

NO. **16 CI 05350**

JEFFERSON CIRCUIT COURT
DIVISION **THREE (3)**
HONORABLE ~~WETZ~~ **PERE**

CHRISTOPHER KELLOGG

PLAINTIFF

v.

DECHOKER, LLC

DEFENDANT

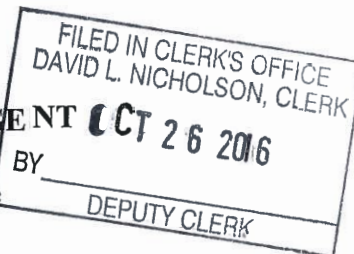
SERVE:

REGISTERED AGENT

Lisa Carver

10433 Garda Drive

Trinity, FL 34655



JEFFERSON CIRCUIT COURT
DIVISION THREE (3)

COMPLAINT

Plaintiff, Christopher Kellogg (hereinafter "Kellogg" or "Plaintiff") files his Complaint against the Defendant, Dechoker, LLC (hereinafter "Dechoker" or "Defendant") and in support hereof states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Christopher Kellogg is a Kentucky resident.
2. Dechoker, LLC is a Florida limited liability company doing business in Louisville, Jefferson County, Kentucky.
3. At all times relevant hereto, Dechoker maintained an office in Kentucky and conducted business in Jefferson County.
4. Venue and jurisdiction are proper in this Court.
5. An actual controversy exists between the parties to this Action. The amount in controversy exceeds \$5,000.00, exclusive of interests and costs.

II. FACTS

6. Kellogg is a current shareholder and a former employee of Dechoker.

7. Effective June 1, 2015, Kellogg and Dechoker entered into a written employment agreement (hereinafter the "Contract"). (A copy of the Contract is attached hereto as Exhibit "1"). Kellogg and Alan Carver (hereinafter "Carver"), as Chief Executive Officer ("CEO") and Owner of Dechoker, signed the Contract in person in Louisville, Jefferson County, Kentucky and initialed each page of the Contract.

8. Pursuant to Provision Number 1 of the Contract, Kellogg's job title is Chief Operating Officer ("COO") and President of Dechoker.

9. According to Provision Number 2 of the Contract, Kellogg is to receive a base salary in the amount of \$6,000.00 "net" per month, with the eligibility to earn significantly more once Dechoker reached certain minimum sales.

10. Pursuant to Provision Number 3 of the Contract, Kellogg is to receive quarterly bonuses based upon Dechoker's monthly sales.

11. Pursuant to Provision Number 5 of the Contract, Kellogg was granted three (3) shares of Dechoker private stock as a sign on bonus. However, Dechoker has failed to provide Kellogg the three (3) shares of its private stock by January 1, 2016, as specified in Provision Number 5.

12. According to Provision Number 6 of the Contract, Kellogg is entitled to thirty-six (36) months of salary for severance if Kellogg is terminated, based on his current salary at the time of his termination.

13. During his employment, specifically from September 2015 – November 2015, Kellogg was only paid \$3,000.00 by Dechoker. According to the Contract, Kellogg is owed a “net” amount of \$18,000.00 by Dechoker for this three (3) month time span.

14. During his employment, specifically in June 2016, Kellogg was paid only \$3,000.00 by Dechoker. According to the Contract, Kellogg is owed a “net” amount of \$6,000.00 by Dechoker for the month of June 2016.

15. During his employment, specifically from July 2016 – September 2016, Kellogg was not paid any of the salary owed to him by Dechoker. According to the Contract, Kellogg is owed a “net” amount of \$18,000.00 by Dechoker for this three (3) month time period.

16. During the course of his employment, Dechoker reached sales of over 2,500 units per month, thereby triggering Provision Number 3 of the Contract, which provides Kellogg a quarterly target bonus. However, Dechoker failed to pay Kellogg any of his earned quarterly bonuses.

17. Dechoker terminated Kellogg in September 2016, when Dechoker deactivated his company email account and failed to return any of Kellogg’s phone calls or respond to any of Kellogg’s emails.

18. Following his termination, Dechoker has failed to pay Kellogg the thirty-six (36) months’ worth of salary as severance, pursuant to Provision Number 6 of the Contract.

19. As set forth herein, Dechoker has failed to fully and timely pay Kellogg his earned salary, bonuses, severance salary, and has failed to provide him with a stock certificate evidencing his ownership of three (3) shares of Dechoker.

III. CAUSES OF ACTIONS

A. BREACH OF CONTRACT

20. Plaintiff re-affirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 19, inclusive herein, as fully set forth at this point in their entirety.

21. Kellogg and Dechoker entered into the Contract, which became "effective" on June 1, 2015. Defendant breached the terms of the Contract, due in part to its failure to pay Kellogg his monthly salary, earned bonuses and severance salary.

22. By reason of the foregoing, Kellogg has been monetarily damaged by the Defendant in amount to be proven at trial.

B. KRS 337 WAGE AND HOUR VIOLATION

23. Kellogg re-affirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 22, inclusive herein, as though fully set forth at this point in their entirety.

24. Dechoker has failed to timely and fully pay Kellogg his monthly salary, earned bonuses and severance salary, pursuant to the terms of the Contract.

25. As a result of the foregoing, Kellogg is entitled to monetary damages against Dechoker as set forth in KRS 337.385, including payment of the wages due to him, liquidated damages, attorney's fees and litigation expenses.

