that case, BYU obtained a judgment against SoftSolutions. *Id.* at ¶ 1. BYU relied on Utah Code section 16-10a-1408, which allows for a claim against a dissolved corporation to be enforced against shareholders, to argue it could seek to enforce the judgment against SoftSolution’s officers and directors. *Id.* at ¶ 46. The Utah Supreme Court rejected this theory, stating “section 16–10a–1408 does not authorize the enforcement of claims in a summary collection proceeding.” *Id.* at ¶¶ 46-47. The supreme court relied on Utah Code section 16-10a-1407(4)(b), which states, “an action to enforce a claim includes any civil action.” *Id.* at ¶ 47. The court explained that “a civil action means a proceeding subject to the full spectrum of due process safeguards” and the Legislature’s use of “civil action” did not include “post-judgment” proceedings. *Id.*

There is no reason or indication that the Legislature intended “civil action” to have a different meaning than the “precise” one recognized and applied in *Thorpe* and *Brigham Young University*. Indeed, if the Legislature intended Utah Code section 78B-5-826 to

apply to every proceeding having a civil character, it would have included language similar to that used in a different section of the same chapter and part. For example, section 78B-5-805 applies to “any civil action *or proceeding*” and 78B-5-813 applies to “any civil *proceeding*.” The Legislature’s use of “civil action” and exclusion of “proceeding” in Utah Code section 78B-5-826 should be given meaning. *See, e.g., Marion Energy*, 2011 UT 50, ¶ 14.

The trial court ignored these cases and rules of statutory interpretation. The trial court acknowledged that there was no complaint or summons filed in this case. [R.1081]. But, the trial court reasoned that a confession of judgment was civil in nature. It reasoned that while confessions “allow[] litigants to bypass the initial stages of a civil case and proceed straight to judgment, that does not change the fact that a confession of judgment, once entered, is a civil judgment which is subject to collection pursuant to civil procedural rules.” [R.1081]. But, this was part of BYU’s argument that the Utah Supreme Court expressly rejected in *Tremco Consultants*, 2007 UT 17, ¶¶ 46-47 (ruling “civil action” does not include proceedings limited to “post-judgment collection efforts”).

The trial court also reasoned that a “confession of judgment fits well within the boundaries of a ‘civil judgment’ as defined by Black’s Law Dictionary.” [R.1081]. That analysis confuses the phrase “civil judgment” and the phrase “civil action.” Utah Code 78B-5-826 does not allow for attorney fees for prevailing in a “civil judgment.” That statute applies only to “civil action.” *Id.* As recognized, “[c]ivil action’ is a term of art, and a rather precise one at that.” *Thorpe*, 2010 UT App 297, ¶15. This case does not meet the “precise” definition of the language intentionally selected by the Legislature in Utah Code

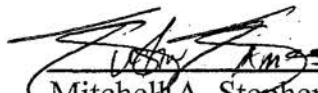
section 78B-5-826. Thus, the trial court erred in awarding Munday his attorney fees under that statute.

CONCLUSION

Munday admits he signed the 2016 Agreement. He admits he signed the accompanying confession. There is no dispute that Munday received the \$160,000 advance. And, there is no dispute that Munday terminated his employment with Safe Home only a few months later without repaying the \$160,000. The trial court erred in setting aside the judgment based on inapplicable and misinterpreted technicalities. The trial court should be reversed and Munday should be required to repay the \$160,000.

DATED: August 31, 2018.

HATCH, JAMES & DODGE



Mitchell A. Stephens
Justin L. James

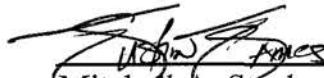
Attorneys for Safe Home Control, Inc.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Public Brief of Appellants Safe Home Control, Inc. complies with the type-volume limitations set forth in Utah R. App. P. 24(f)(1). According to the “word count” feature of Microsoft Word, this brief contains 6,741 words, inclusive of footnotes, from the Jurisdictional Statement section of the brief through the Conclusion.

DATED: August 31, 2018.

HATCH, JAMES & DODGE



Mitchell A. Stephens
Justin L. James

Attorneys for Safe Home Control, Inc.

CERTIFICATE OF SERVICE


I hereby certify that on the 31st day of August, 2018, I caused a true and correct copy of the **BRIEF OF APPELLANTS SAFE HOME CONTROL, INC** to be delivered via electronic delivery, or as otherwise noted, to the following:

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Attorneys for Appellee Jared Munday

DATED: August 31, 2018.

HATCH, JAMES & DODGE



Mitchell A. Stephens
Justin L. James

Attorneys for Safe Home Control, Inc.

OCT 20 2017

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

SAFE HOME CONTROL, INC., a
Delaware Corporation,

Plaintiff,

v.

JARED MUNDAY, an individual,

Defendant.

RULING AND ORDERGRANTING MOTION TO SET ASIDE
JUDGMENT BY CONFESSIONCase No.
160400579

Judge Christine Johnson

This matter is before the Court on a Judgment by Confession filed on April 18, 2016 by Safe Home Control, Inc. ("Safe Home"). Jared Munday ("Munday") filed a Motion to Set Aside the judgment on April 27, 2016. An opposition was filed by Safe Home on May 25, 2016, and Munday filed a Reply on June 6, 2016. The court held an evidentiary hearing on June 15, 2017. Munday then filed a Supplemental Brief in Support of His Motion to Set Aside Judgment on July 31, 2017. On August 20, 2017 Safe Home filed a Supplemental Brief in Opposition, and Munday filed a Post-Hearing Reply Brief on September 13, 2017.

Having considered the arguments presented and the submissions of the parties, and being advised in the applicable rules and the governing law, the Court now grants the motion to set aside, based upon the following:

BACKGROUND

The Present controversy arises from a contract negotiation between Jared Munday and Safe Home Control, Inc. Those negotiations resulted in an offer of employment, which Munday accepted. As part of his employment agreement, Munday signed a Judgment by Confession. The document was signed in the presence of a notary. The notary's jurat simply states: SUBSCRIBED AND SWORN to before me this 18th day of November, 2015." Munday did not part ways with Safe Home on good terms.

Following Munday's departure from Safe Home, Safe Home filed a "Verified Statement for Judgment by Confession," seeking to have its Judgment by Confession entered. The Court approved the proposed judgment, and Munday now seeks to set it aside. Due to procedural flaws, Munday's motion is granted.

ANALYSIS

Judgements by Confession are permitted by statute in Utah under U.C.A. §78B-5-205, which allows that judgments by confession be entered "in the manner prescribed by law." Those particular requirements are set forth in Rule 58A of the Utah Rules of Civil Procedure, which states that "If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant...." The rule goes on to state in 58A(i)(1) that "[i]f the judgment is for money due or to become due, the statement must concisely state the claim and that the specified sum is due or to become due." Further, "[t]he statement must authorize the entry of judgment for the specified sum." URCP 58A(i)(3).

In this case the Judgment signed by Munday fails in two regards. First, it lacks the necessary verification. In *Mickelsen v. Craigco, Inc.* 767 P.2d 561, 564 (Utah 1989) the Utah Supreme Court adopts "as [Utah's] rule that for a valid verification, (1) there must be a correct written oath or affirmation, and (2) it must be signed by the affiant in the presence of a notary or other person authorized to take oaths, and (3) the latter must affix a proper jurat." The Court notes that the written oath, the presence of a notary, and a proper jurat are separate and distinct requirements. A "jurat" is defined in Section 46-1-2(5) as:

a notarial act in which a notary certifies: (a) the identity of a signer who: (i) is personally known to the notary; or (ii) provides the notary satisfactory evidence of the signer's identity; (b) that the signer affirms or swears an oath attesting to the truthfulness of a document; and (c) that the signer voluntarily signs the document in the present of a notary.

In the instant case the Confession of Judgment was indeed signed in front of a notary but there is no written oath or affirmation and no indication that the statement was voluntarily signed. Further, there is no indication that the signer of the document produced evidence of his identity. The Confession of Judgment therefore lacks a proper jurat and fails to meet the requirements of verification under Rule 58A. For that reason alone, this judgment should be set aside.

Second, the Judgment does not state the required “specified sum.” Rule 58A plainly directs that Defendants authorize the entry of judgment for a specified sum. In the instant case the signed statement

authorizes and consents to the entry of Judgment by Confession ... in the principle amount of \$160,000 (“Judgment Amount”), plus interest thereon at the statutory post-judgment interest rate until paid. ... The Judgment Debtor further agrees that the Judgment and Judgment Amount may be augmented by any and all attorneys’ fees and costs incurred by Plaintiff in collecting on the Judgment or collecting the Judgment Amount until paid in full, less such amounts as the Judgment Debtor shall have paid to Judgment Creditor between the date of execution of this confession of Judgment and the date the Judgment may be filed with the Court.

It is further agreed that the Judgment Amount shall be determined by subtracting those payments, if any, that Judgment Creditor receives from Judgment Debtor after the date of this Confession of Judgment, and adding attorney’s fees, costs, and any applicable interest on said amount.”

Verified Statement for Judgment by Confession, filed April 18, 2016.

The equation given here to figure out the amount owed does not amount to a “specified sum.” It includes that certain amounts “may” be augmented. There is no information as to how the decision on those amounts will be made. The amount of attorneys’ fees and costs is unspecified. Any amount that may have been paid on this debt as referenced in the Judgment is not known. There was no final specified amount here for Munday to verify, had the statement been properly verified. Rule 58A requires that the “specified sum” be verified, and this judgment fails to meet that requirement.

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/

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CONCLUSION

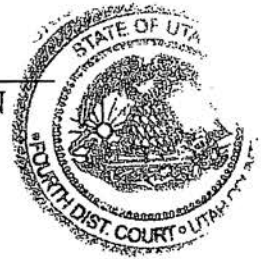
In conclusion, the Judgment by Confession is properly denied.

SO ORDERED.

This Ruling shall stand as the Order of the Court. Pursuant to Rule 7 no further order is required.

DATED this 19th day of October, 2017.


JUDGE CHRISTINE JOHNSON
Fourth District Court



[Mailing certificate on following page]

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 160400579 by the method and on the date specified.

EMAIL: ROBERT B CUMMINGS robert@thesaltlakelawyers.com

EMAIL: EDWARD M PRIGNANO eddie@safehomecontrol.com

EMAIL: DALLIS N ROHDE dallis@clilaw.com

EMAIL: JOHN P SNOW johnsnow@ppktrial.com

Date: 10/20/17

Karl [Signature]

Deputy Court Clerk



B

Exhibit 3: Judgment

IN THE FOURTH JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH IN AND
FOR UTAH COUNTY, PROVO DEPARTMENT

SAFE HOME CONTROL, INC., a Delaware
corporation,

Plaintiff,

v.

