1)

Please prepare a draft of the oral argument that I might present, using the attached cases as authority.

Sylvia Baca and Associates, P.C.

2343 Whitetail Road

Columbia City, Columbia

MEMORANDUM

TO: Sylvia Baca

FROM: Applicant

DATE: July 27, 2021

RE: Industrial Sandblasting, Inc. v. Samuel Morgan

Sylvia,

I have prepared a draft oral argument for your review for the upcoming closing arguments in the Industrial Sandblasting, Inc. v. Samual Morgan case. Please see below.

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May it please the Court.

This case draws (1) on Columbia Stat. Ann. § 24-6-53(a) and (2) Columbia State case law in Strom v. Knox Broadcasting Corporation (Colum. Sp. Ct. 2014) and Fawcett Railway Relief, Inc. v. Columbia Rail Services, Inc. (Colum. Ct. of Ap. 2015).

Ann §24-6-53(a): (1) Applies to contracts between employees and employers; (2) enforces restriction of competition during the term of the restrictive covenant; (3) requires that covenant restrictions must be reasonable (i) "in time," (ii) "geographic area," and (iii) "scope of prohibited activities." (L3). The Columbia Supreme Court held in Strom that such employment non-compete covenants should only be upheld when **strictly** limited in "time, territorial effect, and scope of prohibited activities." The Court also considers the weight of interest the employer seeks to protect against the impact of the covenant on the employee (L3).

Here, Mr. Samuel Morgan is a former employee of Industrial Sandblasting, Inc. (Industrial) and a current employer of Columbia Coatings Corporation (CCC). Mr. Morgan started his career at Industrial, worked there for over five years, received appropriate and normal training and job-growth opportunities, and ultimately chose to leave Industrial because the company failed to offer him the salary and office management responsibilities he rightfully earned and was offered by CCC.

I ask this court to relieved Mr. Morgan from his covenant not-to-compete that he signed as part of his employment contract with Industrial, and believe the court is right to do so for the following reasons:

(1) Geographic Scope:

Mr. Morgan's covenant not-to-compete would prevent him from doing any work at all at any competitor company to Industrial in the State of Columbia for one year. This scope is too broad, especially in light of the precedents set in Strom and Fawcett.

Mr. Morgan's work while at Industrial was--during the course of his 7+ years of work, there--restricted to Columbia City which is in the northeast corner of the state (L7). He only ever did two jobs outside of Columbia City.

Mr. Morgan's work for CCC is all over the State of Columbia, including in the south and southeast--both regions of the state in which Mr. Morgan had virtually no professional contact during his time at Industrial.

The Supreme Court of Columbia held in Fawcett that the scope of the covenant at issue is too broad to be valid if it "far exceeds the area within which" the employee at issue worked (L6).

Here, a restriction on Mr. Morgan's ability to work in regions of the State of Columbia where he's had no, or virtually no, professional contact should be invalid.

Also, a "restriction that covers a geographic area in which the employee never had contact with customers is," according to the Supreme Court of Columbia, "overbroad and unreasonable" (L6). Mr. Morgan's covenant not-to-compete is unreasonably broad because it covers a region and areas of the State of Columbia in which he has never worked.

(2) Scope of Activities

Mr. Morgan's covenant not-to-compete is beyond the scope of what is reasonable, and should be a factor in rendering the covenant invalid.

In Strom, the court upheld the covenant's activity restrictions, because they were limited to on-air broadcasting. Knox provided proof that it had invested upwards of $1M in cultivating a public name, persona, and image for Strom and that broadcast viewers associate broadcast voices with specific televised stations. Knox did not prevent Strom from seeking alternative work, even with a direct competitor, so long as the work was not on-air for the six months needed to effectuate a proper transition.

In Fawcett, the court found the restriction on Markham's activities--which were any activities at all in the states noted--to be much too broad.

Here, Mr. Morgan is seeking to primarily focus on office work, less field work. And, his activities will be focused on clients all over the state, not just those in the City of Columbia. His training is the result of his own financial investment, and while yes, Industrial was supportive of his growth, it does not have the necessary direct security interest in that training to merit holding Mr. Morgan back from comparable work. Indeed, Industrial has others who are similarly qualified (see Strom for comparision where the work was very unique and the investment much, much greater).

(3) Scope of Timing

Mr. Morgan's covenant not-to-compete would prevent him from doing **any work at any competitor** to Industrial, including CCC, for one year. That length of time is unreasonable, and should be an additional factor in rendering the covenant invalid.

In Strom, the court upheld the covenant's time limit of six months to be reasonable, both for Knox, the former employer, and Strom, the employee. This time limit was deemed, by the court, necessary to give Knox sufficient time to rebrand its public-facing broadcasting identity, while not preventing Strom from having employment, an income, and providing reasonable

professional contribution to his new employer, WCAP-TV. Knox provided **proof** that the six month timeframe was essential to carry-out its transition plan--more more, no less than required.

In Fawcett, the court rejected the covenant's time limit of three years as unreasonable. First, because the court had never before upheld a time limit in excess of two years, and second, because Fawcett, the former employer, provided **no proof** that the three year time limit--or **any time limit at all**--was necessary to safeguard its business and investments in Markham, the former employee.

Here, Industrial has said--according to Mr. Cole--that the company has already lost business due to Mr. Morgan's departure. But, there is no proof that such loss of business is actually because Mr. Morgan left the company. There is also no proof presented to support that Industrial needs a full year to transition/restructure from Mr. Morgan's departure. In fact, Industrial had already found a replacement for Mr. Morgan before Mr. Morgan left the company. For a one year time limit--or any time limit--to be enforceable, Industrial should need to provide actual proof that a transition period is necessary to safeguard their company interests. They have failed to provide any such proof. Mere disappoint at Mr. Morgan's departure is not sufficient to just enjoining Mr. Morgan for work.

Base on the totality of the circumstances presented above and the lack of actual proof from Industrial as to the need for the restrictions on geography, timing, and scope of activities, this court should relieve Mr. Morgan from his covenant with Industrial and allow him to freely pursue work with CCC.

I rest my case.

Question #1 Final Word Count = 1163

END OF EXAM