Jared Munday, an individual,

Defendant

JUDGMENT

Judge _____

Case No. _____

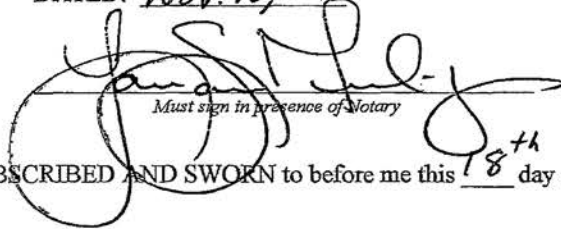
Pursuant to Utah Code Ann. § 78B-5-205 and Rules 58A(f) of the Utah Rules of Civil Procedures, Jared Munday (referred to herein as "Judgment Debtor"), hereby authorizes and consents to the entry of Judgment by Confession against him or her in the principal amount of \$160,000 ("Judgment Amount"), plus interest thereon at the statutory post-judgment interest rate until paid. This amount is owed pursuant to a loan agreement between the parties memorialized in a written promissory note. The Judgment Debtor further agrees that the Judgment and Judgment Amount may be augmented by any and all attorneys' fees and costs incurred by Plaintiff ("Judgment Creditor") in collecting on the Judgment or collecting the Judgment Amount until paid in full, less such amounts as the Judgment Debtor shall have paid to Judgment Creditor between the date of execution of this Confession of Judgment and the date the Judgment may be filed with the Court.

It is further agreed that the Judgment Amount shall be determined by subtracting those payments, if any, that Judgment Creditor receives from Judgment Debtor after the date of this

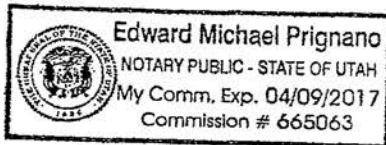
Confession of Judgment, and adding attorneys' fees, costs, and any applicable interest on said amount.

Judgment Debtor hereby expressly stipulates and agrees that the sum that is specified as the Judgment Amount shall be deemed to be "justly due" and shall be deemed to constitute a "specified sum" within the scope of Rule 58A(f) of the Utah Rules of Civil Procedure. The Judgment Debtor further stipulates that the Judgment in the form attached may be entered against it in favor of plaintiff in that specified sum as defined herein.

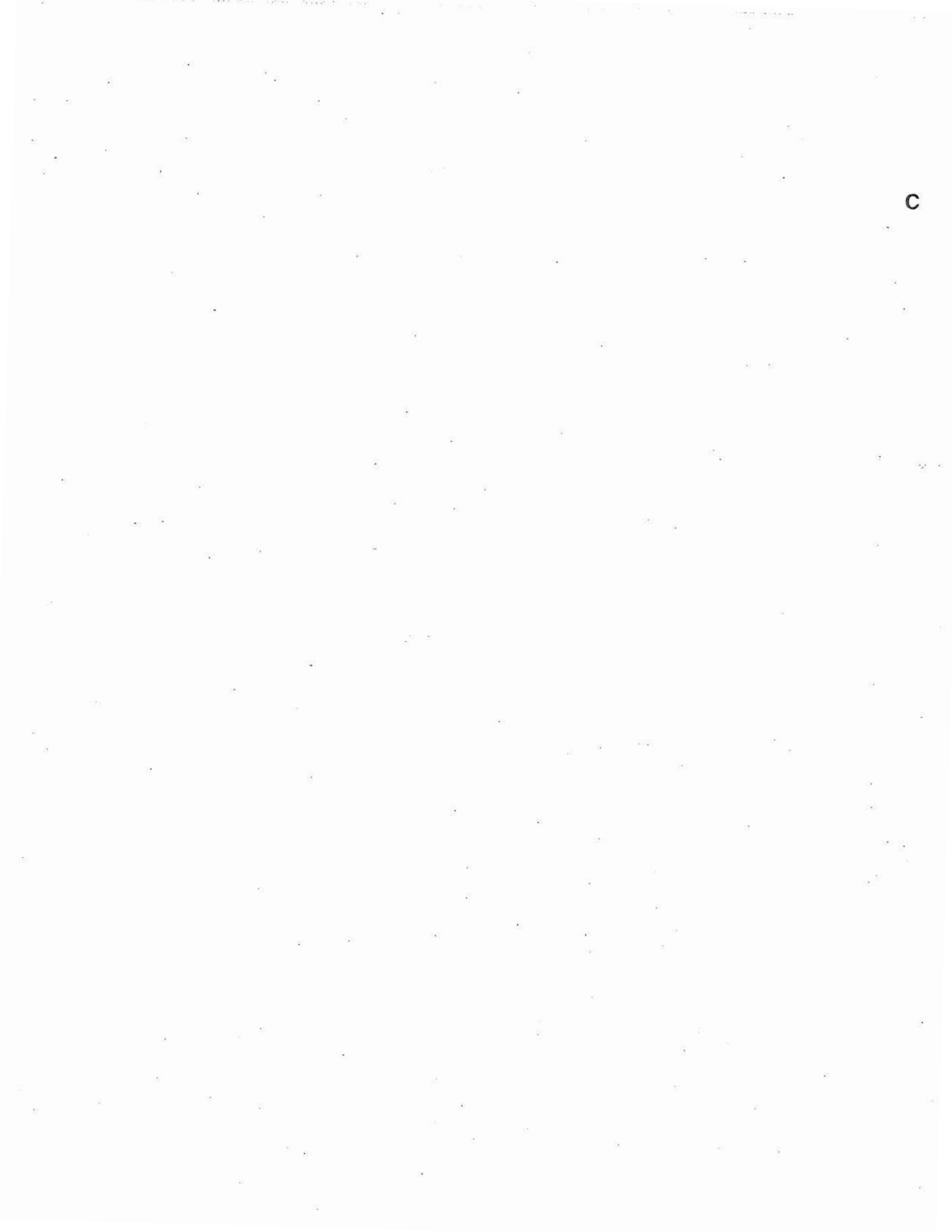
DATED: Nov. 18, 2015


Must sign in presence of Notary

SUBSCRIBED AND SWORN to before me this 18th day of November, 2015.




NOTARY PUBLIC



paid back: 11/19/15



2016 Regional Manager Agreement

This Regional Manager Agreement (collectively with any exhibit attached hereto, this "**Agreement**"), effective NOV 18TH, 2015 (the "**Effective Date**"), is entered into by and between Safe Home Control, Inc., a Delaware Corporation (the "**Company**"), and JARED MUNDAY, the undersigned individual (the "**Representative**").

A. The Company is in the business of marketing, selling, installing and monitoring home and commercial security systems and generally engaged in other related business activities (collectively, the "**Company Business**"). The Company desires to hire Representative, and Representative desires to provide services to the Company.

B. In consideration of the services to be provided by Representative to the Company on the terms set forth in this Agreement, the Company and Representative now desire to enter into this Agreement.

C. WHEREAS the Representative is executing this Agreement to govern, among other considerations, his compensation for sales generated during the Term (defined below).

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Term.** This Agreement shall terminate August 31, 2018, unless renewed by the Parties in writing or terminated prior to that time pursuant to Section 3 of this Agreement. Where this Agreement covers three "Summer Seasons" as defined herein, each of the rules and dates shall apply to each individual Summer Season for the appropriate year.

2. **Appointment of Representative.** The Company hereby agrees to hire Representative as a Regional Manager in such geographic region (the "**Region**"), and as applicable and as agreed upon by the Company, area (the "**Area**") as the Company may determine from the Commencement Date (as defined below), through August 31, 2018 (the "**Term**"), to sell home and commercial security systems offered by the Company. The Company anticipates that Representative will perform most of his services hereunder from May 1 to August 31 of each year (the "Summer Season") of the Term; provided, however, that certain compensation hereunder may not be paid until February 28 of each year of the Term following the Summer Season. The Company shall notify Representative of Representative's Region and, as applicable, Area with respect to the Summer Season on or before April 1 of each year of the Term. For purposes of this Agreement, the "Commencement Date" shall mean the Effective Date.

2.1 **Representative Status.** This Agreement shall not constitute an employment contract between the Company and Representative. Except where appropriate for State or other governmental authority licensing, taxation or other purposes, Representative shall be an independent contractor and not the servant, employee, partner, member, manager, or joint venturer of the Company and, in conformity therewith, Representative shall retain sole and unfettered discretion and judgment in the manner and means of carrying out his activities and duties as assigned by the Company and accepted by Representative, provided the same are not contrary to any law or the provisions of this Agreement. Representative will not be treated as an employee for U.S. federal tax purposes. Further, Representative shall pay all employment, income, and social security taxes levied by any federal, state, or local taxing authority on any sums paid by the Company to Representative. Notwithstanding the preceding, if a state or other local governmental authority requires the Company to treat Representative as an employee for state or local licensing, taxation or other purposes, then the Company reserves the right to treat Representative in accordance with such requirements, and the Company shall provide Representative notice of the same.

3. Termination.

3.1 **Entire Term.** If Representative's relationship with the Company under this Agreement is terminated by the Company for Cause (as defined in Section 3.2) for any acts committed at any time prior to the last day of the Term, or voluntarily by Representative at any time prior to August 31, 2018, Representative understands and agrees that (i) Representative will not qualify for the bonuses as set forth herein and on Exhibit 1, regardless of whether such bonus has accrued or otherwise been earned; and ii)

Representative will be charged all apartment rental costs for all apartments in Representative's Region from the date of termination through the end of the Term and will not receive any reimbursements.

3.2 Termination for Cause. For purposes of this Agreement, "**Cause**" shall be defined to include the following: (i) misappropriation of any of the Company property, including, but not limited to, equipment or parts of a security system, or the Company's tools in Representative's possession; (ii) unreasonably prolonged absence from work which impedes or prevents Representative from performing the essential functions of his job; (iii) failure to perform Representative's duties in a competent manner or to the Company's satisfaction; (iv) dishonesty or conviction of a crime or entry of a plea of guilty or *nolo contendere* to a criminal act; (v) conduct that reflects unfavorably upon Representative, Representative's co-workers, or the Company; and (vi) any breach of the Code of Conduct (as defined below).

3.3 Termination Without Cause. The Company may terminate Representative's relationship with the Company under this Agreement at any time and for any or no reason without notice.

3.4 Termination By Representative. Representative may terminate this Agreement for any or no reason upon seven (7) days' written notice to the Company; provided, however, that the effect of such termination is set forth in this Agreement.

4. **Compensation.** With respect to the subject matter of this Agreement, Representative shall be compensated as set forth on **Exhibit 1** attached hereto, subject to the terms and conditions of this Agreement and subject to reductions and modifications as set forth in the Sales Rules (as defined below) and in this Agreement. The tables on **Exhibit 1** (the "**Compensation Tables**") set forth the compensation rates applicable to Representative per number of Contracts (as defined below) in Good Standing (as defined below) generated by Representative or Representative's Region, or Area as applicable, during the Summer Season. Representative agrees and acknowledges that the Company maintains certain Sales Rules, which are attached as **Exhibit 6**, which (a) Representative is responsible for knowing and understanding, (b) the Company may modify, change or eliminate from time to time, and (c) set forth certain reductions to the Flat Rate, Retroactive Bonus and other compensation that Representative may receive, and which sets for certain fees that may be charged to Representative (the "**Sales Rules**") prior to said compensation being earned by the Representative. The Sales Rules, as they may be modified from time to time by the Company, are hereby incorporated into this Agreement by this reference. Representative understands and agrees that he shall not be entitled to any compensation or benefits other than as expressly referenced herein or otherwise set forth in **Exhibit 1**, this Agreement and the Sales Rules; however, the Company may allow Representative to participate in an off-season compensation plan pursuant to the policies and practices of the Company. A "**Contract**" shall mean that certain agreement whereby a customer agrees to purchase a security system and related services from the Company on the terms and conditions set forth therein. A Contract is in "**Good Standing**" if (i) all installation fees and monthly service and/or monitoring fee payments have been received in full by the Company or its nominee, (ii) the customer is currently satisfied with the installation, security equipment, monitoring services, and all other services provided by the Company and/or the monitoring company selected by the Company (the "**Monitoring Company**" or "**ADT**") pursuant to the Contract with such customer, (iii) the Contract with such customer is eligible to be purchased by the Monitoring Company pursuant to the Monitoring Company's guidelines, (iv) the Contract has not been cancelled or otherwise terminated; (v) all original paperwork for such Contract (including all forms of the Contract) has been received by the Company; and (vi) the Company has, in its determination, received full funding by the Monitoring Company. Representative acknowledges that the Company relies on the purchase of Contracts by the Monitoring Company, and that the Monitoring Company's policies and procedures may change from time to time which will necessarily affect whether or not a Contract is in Good Standing. As described in **Exhibit 1**, certain compensation may be advanced or paid to Representative in multiple payments (i.e., Flat Rate and Retroactive Bonus), and payments will only be paid with respect to Contracts in Good Standing at the time of such payments. Each of the parties hereby acknowledges and agrees that **Exhibit 1** may be modified or amended from time to time at the sole discretion of the Company upon one (1) business day's notice to Representative, and that **Exhibit 1** is subject to the provisions of the Sales Rules, which Sales Rules shall govern in the event of any inconsistency with this Agreement of **Exhibit 1**. Representative further acknowledges and agrees that any compensation advanced to Representative hereunder shall be subject to offsets, adjustments, and other charges until completely earned by Representative, including but not limited to a reduction equal to the aggregate amount of any and all extraordinary compensation offered by Representative to any Company sales representative or other representative, all as set forth in **Exhibit 1**. Representative acknowledges that he or she shall not have earned, and will not be entitled to, any bonuses if Representative breaches this Agreement at any time prior to the end of the Term, including, but not limited to, the Retroactive Bonus, the Area Rate, the Region Rate, the Leadership Bonus or the Regional Manager Budget (as defined in **Exhibit 1**).

5. **Housing.** Representative shall be responsible for any amount of money the Company spends, in Representative's Region (for all sales representatives, summer office staff, housing for office/storage and installing technicians) on housing that exceeds the current housing guidelines as posted/communicated by the Company. As described above, housing rates shall be charged to Representative by the Company weekly or bi-weekly in arrears at the amount posted in the Company's housing guidelines, at the Company's sole discretion. Further, (i) Representative shall be responsible to pay for utilities and any fees or fines assessed by third parties (e.g., apartment complexes) without reimbursement by the Company, and (ii) Representative shall not be eligible for any rent reimbursements the Company may provide if he does not live in an apartment approved by the Company. Representative shall not be entitled to any available rent reimbursements that the Company may provide if

Representative (a) is Terminated for Cause pursuant to Section 2.2, (b) quits voluntarily, or (c) breaches this Agreement at any time prior to the end of the Term.

5.1 During the Term of this Agreement, the Company may at its option provide Representative with housing accommodations, including adequate furniture. Should the Company provide housing, and should Representative use such housing, the Company will charge its posted housing rates (as announced and modified by the Company from time to time in its sole discretion) to Representative weekly in arrears. The Company shall not be liable for theft, loss or damage, if any, to any of Representative's personal property caused by fire, water, or from any cause whatever. Further, Representative shall be liable for and shall pay for any and all damage caused to any housing premises in Representative's Region. Representative agrees and acknowledges that no pets of any kind are permitted in Company housing.

6. **Confidentiality.** Representative understands and acknowledges that, during Representative's relationship with the Company under this Agreement, Representative has had and will have access to and has learned and will learn (i) information proprietary to the Company and its affiliates (collectively for purposes of this Section, the "**Company**") that concerns the operation and methodology of the Company Business as the same is now and hereafter conducted by the Company, and (ii) other information proprietary to the Company, including, without limitation, trade secrets, know-how, prices, customer and supplier lists and data, customer databases, pricing and marketing plans, policies and strategies, details of customer and supplier relationships, operations methods, sales techniques, business acquisition plans, the identity of employees and other independent contractors, new recruitment and personnel acquisition plans, processes, patent and trademark applications, Web sites, Internet addresses, email addresses and domain names, including all software, information and processes necessary to operate the Company's Web site, and all other confidential information with respect to the Company Business (collectively, "**Proprietary Information**"). Representative agrees that, from and after the Effective Date, Representative will keep confidential and will not disclose directly or indirectly any such Proprietary Information to any third party, except as required to fulfill Representative's duties as an Representative of the Company during the Term of this Agreement, and will not use such Proprietary Information except for the Company's benefit and for the Company Business and will not misuse, misappropriate, or exploit such Proprietary Information in any way. The restrictions contained herein shall not apply to any information that was (a) already available to the public at the time of disclosure, or subsequently becomes available to the public other than by breach of this Agreement, or (b) disclosed due to a requirement of law, provided that Representative shall have given prompt notice of such requirement to the Company to enable the Company to seek an appropriate protective order with respect to such disclosure.

7. **Noncompetition and Nonsolicitation.**

7.1 In the event of termination of this Agreement of Representative's relationship with the Company (for whatever reason or no reason at all), and for a period of two (2) years from the date of such termination (the "**Noncompetition Period**"), Representative shall not, directly or indirectly (whether as a principal, agent, independent contractor, employee, partner, owner, or in any other similar capacity), own, manage, operate, participate in, perform services for, be employed by, or otherwise carry on, a business similar to or competitive with the Company Business anywhere in which the Company or any of its affiliates, during the Noncompetition Period, is engaged, or to the Representative's knowledge the Company intends to become engaged in the Company Business. Notwithstanding the foregoing, Representative shall not be prohibited from owning not more than one percent of the voting stock of any publicly traded entity that competes with the Company.

7.2 In the event of termination of this Agreement of Representative's relationship with the Company (for whatever reason or no reason at all), and for a period of three (3) years from the date of such termination (the "**Nonsolicitation Period**"), Representative shall not, directly or indirectly, (i) recruit, solicit, induce, or influence (or seek to induce or influence) any person who is or was within the preceding two (2) years employed by, hired by, affiliated with, or acts as a consultant, independent contractor, or salesperson for, the Company or the ADT Corporation ("**ADT**") to terminate or alter his or her relationship with the Company or ADT.

7.3 Except as permitted by the Company or as is otherwise necessary to carry out Representative's duties, during the Nonsolicitation Period, Representative shall not, directly or indirectly, call on or solicit any person, business or other entity who or which is, or had been within the prior two years, a customer or potential customer, or supplier or potential supplier, of the Company with respect to the Company Business or any business similar to or competitive with the Company Business as of the termination of Representative's relationship with the Company under this Agreement, as the case may be.

7.4 Representative represents and warrants that one of the fundamental expectations of Representative and the Company with respect to Representative's solicitation of Contracts is that the Contracts will be renewed by the customers after expiration of the applicable term of the Contracts, and Representative acknowledges that Contracts are customarily so renewed. Accordingly, in consideration of the Company's payments set forth in this Agreement and in consideration of other good and valuable consideration, Representative agrees that he shall not, at any time within five (5) years from the date a Contract was acquired by the Company, directly or indirectly, in any capacity (including, without limitation, for himself, or on behalf of any other person or entity, or as an employee, officer, director, manager, partner, shareholder, agent, independent contractor, or other similar person of another person or entity) contact, solicit, or attempt to contact or solicit or accept unsolicited monitoring or alarm installation fees or business from the customer to whom such Contract related. In furtherance of the foregoing, but without limiting the same, without the prior written consent of the Company,

which may be given or withheld in the Company's sole discretion, Representative agrees not to sell or convey any customer lists or other confidential information of the Company or otherwise related to the Contracts and the customers to any other person nor offer to sell monitoring or other equipment to any customer.

7.5 Representative agrees that the amount of damage resulting to the Company from a violation of this Section is difficult to ascertain and acknowledges that the Company shall be entitled to liquidated damages, for loss of revenue and not as a penalty, from Representative if he violated this covenant in the amount of any affected Contract's monthly payment to the Company multiplied by 50, in addition to permanent injunctive and other applicable relief. Such damages shall be paid by such Representative to the Company within ten (10) days after receipt of written demand from the Company. The Company shall also be entitled to equitable relief, including, but not limited to, an injunction, and such relief shall be cumulative and in addition to any other remedies that the Company may have hereunder and/or at law or in equity; and Representative agrees not to assert as a defense in any such equitable proceeding that an adequate remedy at law exists.

8. **Presumption of Accuracy of the Company's Computations.** Representative shall provide written notice to the Company that Representative claims that any computation by the Company contemplated by this Agreement is not accurate. Said notice shall be in writing and shall be given to the Company within fifteen (15) days of the Representative being provided with the subject computation, or access to the subject computation, including by means of access to the Company's internal software. Failure of Representative to provide the Company such written notice within the designated response time shall constitute Representative's acceptance of such computation. The Company may accept or reject such claim in its sole and absolute discretion.

9. **Retention Goals.** During the term of this Agreement, Representative is required to assist the Company in the retention of accounts.

10. **Draw.** Subject to the conditions below, the Company may pay the Representative a monthly draw of up to \$10,000 in period installments in accordance with the Company's customary payroll practices, but no less frequently than monthly (the "**Draw**"). Representative shall be paid the Draw during the Term of this Agreement if, and only if, Representative's Region (as defined in Exhibit 1) generates a minimum of one thousand (1,000) Good Standing Contracts during the preceding Summer Season. If Representative's Region does not generate a minimum of one thousand (1,000) Good Standing Contracts during the preceding Summer Season, Representative shall not be entitled to the Draw. The Draw is a loan from the Company to Representative that is carried forward until the Representative earns sufficient commissions and/or incentives to repay it or until Representative is no longer employed with the Company. The Draw will be repaid as follows: The outstanding Draw will be withheld from any earned compensation contained in this Agreement. If this Agreement is terminated for any reason then the amount outstanding becomes due and payable in full at the time of termination. The Company reserves the right to withhold the outstanding balance from as well as from any other form of compensation due to Representative to include salary, commissions, incentives, and reimbursable expenses where allowed by state and federal law.

11. **Signing Bonus.** The Company shall pay the Representative a lump sum cash signing bonus of \$160,000 (the "**Signing Bonus**") within 30 days following the Effective Date; provided that, the Representative shall repay the gross amount of the Signing Bonus if, prior to the end of the Term of this Agreement, the Representative terminates this Agreement (as defined in Section 3.4) or Representative is terminated by the Company for Cause (as defined in Section 3.2). Representative shall repay the gross amount of the Signing Bonus if, prior to the end of the Term of this Agreement, Representative's Region fails to generate at least two thousand and five hundred (2,500) Good Standing Accounts. In addition, prior to receiving the Signing Bonus, Representative must sign the consent to judgment (the "**Judgment**") contained in Exhibit 3 and described in Section 15.

12. **Interpretation and Acknowledgment.**

12.1 It is the intention of the parties hereto that the noncompetition and nonsolicitation covenants contained in Section 7 of this Agreement be enforced to the greatest extent (but to no greater extent) in time, scope, geography, and degree of participation as is permitted by applicable law. To this end, the parties hereto agree that such covenants shall be construed to extend in time and territory and with respect to degree of participation only so far as they may be enforced, and that such covenants are to that end hereby declared divisible and severable because it is a purpose of this Agreement to govern competition by Representative anywhere in which the Company, during the Noncompetition Period, is engaged or intends to become engaged in the Company Business.

12.2 Representative acknowledges that Representative's covenants and agreements in Section 7 of this Agreement are reasonable and necessary to protect the Company's legitimate interest in its Proprietary Information and goodwill. Representative acknowledges that Section 7 of this Agreement is not so broad as to prevent Representative from earning a livelihood or practicing Representative's chosen profession after termination or expiration of this Agreement.

12.3 The parties hereto acknowledge that this Agreement does not, and will not, create any obligation on behalf of the Company to hire the Representative or renew the Agreement after the expiration of the Term. Representative hereby acknowledges that

the covenants and agreements in Section 7 shall remain enforceable if the Company terminates Representative's relationship with the Company under this Agreement for Cause prior to the end of the Term.

13. **Prior Employer Agreements.** Representative represents and warrants that Representative's services to the Company under this Agreement do not violate or breach any confidential relationship between Representative and any other party. Representative further agrees that Representative will not use for the Company's benefit or disclose to the Company any proprietary information of any third party that Representative is prohibited (by agreement or otherwise) from so using or disclosing. Representative also represents that Representative has disclosed to the Company any such confidential relationships and relevant agreements and prohibitions. Representative further agrees to indemnify and hold the Company harmless from all damages, expenses, costs (including reasonable attorneys' fees) and liabilities incurred in connection with, or resulting from, a breach of this Section.

14. **Nondisparagement.** During and after the Term of this Agreement, Representative agrees not to disparage the Company, its managers, members, or affiliates; provided, however, that Representative may give truthful testimony given in compliance with a lawful subpoena or court order. The Representative further agrees not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Company, its employees, directors, and officers. Representative acknowledges and agrees that this prohibition extends to statements, written or verbal, including via social media, made to anyone, including but not limited to, the news media, industry analysts, competitors, vendors, employees (past and present) and customers or potential customers.

15. **Consent to Judgment.** Representative agrees to execute the Judgment attached hereto as **Exhibit 3**, which will, in the event Representative breaches this Agreement, allow the Company to obtain an immediate judgment against Representative for any deficiency, which has not been repaid to the Company, or (ii) any Bonus monies paid by the Company to Representative pursuant to this Agreement, which have not been repaid to the Company or otherwise set off against Representative's compensation, the Company's costs and attorneys' fees incurred with respect thereto, and any interest.

16. **Prior Agreements.** The parties hereto hereby agree and acknowledge that to the extent Representative has been retained by the Company for part or all of the Term under a prior agreement, this Agreement shall supersede and replace any prior agreement with respect to the Term and shall control for purposes of determining Representative's compensation for the Term.

17. **Intentionally Omitted.**

18. **Notices.**

If to Company:

Safe Home Control, Inc.
Attention: General Counsel
495 W University Pkwy
Orem, UT 84058

If to Representative:

At the address listed on Representative's W-9 or application.

19. **Background Check.** Representative hereby consents to and authorizes the Company to conduct a background check (including a search of criminal, motor vehicle, and other records) on Representative.

20. **Drug Testing.** Representative hereby consents to be subjected to mandatory drug testing by the Company without notice. Refusal to participate or failure of a test may result in fines, suspension or termination.

21. **Licensing.** Representative assumes responsibility for ensuring that Representative has all necessary permits and licenses necessary to sell. Any failure to obtain necessary permits or licenses may result in fines, suspension or termination, and the Company may deduct any damages or costs incurred as a direct or indirect result of such failure from Representative's compensation hereunder.

22. **Auto Insurance.** Neither Representative nor his automobile shall be eligible for any coverage under the Company's auto insurance policy. Representative shall be responsible for acquiring his own auto insurance coverage prior to operating any vehicle in accordance with applicable state law.

23. **Policies and Procedures.** Representative agrees to abide by all the Company's rules, regulations, handbooks, manuals, trainings, policies, practices, and procedures, including, but not limited to, those policies set forth in Exhibits 8 and 9 hereto. The Company, in its sole and absolute discretion, may from time to time amend, modify, or revise its rules, regulations, handbooks, manuals, policies, practices, and procedures. By signing this Agreement, Representative acknowledges and represents that Representative has received, reviewed, read, and agrees to abide by all of the provisions in the Code of Conduct, Sales Rules, and the Anti Harassment Policy set forth herein. Representative shall not perform any services for the Company unless Representative is (i) authorized by the Company to perform services in that area, (ii) properly licensed to perform services in that area, and (iii) has previously obtained any and all permits or licenses required for the services Representative is performing in that area. Representative represents and agrees that prior to performing any service for the Company in any area, Representative will contact the Company and notify the Company of the locations where Representative intends to perform services.

24. **Choice of Law.** The parties agree that this Agreement shall be construed in accordance with, and governed by, the laws of the State of Utah, without regard to the application of conflicts of law principles. The parties agree that any suit, action or proceeding arising out of or relating to this Agreement must be instituted in a state court of competent jurisdiction located in Utah County, Utah and the parties hereby irrevocably submit to the exclusive jurisdiction of any such court.

25. **Headings.** The headings used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

26. **Miscellaneous.** This Agreement is binding upon and for the benefit of the parties hereto, their respective officers, directors, employees, partners, principals, successors and assigns. Representative may not assign this Agreement without the prior written consent of the Company, which consent may be withheld in the sole discretion of the Company. The Company may assign this Agreement in its discretion without the consent of any other party. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. Any reference in this Agreement to gender includes all genders and words importing the singular number only shall include the plural and vice versa. This Agreement, in conjunction with Exhibit 1, is intended to comply with the requirements of Section 3508 of the Internal Revenue Code as such section applies to "direct sellers."

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement to be effective as of the day and year first written above.

THE COMPANY:


SAFE HOME CONTROL, INC.


Signature

Name: MICHAEL BIRCHALL

Title: President/CEO

REPRESENTATIVE:


Signature

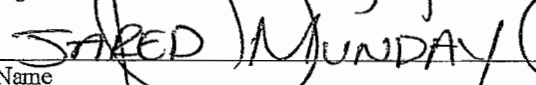

Name

Exhibit List

Exhibit 1	Compensation
Exhibit 2	Code of Conduct
Exhibit 3	Judgment
Exhibit 4	Intentionally Omitted
Exhibit 5	Anti Harassment Policy
Exhibit 6	Sales Rules

Exhibit 1: Payscales

Personal Compensation Table

A. Accounts in Good Standing	B. Flat Rate	C. Retroactive Bonus
1+	\$620	\$100

Note

- Flat Rate and Retroactive Bonus based off of selling Pulse Tier I for \$54.99
- The Flat Rate and Retroactive Bonus are subject to conditions and deductions set out in this Agreement and Exhibit 8, Sales Rules

Region Compensation Table

F. Region Accounts in Good Standing	G. Region Rate (Per Contract)
1+	\$50

Note

- Region Rate based off of selling Pulse Tier I for \$54.99
- Region Rate is subject to conditions and deductions set out in this Agreement and Exhibit 8, Sales Rules

1. **Compensation Tables.** For purposes of this Agreement, (i) “*Personal Compensation Table*” shall mean the Table of Regional Manager Compensation Rates for Contracts Personally Generated By Representative, (ii) “*Area Compensation Table*” shall mean the Table of Regional Manager Compensation Rates for Contracts Generated In Representative’s Area and (iii) “*Region Compensation Table*” shall mean the Table of Regional Manager Compensation Rates for Contracts Generated In Representative’s Region. **All Compensation detailed hereunder is earned in part through the Representative’s material assistance in servicing an account following the initial point-of-sale. WHILE A COMPENSATION PAYMENT MAY BE ADVANCED AND PAID PENDING THE COMPLETION OF ALL NECESSARY PREREQUISITES TO EARNING SUCH COMPENSATION (AS DETAILED HEREIN), NO COMPENSATION SHALL BE FINALLY EARNED UNTIL ALL SUCH NECESSARY PREREQUISITES HAVE BEEN SATISFACTORILY MET.**

2. **Contracts Submitted.** Payment of the Flat Rate (as defined below) and all bonuses may only be advanced, and shall not be finally earned, until all of the following necessary prerequisites have been met: The Representative submits Contracts that (i) have been properly documented and installed in accordance the Company’s policies, and (ii) are in Good Standing, rather than on Contracts that will be or should be submitted or on Contracts not in Good Standing; and any compensation for submitted Contracts is subject to modification and reduction in accordance with the Sales Rules. For the avoidance of doubt, no Contract shall be considered in Good Standing, until all paperwork for such account, including all forms of the Contract, are electronically scanned and received by the Company. The Company reserves the right to withhold from, or to not pay to, Representative any advanced compensation, including, but not limited to, the Flat Rate or any bonus, relating to Contracts that (A) are submitted late, (B) are not in Good Standing, or (C) have not resulted in two consecutive monthly monitoring fee payments from the date of the installation of the security system. If a customer’s past due amount is sixty (60) or more days past due, the account will be considered bad and Representative will be charged back any amount received on the account. In addition, regardless if the account is no longer past due at some point in the future, commissions will not be paid again and the number cannot count towards the calculation of any bonus or compensation in this Agreement, including, but not limited to, the Retroactive Bonus, the Area Rate, and the Region Rate. By executing this Agreement, Representative acknowledges and agrees that he or she has not earned, and is not entitled to, any compensation set forth in the Compensation Tables (i.e., any compensation listed in columns) or anywhere else in this Agreement for Contracts that are *not* in Good Standing, as reconciled by the Company in February of every year during the Term of this Agreement (the “*Reconciliation*”). In the event that any Contract submitted by Representative or Representative’s Area on which a Flat Rate payment has been advanced becomes *not* in Good Standing during the Term of this Agreement, Representative may (in the Company’s sole discretion) be required to return such compensation or payment paid to Representative. In the event that Representative fails to repay such payment, the Company may deduct the amount from any compensation due to Representative by the Company and pursue any other available legal remedy to recover such payment. Representative acknowledges that the Company relies on the funding and the purchasing of Contracts from ADT and that ADT may, in its sole and absolute discretion, make changes to its policies that affect the Company and its funding. As a result, the Company may, in its sole and absolute discretion, make changes from time to time in how it determines whether or not a Contract is in Good Standing.

3. **Cancelled Accounts.** In addition to the repayment of any Flat Rate payment which has been advanced with respect to cancelled Contracts during the Term, Representative may (in the Company’s sole discretion) be charged a fee for cancelled accounts on Contracts personally generated by Representative (the “*Cancellation Fee*”). In the event that Representative’s Notice of Cancellation rate (the “*NOC Rate*”) meets or exceeds a 5% rate, Representative shall be assessed a Twenty-Five (\$25) dollar Cancellation Fee for each NOC cancellation. If applicable, these Cancellation Fees shall be assessed at reconciliation. Furthermore, in the event that Representative’s NOC Rate meets or exceeds 10%,

Representative shall be assessed a One Hundred (\$100) dollar Cancellation Fee for each NOC cancellation. If applicable, these Cancellation Fees shall be assessed at reconciliation. In the event that Representative fails to pay any Cancellation Fee, the Company may deduct such Cancellation Fee from any compensation due to Representative by the Company. If the percentage of cancellations within the Notice of Cancellation period (as described in the applicable customer contracts) in Representative's Region exceed 5% of all Contracts generated in such Region, then the Region Rate (as set forth in Column G and described below) shall be reduced by \$2.50. If Representative is also assigned by the Company as an Area Manager, then the Office Rate shall be reduced by an additional \$5 if the percentage of cancellations within the Notice of Cancellation period in Representative's Area exceeds 5% of all Contracts generated in such Area.

4. **Credit Score.** "*A Credit Contract*" shall mean a Contract wherein a customer has a credit score classified as "A Credit" pursuant to the Company's then-current credit classifying standards, which may be modified by the Company from time to time. "*B Credit Contract*" shall mean a Contract wherein a customer has a credit score classified as "B Credit" pursuant to the Company's then-current credit classifying standards, which may be modified by the Company from time to time. "*C Credit Contract*" shall mean a Contract wherein a customer has a credit score classified as "C Credit" pursuant to the Company's then-current credit classifying standards, which may be modified by the Company from time to time. Representative acknowledges and agrees that from time to time the Company may in its sole discretion modify the credit score requirements of an A Credit Contract, a B Credit Contract, or a C Credit Contract without notice.

5. **Calculation of Number of Contracts.** Only A Credit Contracts, B Credit Contracts and C Credit Contracts in Good Standing shall qualify for bonuses and be counted as part of the number of Contracts. Notwithstanding anything to the contrary contained in this Agreement, if Representative generates a minimum of one hundred (100) Contracts in Good Standing during the Summer Season, then Contracts personally generated by Representative shall be included in the determination of "Number of Area Contracts" in the Compensation Tables above with respect to the calculation of the Area Rate and any Sales Bonus (all as defined below, and collectively, the "*Area Bonuses*"); *provided, however*, that Representative shall not be eligible to receive the Area Bonuses with respect to such Contracts personally generated by Representative.

6. **Timing of Payments.** The amount of compensation advanced to Representative pursuant to the Flat Rate shall be paid weekly to Representative in accordance with the practices and policies of the Company, unless otherwise determined by the Company. Other than with respect to payments of the Region Rate, Area Rate, and Retroactive Bonus. The amount of compensation due to Representative pursuant to the Bonuses shall be paid by the Company to Representative on or before February 28 of the year following the Summer Season, in accordance with the practices and policies of the Company, unless all Contracts have not been reconciled by such date or unless otherwise determined by the Company.

7. **Flat Rate.** Subject to the terms and conditions of this Agreement and the Sales Rules, Representative shall be advanced the Flat Rate set forth in Column B of the Personal Compensation Table (the "*Flat Rate*"), for each Contract personally generated by Representative that is in Good Standing. If a Contract is not in Good Standing, the Company has no obligation to pay the Flat Rate for such Contract to Representative. Representative shall be advanced the Flat Rate payment for each Contract in Good Standing only after the Company has received the second regular monthly monitoring fee (which is not the payment collected at time of the sale of the security system or the next payment obtained, but rather the second payment that is either sent from the customer or auto-debited from such customer) for any such Contract. If Representative receives any advance Flat Rate payment with respect to a Contract that later becomes a Contract that is not in Good Standing prior to reconciliation, Representative agrees and acknowledges that the Company will charge back the amount of such Flat Rate compensation with respect to such Contract then not in Good Standing against any future compensation due to Representative. The Flat Rate for all C Credit Contracts shall be reduced by no less than \$100.00 and shall be governed by the current Sales Rules. If there is any inconsistency between this paragraph and any other paragraph in this Exhibit 1 or in the Agreement, then this paragraph shall control. In addition, the Company may offset all amounts that Representative owes to the Company against the Flat Rate and against any other compensation to which Representative may be entitled to receive under this Agreement. *Representative agrees and acknowledges that the amount of the Flat Rate may be adjusted and reduced based on several factors in accordance with the Sales Rules.* Such factors include, without limitation, billing type, base monitoring rate, credit score, and other factors. The Company may change or modify these factors in its sole and absolute discretion from time to time.

8. **Intentionally Omitted**

9. **Intentionally Omitted**

10. **Intentionally Omitted**

11. **Intentionally Omitted**

12. **Minimum Account Guarantee.** Representative agrees that in order to be eligible for any compensation contained in this Agreement, Representative's Region must generate a minimum of two thousand and five hundred (2,500) Good Standing Contracts ("*Minimum Account Guarantee*") during the Term of this Agreement.

13. **Region Rate.** Representative shall be entitled to receive the Region Rate, set forth in Column G of the Region Compensation Table (the "*Region Rate*"), for each Contract that is in Good Standing and generated in Representative's Region (excluding Contracts generated by Representative) if, and only if, (1) Representative has a relationship with the Company on the last day (August 31) of the applicable Summer Season; (2) and Representative has paid to the Company any amounts owing to the Company; (iii) Representative has not been terminated by the Company for Cause or Representative's breach of this Agreement; and (iv) Representative is not in breach of this Agreement. If a Contract is not in Good Standing, the Company has no obligation to pay the Region Rate for such Contract to Representative. Representative shall earn and be entitled to receive the Region Rate for each Contract in Good Standing only when the Company has received the second regular monthly monitoring fee (which is not the payment collected at time of the sale of the security system or the next payment obtained, but rather the second payment that is either sent from the customer or auto-debited from such customer) for any such Contract. In addition, Representative will not receive the Region Rate for any Bad Accounts (as defined in Section A-22). If Representative receives any Region Rate compensation with respect to a Contract that later becomes a Contract that is not in Good Standing, Representative agrees and acknowledges that the Company will charge back the amount of such Region Rate compensation with respect to such Contract then not in Good Standing against any future compensation owed to Representative. In addition, the Company may offset all amounts that Representative owes to the Company

against the Region Rate and against any other compensation to which Representative may be eligible under this Agreement. For C Credit Contracts, Representative shall be entitled to receive one half (1/2) the amount set forth in Column G of the Region Compensation Table. Furthermore, the Region Rate shall be reduced by \$2.50 per Contract if the average installation fee collected in Representative's Area is below \$60; the Office Rate shall be reduced by \$2 per Contract if the average installation fee collected in Representative's Area is between \$60 and \$70; the Office Rate shall be reduced by \$1.50 per Contract if the average installation fee collected in Representative's Area is between \$70 and \$85.

14. Advances Paid to Sales Representatives. Notwithstanding anything herein to the contrary, at the sole discretion of the Company, Representative may receive scheduled or unscheduled payments from the Company which, unless otherwise agreed to by the Company in writing, shall represent one or more payment advances (each an "Advance"). An Advance, if any, shall, among other things, be based on the Representative's projected and anticipated sales volumes for the Summer Season. The aggregate amount of any and all compensation finally earned by Representative hereunder with respect to the Term shall be offset by the aggregate amount of all Advances paid to the Representative. If one or more offsets against any compensation otherwise due to Representative is not sufficient to cover the amount of an Advance, then Representative covenants and agrees to pay the Company such excess amount within fifteen (15) days of a written demand by the Company. Furthermore, in the event that Representative fails to repay any such excess Advance amount, then the Company, in its sole discretion, may pursue any other available legal remedy to recover such amount.

15. Extraordinary Recruit Compensation. Notwithstanding anything herein to the contrary, the aggregate amount of any and all compensation earned by Representative hereunder with respect to the Term shall be reduced by the aggregate amount of any additional, extraordinary, or unusual compensation, bonus or other agreement or arrangement offered by Representative or Company (if deemed by the Company to be in the best interest of the Company and/or necessary for the Company's purposes) to any Company sales representative or other representative that is not otherwise payable pursuant to the Company's standard policies and procedures. For the avoidance of doubt, any compensation set forth herein other than the Flat Rate, shall be paid, if at all, in two installments—one in November of the year of the Summer Season and one on or before February of the year following the Summer Season, unless otherwise determined by the Company.

16. Bonuses Paid to Sales Representatives. Notwithstanding anything herein to the contrary, the aggregate amount of any and all compensation earned by Representative hereunder with respect to the Term shall be reduced by the aggregate amount of the "Area Rate" earned by sales representatives and assistant area managers in Representative's Area.

17. Budget Bonus. During the Term of this Agreement, Representative shall have a budget of \$40 per Contract in Good Standing generated in Representative's Region, based on the aggregate Contracts in Good Standing generated in such Region during the Summer Season (the "Budget Bonus"). In the event that Representative exceeds the Budget Bonus, the difference shall be offset from any compensation due to Representative by the Company, if any. If one or more offsets against any compensation otherwise due to Representative is not sufficient to cover the amount exceeding the Regional Manager Budget, then Representative covenants and agrees to pay the Company such excess amount within fifteen (15) days of a written demand by the Company. Furthermore, in the event that Representative fails to repay any such excess amount, then the Company, in its sole discretion, may pursue any other available legal remedy to recover such amount in excess of the Budget Bonus. Conversely, should the Representative spend less than the Budget Bonus, the Representative shall be entitled to the surplus. At the Company's sole discretion, Representative may be given access to a company credit card. Representative is responsible for using the card only for their intended purpose, retaining receipts and providing explanations for all company credit card transactions and obtaining authorization for credit card invoices. Use of company credit cards for expenses of a personal nature of any kind may result in disciplinary action up to and including dismissal of use and fines. It may result in the expenses being deducted from Representative's Region Rate.

17.1 I have read and understood the Safe Home Control Statement of Policy and Procedure for having a Corporate General Credit Card. By this form, I give permission for Safe Home Control, Inc. to withhold (deduct) from my Budget personal items, unauthorized expenses, unreported expenses incurred by me and approved expenses incurred by me using my General Credit Card.

Representative Signature:  Printed Name: JARED MUNDAY

18. Leadership Bonus. After, and only after, Representative's Region has exceeded the Minimum Account Guarantee will the Representative be eligible to receive an additional one hundred dollars (\$100) per Good Standing Contract generated in Representative's Region (the "Leadership Bonus"). The Leadership Bonus is in recognition of the Representative's ability to the Company may reduce or offset the Leadership Bonus according to the terms in this Exhibit and Agreement for any deficiency, fine, deduction or balance due to the Company. The Company may, in its sole and absolute discretion, use the Leadership Bonus to help Representative recruit and retain sales representatives. Notwithstanding the foregoing, the Company may, in its sole and absolute discretion, advance the Leadership Bonus to Representative

19. Extension. The Company will issue the rules and regulations associated with sales rules of the Extension approximately thirty (30) days prior to September 1 of each year. The Extension consists of sales and install activity done between September 1 and September 30 of each year.

20. Early Term Attrition. Representative will be deducted four dollars (\$4.00) of the Region Rate if the percentage of cancellations inside the Region exceeds 10%, as reconciled by the Company in February following the Summer Season.

21. Fraud in Region. Any fraudulent activity by any individual in Representative's Region, in the event that the Company determines that Representative had any knowledge of the fraudulent activity, or reasonably should have known of the fraudulent activity, shall result in fines and deductions to Representative not to exceed the cost incurred by Company to satisfy its obligations to business partners, customers and the creation costs of the specific account(s) involved in the fraudulent activity.

23. Presumption of Accuracy of the Company's Computations. Representative shall provide written notice to the Company that Representative claims that any computation by the Company contemplated by this Agreement is not accurate. Said notice shall be in writing and shall be given to the Company within fifteen (15) days of the Representative being provided with the subject computation, or access to the subject computation, including by means of access to the Company's internal software. Failure of Representative to provide the Company such written notice within the designated

response time shall constitute Representative's acceptance of such computation. The Company may accept or reject such claim in its sole and absolute discretion.

24. Definition of Downline and Region. The Company, in its sole and absolute discretion and in good faith, may define Representative's downline. In addition, the Company may make agreements with Representative's downline, sales representatives, area managers, etc. that could affect any compensation due in this Agreement if the Company determines, in good faith, that it is in the Company's best interest.

25. Netting of Bonuses and Deductions. All compensation paid or due to Representative hereunder until finally earned shall, at the Company's discretion, be netted against any deficiency, fine, deduction, or balance due to the Company by Representative, such that any such deficiency, fine, deduction or balance due may offset any other bonus or compensation otherwise earned or due. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto further acknowledge and agree that if (a) this Agreement is terminated by the Company for Cause or Representative's breach of this Agreement, (b) this Agreement is terminated voluntarily by Representative at any time prior to the expiration of the Term of this Agreement, or (c) Representative breaches this Agreement at any time prior to August 31, 2018; then (x) Representative shall not qualify for or otherwise be entitled to retain or receive any past or future bonus of any kind including without limitation, any Retroactive Bonus, Region Rate, Area Rate, Budget Bonus, or Leadership Bonus (collectively the "**Bonuses**") to which he may otherwise be entitled to under this Agreement, regardless of whether such compensation has accrued, been advanced, or otherwise paid; (y) Representative shall be automatically obligated to immediately repay to the Company any and all Bonuses received by Representative pursuant to this Agreement, and (z) the Company shall have the right but not the obligation to offset the amount of any Bonuses paid to Representative against any compensation owed to Representative or otherwise exercise any remedy available under applicable law or principles of equity, including but not limited to the filing of the Judgment attached hereto as **Exhibit 3**. Any and all Bonuses or adjustment to commissions authorized in writing or verbally by Representative for and on behalf of another individual in Representative's Region is a personal guarantee by Representative. If the Company compensates any individual in Representative's Region more than the standard compensation rates, Representative is responsible to pay for the difference through a deduction of the additional amount from Representative. In addition, the Company may offset **any and all amounts** that Representative owes to the Company against any other compensation to which Representative may be entitled to receive under this Agreement.

Exhibit 2: Code of Conduct

SAFE HOME CONTROL 2016 Code of Conduct

Introduction

We are genuinely happy that each of you is a part of Safe Home Control's team. It is Safe Home Control's goal to help you be successful. It has always been Safe Home Control's policy to maintain the utmost integrity in all we do.

Back-Office Technology Will Detect Failures to Comply

Safe Home Control has invested substantial time and money into building an elite back office that will assist you in being successful. Specifically, Safe Home Control's Compliance Team will assist you in achieving your goals, and is equipped to identify failures to comply with Safe Home Control's Code of Conduct directives. While the timing of such detection may be uncertain, it is certain that Safe Home Control will detect most, if not all, failures to comply with its Code of Conduct directives. While we hope that such policing measures are unnecessary because of your ethical and honest efforts, such policies are in place to attempt to ensure compliance.

Disciplinary Action

Failure to comply with Safe Home Control's policy and the below-referenced directives **will result in disciplinary action, which may include fines, a sale or sales taken out of your name (including a chargeback or loss of commissions), loss of bonuses (including your backend), suspension and/or termination** of your service relationship with Safe, and responsibility for any and all costs associated therewith. Safe Home Control reserves the right to terminate any Representative at any time for no reason, or upon the occurrence of any violation of its Code of Conduct directives. Further, certain violations of the Code of Conduct could subject you to criminal penalties which may include fines and/or imprisonment.

Summary of Certain Policies

Although it is impossible for us to list every possible way in which you could be subject to discipline, the examples below represent a *brief summary* of a few of the items which could violate the underlying principles of honesty, integrity, and fair-dealing required by Safe Home Control's Code of Conduct.

1. CONTRACT

- Only include completely true and accurate information on the customer contract.
- Do not modify, amend, add to, scratch out, or change in any way the wording of a customer contract (before or after the customer signs). This applies to changes / additions made both in writing and verbally.
- If the customer speaks Spanish, and the sales presentation was done in Spanish, then the customer must sign a Spanish contract and also must perform a Spanish Welcome Call. No interpreters are allowed.
- If an electronic contract is used, the customer's valid e-mail address **must** be provided and a copy sent to their e-mail address. Do not use your personal e-mail address or create an e-mail address for the customer.
- You must use the Safe Home Control's electronic contracts for at least 75% of all accounts. Failure to do so will result in a reduction in compensation.

2. CREDIT CHECK / PERSON ON THE CONTRACT

- Do not "run" a credit check unless the person is a prospective customer and has given you his/her clear and expressed permission (from that individual directly).
- A spouse cannot authorize the credit check of the other spouse.
- The only person allowed on the contract is the homeowner (on the actual title of the home) or legal spouse of the homeowner. (Do not sell to renters).
- Be aware of the capacity of each potential customer to enter into a contract voluntarily, intentionally, and knowingly (i.e., the elderly, disabled, those taking medications, intoxicated, etc.).
- Representative must enter the prospective customer's date of birth or social security number

- Do not state or imply that it is merely an “update” or “upgrade,” when such a change actually requires that the customer start a new contract with Safe Home Control, and/or that such would result in a change of alarm monitoring service providers.

8. PAYMENTS / PAYMENT INFORMATION

- Do not use at any time, or include on a customer contract, any financial or payment information other than the homeowner’s personal financial information. (i.e., you cannot use or allow to be used a prepaid credit card).
- Do not attempt to pay any balance on a customer’s account. Do not attempt to provide a credit on an account to remove a past-due balance, in an attempt to be paid commission on the account.

9. PREVIOUSLY SOLD ACCOUNTS

- Do not use customer information that you have previously obtained (i.e., from working for another Safe), or obtained from another individual, to sell or resell a customer (i.e., customer lists).

10. PROFESSIONALISM / GENERAL CONDUCT

- Do not use anything that may be considered “scare tactics” when soliciting prospective customers (i.e., do not tell a customer that burglars can or will disable their current alarm or have recently been in the area).
- Your conduct must be professional and consistent with a representative of Safe Home Control at all times.
- You must follow and abide by Safe Home Control’s current Media Policy.
- You must follow and abide by Safe Home Control’s current policy regarding Social Media (such as Facebook, MySpace, Twitter, etc.)

11. PHONE AUTHENTICATION AND ECONTRACTS

- You must input the customer’s phone number into DocuSign.
- DocuSign will call the customer’s phone number, and the customer will have to input an access code.
- The customer must record their name into the system.
- You must NEVER input your own phone number or record anyone’s voice except for the customer’s. This will be considered fraud, and is a terminable offense.

12. TELEMARKETING / INSIDE SALES

- All calls related to the sale of the security system must be done on a recorded line and the customer must be clearly informed that the call is being recorded at the beginning of the sales call.
- Do not make calls to (or accepts calls from) any state where an individual telemarketing license is required, unless you have a physical copy of such license in your possession at that time.

If you do not understand any directive or if you require additional clarification on any directive from the Code of Conduct, you should immediately contact Safe Home Control’s Compliance Department (compliance@Safehomecontrol.com) to receive such clarification and/or under

Exhibit 3: Judgment

IN THE FOURTH JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH IN AND
FOR UTAH COUNTY, PROVO DEPARTMENT

SAFE HOME CONTROL, INC., a Delaware
corporation,

Plaintiff,

v.

Jared Munday, an individual,

Defendant

JUDGMENT

Judge _____

Case No. _____

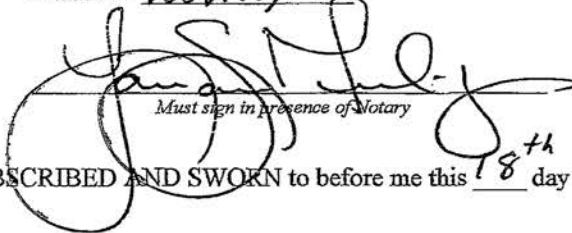
Pursuant to Utah Code Ann. § 78B-5-205 and Rules 58A(f) of the Utah Rules of Civil Procedures, Jared Munday (referred to herein as "Judgment Debtor"), hereby authorizes and consents to the entry of Judgment by Confession against him or her in the principal amount of \$ 160,000 ("Judgment Amount"), plus interest thereon at the statutory post-judgment interest rate until paid. This amount is owed pursuant to a loan agreement between the parties memorialized in a written promissory note. The Judgment Debtor further agrees that the Judgment and Judgment Amount may be augmented by any and all attorneys' fees and costs incurred by Plaintiff ("Judgment Creditor") in collecting on the Judgment or collecting the Judgment Amount until paid in full, less such amounts as the Judgment Debtor shall have paid to Judgment Creditor between the date of execution of this Confession of Judgment and the date the Judgment may be filed with the Court.

It is further agreed that the Judgment Amount shall be determined by subtracting those payments, if any, that Judgment Creditor receives from Judgment Debtor after the date of this

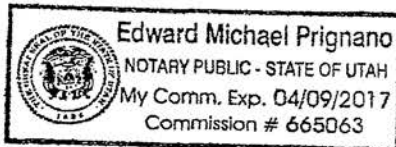
Confession of Judgment, and adding attorneys' fees, costs, and any applicable interest on said amount.

Judgment Debtor hereby expressly stipulates and agrees that the sum that is specified as the Judgment Amount shall be deemed to be "justly due" and shall be deemed to constituted a "specified sum" within the scope of Rule 58A(f) of the Utah Rules of Civil Procedure. The Judgment Debtor further stipulates that the Judgment in the form attached may be entered against it in favor of plaintiff in that specified sum as defined herein.

DATED: Nov. 18, 2015


Must sign in presence of Notary

SUBSCRIBED AND SWORN to before me this 18th day of November, 2015.




NOTARY PUBLIC

Exhibit 4: Intentionally Omitted

Exhibit 5: Anti- Harassment Policy

ANTI-HARASSMENT POLICY

All Unlawful Harassment Prohibited

Safe Home Control, Inc. strictly prohibits and does not tolerate unlawful harassment against employees or any other covered persons because of race, religion, creed, national origin, ancestry, sex (including pregnancy), gender (including gender nonconformity and status as a transgender or transsexual individual), age (40 and over), physical or mental disability, citizenship, genetic information, past, current or prospective service in the uniformed services, or any other characteristic protected under applicable federal, state or local law.

Sexual Harassment

All Safe Home Control, Inc. employees, other workers and representatives are prohibited from harassing employees and other covered persons based on that individual's sex or gender (including pregnancy and status as a transgender or transsexual individual) and regardless of the harasser's sex or gender.

Sexual harassment means any harassment based on someone's sex or gender. It includes harassment that is not sexual in nature (for example, offensive remarks about an individual's sex or gender), as well as any unwelcome sexual advances or requests for sexual favors or any other conduct of a sexual nature, when any of the following is true:

- Submission to the advance, request or conduct is made either explicitly or implicitly a term or condition of employment.
- Submission to or rejection of the advance, request or conduct is used as a basis for employment decisions.
- Such advances, requests or conduct have the purpose or effect of substantially or unreasonably interfering with an employee's work performance by creating an intimidating, hostile or offensive work environment.

Safe Home Control, Inc. will not tolerate any form of sexual harassment, regardless of whether it is:

- Verbal (for example, epithets, derogatory statements, slurs, sexually-related comments or jokes, unwelcome sexual advances or requests for sexual favors).
- Physical (for example, assault or inappropriate physical contact).
- Visual (for example, displaying sexually suggestive posters cartoons or drawings, sending inappropriate adult-themed gifts, leering or making sexual gestures).

This list is illustrative only, and not exhaustive. No form of sexual harassment will be tolerated.

Harassment is prohibited both at the workplace and at employer-sponsored events.

Other Types of Harassment

Safe Home Control, Inc.'s anti-harassment policy applies equally to harassment based on an employee's race, religion, creed, national origin, ancestry, age (40 and over), physical or mental disability, citizenship, genetic information, past, present or prospective service in the uniformed services, or any other characteristic protected under applicable federal, state or local law.

Such harassment often takes a similar form to sexual harassment and includes harassment that is:

- Verbal (for example, epithets, derogatory statements, slurs, derogatory comments or jokes).
- Physical (for example, assault or inappropriate physical contact).
- Visual (for example, displaying derogatory posters, cartoons, drawings or making derogatory gestures).

This list is illustrative only, and not exhaustive. No form of harassment will be tolerated.

Harassment is prohibited both at the workplace and at employer-sponsored events.

Complaint Procedure

If you are subjected to any conduct that you believe violates this policy, you must promptly speak to, write or otherwise contact your direct supervisor or, if the conduct involves your direct supervisor, the next level above your direct supervisor, ideally within ten (10) days of the offending conduct. If you have not received a satisfactory response within five (5) days after reporting any incident of what you perceive to be harassment, please immediately contact the Legal Department. These individuals will ensure that a prompt investigation is conducted.

Your complaint should be as detailed as possible, including the names of all individuals involved and any witnesses. Safe Home Control, Inc. will directly and thoroughly investigate the facts and circumstances of all claims of perceived harassment and will take prompt corrective action, if appropriate.

Additionally, any manager or supervisor who observes harassing conduct must report the conduct to the Legal Department so that an investigation can be made and corrective action taken, if appropriate.

No Retaliation

No one will be subject to, and Safe Home Control, Inc. prohibits, any form of discipline, reprisal, intimidation or retaliation for good faith reporting of incidents of harassment of any kind, pursuing any harassment claim or cooperating in related investigations.

Safe Home Control, Inc. is committed to enforcing this policy against all forms of harassment. However, the effectiveness of our efforts depends largely on employees telling us about inappropriate workplace conduct. If employees feel that they or someone else may have been subjected to conduct that violates this policy, they should report it immediately. If employees do not report harassing conduct, Safe Home Control, Inc. may not become aware of a possible violation of this policy and may not be able to take appropriate corrective action.

Violations of this Policy

Any employee, regardless of position or title, whom any Vice President determines has subjected an individual to harassment or retaliation in violation of this policy, will be subject to discipline, up to and including termination of employment.

Administration of this Policy

The Legal Department is responsible for the administration of this policy. If you have any questions regarding this policy or questions about harassment that are not addressed in this policy, please contact the Legal Department.

Exhibit 6: Sales Rules

In accordance with Section 4, the Sales Rules may be modified from time to time in the Company's sole and absolute discretion. The Company will provide a copy of the Sales Rules.

Chase.

R: 124001545

A: 116 215900

D

NOV 30 2017

CLERK

**FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

SAFE HOME CONTROL, INC., Plaintiff, vs. JARED MUNDAY, Defendant.	RULING ON DEFENDANT'S MOTION FOR ATTORNEYS' FEES AND COSTS Civil No. 160400579 Date: November 29, 2017 Judge Christine S. Johnson
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This matter is before the Court on Defendant's Motion for Attorneys' Fees and Costs, filed on November 3, 2017. Plaintiff filed its opposition on November 17, 2017, followed by Defendant's reply on November 22, 2017. Neither party having requested a hearing, the motion was submitted for decision by Defendant that same day. Having considered the submissions of the parties and the arguments presented, and being familiar with the governing law and the applicable rules, the Court now grants the request, based upon the following:

BACKGROUND

The present controversy arises from an employment dispute. The case was filed as a Confession of Judgment pursuant to Rule 58A(i). Plaintiff, Safe Home Control, Inc. ("Safe Home") filed its Verified Statement for Confession of

Judgment on April 18, 2016, requesting judgment in the amount of \$160,000.00, in addition to attorneys' fees, costs, and interest. Defendant Jared Munday ("Munday") opposed entry of the judgment, and the Court thereafter entertained extensive briefing regarding its enforceability. The Court also conducted an evidentiary hearing on June 15, 2017. Once all briefing was completed (both before and after the evidentiary hearing), the Court issued its Ruling granting Munday's motion to deny entry of the confession of judgment. As the prevailing party, Munday now seeks an award of attorneys' fees in the amount of \$48,200.50 and costs in the amount of \$2,916.57.

ANALYSIS

Munday seeks attorneys' fees pursuant to statute, which allows that "[a] court may award costs and attorney fees to either party that prevails in a civil action based upon any . . . written contract . . . when the provisions of the . . . written contract . . . allow at least one party to recover attorney fees." Utah Code Ann. §78B-5-826. Safe Home does not dispute that the confession of judgment filed in this case arose from a written contract which included an attorney's fees and costs provision. However, it opposes a fee and costs award in this case under the following theories: (1) Munday is not the prevailing party in the underlying contract dispute, (2) the Confession of Judgment is not a civil action, and (3) Munday's affidavit in support of the fee award is inadequate. The Court will consider each issue in turn.

A. Defendant is the Prevailing Party

Safe Home asserts that Munday's victory in avoiding judgment in this case does not make him the prevailing party because Safe Home retains the option of filing, and has every intention of pursuing, a traditional breach of contract claim against him, and until the merits of that claim are heard, it is premature to declare Munday the prevailing party. Munday counters that he prevailed in the only claim at issue in the case presently before the Court—making him the prevailing party. The Court agrees with Munday.

Rule 73(a) requires a party seeking a fee award to file its motion "no later than 14 days after the judgment is entered[.]" URCP 73(a). Safe Home's argument is at odds with this directive, because it would require Munday to delay seeking fees in this case until it is determined whether Safe Home prevails

in a different case which has not yet been filed. Such a practice is untenable, as it would put the finality of this case on hold indefinitely. Safe Home may choose to file a breach of contract claim at some future point, but the choice made in *this* case was to seek a confession of judgment. That was the sole claim at issue and Munday has prevailed.

Based upon the foregoing, the Court determines that Munday is the prevailing party.

2. *A Confession of Judgment is a Civil Action*

Safe Home next asserts that a confession of judgment is not a “civil action” within the meaning of the reciprocal fee statute because a complaint and summons was not filed. Munday counters that Safe Home’s definition of a “civil action” is unreasonably narrow. The Court agrees with Munday.

Safe Home correctly notes that a civil action is generally commenced by filing a complaint and serving a summons. *See* URCP 3. That was not done here. Instead, Safe Home proceeded by filing a confession of judgment pursuant to Rule 58A(i). While this rule of civil procedure allows litigants to bypass the initial stages of a civil case and proceed straight to judgment, that does not change the fact that a confession of judgment, once entered, is a *civil* judgment which is subject to collection pursuant to *civil* procedural rules. Indeed, as noted by Munday, in Utah there is only “one form of action to be known as a ‘civil action.’” URCP 2. The rule which permitted Safe Home’s Confession of Judgment is included among the rules of procedure which govern civil actions. Furthermore, a confession of judgment fits well within the boundaries of a “civil judgment” as defined by Black’s Law Dictionary: “any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment.” BLACK’S LAW DICTIONARY (10th ed. 2014).

Accordingly, the Court’s rejects Safe Home’s argument that a confession of judgment is something other than a civil action. While Utah’s Rules of Civil Procedure permit litigants to seek a judgment without filing a complaint, that does not change the fundamental nature of what confessions of judgment are. They are civil actions governed by civil procedural rules. Moreover, Safe Home’s interpretation directs an absurd result, where it is permitted to seek

attorney's fees in its claim, while denying the defendant those same fees should the defendant prevail. This would thwart the policy behind the reciprocal attorney fees statute, which is intended to eliminate unequal exposure to the risk of contractual liability for attorney fees. See *PC Crane Service, LLC v. McQueen Masonry, Inc.*, 2012 UT App 61, 273 P.3d 396.

Based upon the foregoing, the Court concludes that the Confession of Judgment filed here is a civil action.

3. *Defendant's Fee Affidavit is Adequate*

For its final argument, Safe Home asserts that Munday's fee affidavit is insufficient because the requested fees are unreasonable. Specifically, Safe Home asserts that Munday's affidavit requests fees indiscriminately, failing to distinguish between successful issues and unsuccessful issues. For example, Safe Home points to the time billed for the evidentiary hearing, which Safe Home claims was not time spent in furtherance of a winning defense. Munday responds that his affidavit adequately itemizes the time spent on its successful defense, and that both the amount of hours and the rate billed is reasonable. The Court agrees with Munday.

In interpreting fee awards, the Utah Supreme Court has directed use of the "flexible and reasoned" approach in order to determine which party is the successful party under the statute. *A.K. & R. Whipple Plumbing and Heating v. Guy*, 2004 UT 47, ¶26, 94 P.3d 270. This approach requires careful consideration of the facts of each case. Courts are discouraged from simply looking at a net result, as "rigid application of the net judgment rule can result in unreasonable awards of attorney fees." *Id.* Rather, courts should focus "on which party had attained a 'comparative victory,' considering what total victory would have meant for each party and what a true draw would look like." *J. Pochynok Co., Inc. v. Smedsrud*, 2005 UT 39, ¶11, 116 P.3d 353. Other factors include "which party obtained a greater percentage of the amount originally claimed," *id.* As well as "looking at the amounts actually sought and then balancing them proportionally with what was recovered." *Id.* at ¶12. Finally, practical questions may include:

1. What legal work was actually performed?
2. How much of the work performed was reasonably necessary to adequately prosecute the

matter? 3. Is the attorney's billing rate consistent with the rates customarily charged in the locality for similar services? 4. Are there circumstances which require consideration of additional factors, including those listed in the Code of Professional Responsibility?

Dixie State Bank v. Bracken, 764 P.2d 985, 990 (Utah 1988).

Using this approach, the fees requested by Munday as the prevailing party are reasonable. While the Court did not reach every issue researched, briefed, and explored by Munday, he nevertheless achieved a total victory by avoiding entry of the judgment sought by Safe Home. He did so by a careful and reasoned strategy, which included filing a motion to set aside the judgment, conducting limited discovery, and participating in an evidentiary hearing which was requested by a stipulation of both parties. This strategy was not excessive, given the amount of money at issue, and given that Munday could not have known precisely which issue would be most compelling to the Court. Ultimately, it was reasonably necessary for Munday to pursue multiple theories in his motion to properly advance his defense. Moreover, there is no dispute that the hourly rates requested are reasonable, and there is no particular excess noted on the fee affidavit. While Safe Home quibbles about minor entries, such as the time spent in preparing binders for the evidentiary hearing, those binders were useful and the amount of time involved was negligible.

Lastly, Safe Home objects to an assessment of costs. Munday requests \$2,916.57 in costs, which includes copying and printing costs, filing fees, and transcript requests, among other things. Most of these costs are minor; however, standing out is a charge for \$1,430 for "CitiCourt invoice 84035, Evidentiary Hearing" and \$955 for "investigation." Safe Home requests that such costs are not permissible.

"Costs are defined as those fees which are required to be paid to the court and to witnesses, and for which the statutes authorize to be included in the judgment." *Stevensen 3rd East, LC v. Watts*, 2009 UT App 137, ¶63, 210 P.3d 977 (internal quotation marks omitted). These costs, which would typically include filing fees and statutory witness fees (*see* Utah Code Ann §78B-1-147), are automatically awarded to the prevailing party pursuant to Rule 54(d). Beyond these costs, litigation expenses are not permitted under statute or rule,

but may be appropriate where "costs" are provided for by contract. "In order to not render the term "costs" superfluous, the Contract should be read to include those costs that were associated with the litigation but would not be included under a regular Rule 54(d) cost award." *Chase v. Scott*, 2001 UT App 404, ¶20, 38 P.3d 1001.

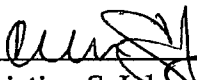
In the present case, Munday requests traditional costs (filing fees) as well as litigation expenses (copying fees, etc.) not because they are permissible under Rule 54(d), but because "costs" were contemplated in the contract. Safe Home present no argument that these costs were not intended to include litigation expenses. Accordingly, the Court concludes that it is proper to award them pursuant to the reciprocal fee statute.

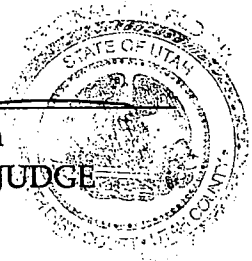
Based upon the foregoing, the Court determines that Munday is the prevailing party and is entitled to attorney fees and costs. Accordingly, his motion for fees and costs is properly granted.

Pursuant to Rule 7, Counsel for Munday is directed to prepare an order consistent with this Ruling.

DATED this 29 day of November, 2017.

BY THE COURT:


Christine S. Johnson
DISTRICT COURT JUDGE



certificate of mailing is on the following page.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 160400579 by the method and on the date specified.

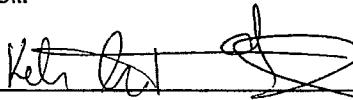
EMAIL: ROBERT B CUMMINGS robert@thesaltlakelawyers.com

EMAIL: EDWARD M PRIGNANO eddie@safehomecontrol.com

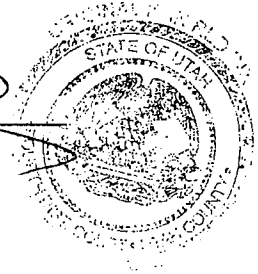
EMAIL: DALLIS N ROHDE dallis@clilaw.com

EMAIL: JOHN P SNOW johnsnow@ppktrial.com

Date: 11/30/17



Deputy Court Clerk



E

Case Number	Judgment #	Augmentation	District Court	Court
150700893	1	Entering judgment for "\$1,209.92 less those payments received" plus an "augmentation to the Judgment by	2nd	Farmington
160100089	2	"Judgment Amount, plus interest and costs of collection, including reasonable attorney's fees, less such amounts as Judgment Debtor shall have paid..."	4th	American Fork
160300129	3	Identical Verified Statement confessing to judgment for \$25,000 which "may be augmented by an and all attorneys' fees and costs incurred by Plaintiff in collecting on the Judgment. . . , less such amounts as the Judgment Debtor shall have paid. . . "	4th	Utah
160301755	4	Verified Statement confessing to judgment for \$1,238.79 and providing that "[t]he [J]udgment shall be augmented in the amount of [p]laintiff's costs and reasonable attorney's fees."	3rd	Tooele
160400859	5	Identical Verified Statement confessing to judgment for \$25,000 which "may be augmented by an and all attorneys' fees and costs incurred by Plaintiff in collecting on the Judgment. . . , less such amounts as the Judgment Debtor shall have paid. . . "	4th	Utah
160500018	6	Verified Statement allowing the "Judgment shall be augmented in the amount of Plaintiff's costs and reasonable attorney's fees."	5th	Cedar
160700074	7	"[J]udgment is to be entered against Defendant . . . in the amount of the Outstanding Balance plus, court costs and reasonable attorney fees, minus payments made."	7th	Carbon

Case Number	Judgment #	Augmentation	District Court	Court
160700905	8	Providing "This judgment shall be augmented by all costs and reasonable attorneys' fees incurred by [plaintiff] in enforcing and collecting upon this judgment."	2nd	Farmington
160800125	9	Verified Statement confessing to judgment for \$63,463.14 plus . . . costs of court, collection costs and all attorney's fees, less any amount paid...."	8th	Uintah
110500036	10	Verified Statement allowing for Judgment of "\$3,285.43" which "may be subsequently amended by Plaintiff without notice to give credit for payments made and to add such costs and attorney fees as provided herein or actually incurred."	5th	Beaver
110600008	11	Verified Statement allowing judgment to be entered for \$2,554.75 and allowing the "judgment [to] be augmented in the amount of reasonable costs and attorney's fees expended in collecting said judgment."	6th	Garfield
110600026	12	Verified Statement confessing to judgment for \$102,924.96 and allowing for augmentation for "all attorneys' fees and costs that [plaintiffs] may incur in association with enforcement and/or collection of said judgment against [defendants]."	6th	Piute
120100098	13	Entering Judgment for the "Principal" "less payments made" and ordering the "judgment [to] be augmented in the amount of reasonable costs and attorney fees expended in collecting said judgment by execution or otherwise as shall be established by affidavit."	1st	Box Elder

Case Number	Judgment #	Augmentation	District Court	Court
130100152	14	Allowing for "the Judgment and Judgment Amount may be augmented by any and all attorneys' fees and costs incurred by [Plaintiff] in collecting on the Judgment or collecting the Judgment Amount until paid in full, less such amounts as the Judgment Debtor shall have paid to Judgment Creditor..."	4th	American Fork
150100275	15	Verified Statement confessing to judgment of \$6,695.69, "which shall be increased by, to date service of process costs, and court costs. . . which may [then] be augmented further by another order of [the] [c]ourt to aware future costs in collection of the Judgment."	1st	Cache
150600021	16	Verified Statement confessing to judgment for \$1,328,367.04 which was to be "augmented as follows: (a) post-judgment interest. . . ; and (b) Plaintiff's attorneys' fees and legal costs incurred from November 10, 2014 until the total judgment, including augmentations thereof, is paid in full."	6th	Garfield
150906330	17	Verified Statement confessing to judgment for "\$1,035.22 less those payments made [by defendant]" and allowing plaintiff to "augment th[e] judgment by [c]onfession by the amount of attorney fees and costs incurred by [the plaintiff] in collecting the judgment..."	2nd	Weber

Case Number	Judgment #	Augmentation	District Court	Court
160000059	18	Verified Statement confessing to judgment of \$1,171.48 "less those payments made [to the plaintiff]" and allowing plaintiff to "augment th[e] [j]udgment by [c]onfession by the amount of attorney fees and costs incurred by [the plaintiff]."	8th	Duchesne
160100188	19	Identical Verified Statement confessing to judgment for \$25,000 which "may be augmented by an and all attorneys' fees and costs incurred by Plaintiff in collecting on the Judgment. . . , less such amounts as the Judgment Debtor shall have paid. . . ."	4th	Utah
160400860	20	Identical Verified Statement confessing to judgment for \$25,000 which "may be augmented by an and all attorneys' fees and costs incurred by Plaintiff in collecting on the Judgment. . . , less such amounts as the Judgment Debtor shall have paid. . . ."	4th	Utah
160401248	21	Identical Verified Statement confessing to judgment for \$25,000 which "may be augmented by an and all attorneys' fees and costs incurred by Plaintiff in collecting on the Judgment. . . , less such amounts as the Judgment Debtor shall have paid. . . ."	4th	Utah
160401280	22	Identical Verified Statement confessing to judgment for \$25,000 which "may be augmented by an and all attorneys' fees and costs incurred by Plaintiff in collecting on the Judgment. . . , less such amounts as the Judgment Debtor shall have paid. . . ."	4th	Utah

Case Number	Judgment #	Augmentation	District Court	Court
160500027	23	Verified Statement confessing to judgment for \$72,000 and providing that the "judgment may be augmented in the amount of reasonable costs and attorney fees expended in collection efforts."	3rd	Summit
160500143	24	Verified Statement confessing to judgment for \$13,493.80 and providing that "[t]he [j]udgment shall be augmented in the amount of [p]laintiff's costs and reasonable attorney's fees."	3rd	Summit
160700074	25	Verified Statement confessing to judgment for \$4,876.70 "plus court costs and reasonable attorney fees, minus payments made."	7th	Carbon
160800030	26	Verified Statement confessing to judgment for "\$20,000.00 less the sum of any payments [made]" plus "all costs and attorneys' fees reasonably incurred by plaintiff in collection of the amounts owed to plaintiff."	8th	Duchesne
170500080	27	Verified Statement allowing "entry of Judgment . . . in the full deficiency amount of \$50,060.66 less any amounts actually paid . . . as well as attorney's fees and costs incurred by [Plaintiff]."	5th	Cedar
170903914	28	Verified Statement confessing to judgment for \$1,074.24 and providing the "[j]udgment shall be augmented in the amount of [the p]laintiff's costs and reasonable attorney's fees. . . in collecting said [j]udgment."	2nd	Weber
180500002	29	Verified Statement confessing to judgment for "\$6,974.57, plus attorney fees, plus costs, less payments made to Plaintiff."	2nd	Morgan

Case Number	Judgment #	Augmentation	District Court	Court
180500100	30	Verified Statement confessing to judgment for "the outstanding balance of \$14,018.51, plus attorney fees, plus costs, less payments made to [the p]laintiff."	5th	Iron
180901605	31	Verified Statement confessing to judgment for \$18,175.64 "plus late fees; and (2) all attorney fees and costs incurred by [the plaintiff] in attempting to collect on the judgment, less any amounts already paid. . ."	3rd	Salt Lake
180901938	32	Verified Statement confessing to judgment for \$19,531.78 and providing the "[j]udgment shall be augmented in the amount of reasonable costs and attorney's fees expended in collecting said judgment. . ."	2nd	Weber
180902224	33	Verified Statement confessing to judgment for \$3,835.29 "plus attorney fees, plus costs, less payments made to Plaintiff...."	3rd	Salt Lake
180903903	34	Verified Statement confessing to judgment for \$15,000 "(less any payments made by [d]efendant after the signature of th[e confession of judgment], which shall be increased by attorney fees, costs, and interest. . [and] . . which may be augmented further by order of the Court to award future costs and fees incurred in collection of the judgment."	3rd	Salt Lake