C. FAILURE TO ALLOW ACCESS TO COMPANY RECORDS (KRS 275.185)

26. Kellogg re-affirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 25, inclusive herein, as though fully set forth at this point in their entirety.

27. As a shareholder of Dechoker, Kellogg is entitled to regular access to Dechoker's tax returns, corporate books and financial records, including reports relating to all corporate matters and financial accounts and expenditures, pursuant to KRS 275.185.

28. Defendant has refused to allow Kellogg the access to Dechoker's financial books and records which he is entitled. Therefore, Kellogg requests that the Court order Dechoker to allow Kellogg and his attorney and accountant access to all of Dechoker's tax returns, corporate and financial and banking books and records, pursuant to KRS 275.185.

D. MANDATORY RECOVERY OF ATTORNEY'S FEES AND COSTS

29. Kellogg re-affirms, re-avers and re-alleges all allegations contained in paragraphs 1 through 28, inclusive herein, as though fully set forth at this point in their entirety.

30. Kellogg is mandatorily entitled to recover his attorney's fees and costs pursuant to the provisions of KRS 337.385.

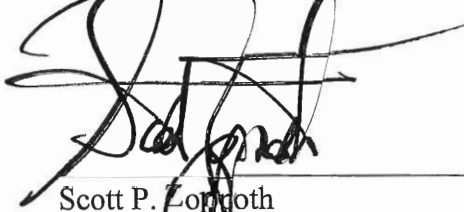
IV. PRAYER FOR RELIEF

Plaintiff, Christopher Kellogg, respectfully prays for Judgment against Defendant, Dechoker, LLC, as follows:

- A. For breach of contract against Dechoker, LLC in an amount to be determined at trial;
- B. For all statutory remedies, including payment of the wages due to Kellogg, liquidated damages, attorney's fees and litigation expenses provided by and pursuant to Defendant's violations of KRS 337;
- C. For a Court order allowing access and inspection of the corporate books and financial records of Dechoker, LLC, pursuant to KRS 275.185;
- D. For the reasonable attorney's fees and court costs incurred by Plaintiff;
- E. For all costs of Court and related expenses which Plaintiff will incur herein;
- F. For a jury trial as to all issues; and
- G. For any and all other relief to which Plaintiff may be entitled.

Respectfully submitted,

THE ZOPPOTH LAW FIRM

A large, stylized handwritten signature in black ink, appearing to read 'Scott P. Zoppoth', is written over a horizontal line.

Scott P. Zoppoth
Bradley S. Zoppoth
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Louisville, KY 40202
(502) 568-8884
spz@zoplaw.com
bsz@zoplaw.com
Counsel for the Plaintiff, Christopher Kellogg

EXHIBIT

1

Christopher Kellogg
1200 Nightingale Lane
Goshen, Ky 40026

Dear Christopher Kellogg,


On behalf of Dechoker llc (the "Company"), is pleased to offer you the following terms of employment as Chief Operating Officer of the Company, effective June 1, 2015. The initial terms of your new position with the Company are as set forth below.

1. Position.

You will be the Chief Operating Officer President of Dechoker and as such acts as an officer of the company. Your place of employment will be the Company's office in Louisville Ky. Your responsibilities in this position will include managing the day to day operations of the Company and you will report to the CEO and Owner Alan Carver. You agree to the best of your ability and experience that you will at all times loyally and conscientiously perform all of the duties and obligations required of and from the Company. During the term of your employment, you further agree that you will devote all of your business time and attention to the business of the Company and that you will not, directly or indirectly, engage or participate in any personal, business, charitable or other enterprise that is competitive in any manner with the business of the Company, whether or not such activity is for compensation.

2. Compensation.

Your base salary will continue to be at the rate of \$5000.00 net per month per year, until the company reaches the 2500 units sold threshold at which time you will then be paid \$180,000 per year less payroll deductions and all required withholdings per year, when the company sells 10,000 units threshold your salary moves to \$300,000 per year then at 25,000 units threshold your salary will adjust to \$480,000 a year less payroll deductions and all required withholdings. You will be paid on the first and fifteenth on the Company's regularly scheduled pay dates. Additionally you are eligible to earn quarterly bonus compensation as part of the Executive Bonus Compensation Plan (the "Bonus Plan").



In addition, you will have access to company funded family health, dental, Short and Long Term Disability and Life Insurance coverage (up to 5 times your annual salary) ; coverage as part of the Executive Package. You will also be able to participate in the company 401 (k) plan, when plan is initiated. Additionally, you will receive 30 days of personal time off (PTO) that begins on date of hire. Details about these benefits are provided in the Summary Plan Descriptions, available for your review. The Company may modify your compensation and benefits from time to time as it deems necessary, with or without advance notice. If at such time the company can not meet payroll, you will be given an 'I owe you' note signed by Alan Carver and will be paid at a time where the company can fiscally afford the payment.

3. Bonus Plan


You will be eligible to receive a quarterly target bonus that kicks in at 2500 unit per month sales based on the below schedule: 2500 units in company sales per month will be paid 2.5% of net revenue with sales up to 5,000 units per month. 5001 units in sales will be paid 5% of net revenue up to 20,000 units between CEO, CFO and COO. 10,001 and up to 14,999 units in company sales will be paid 5% net revenue. 15,000 and above units in company sales per month will result in a monthly 5% of net revenue. Year two will be adjusted based on company earning to be no less than 5%. Any bonus payment will be subject to applicable taxes and withholdings. To qualify for the bonus, you must remain continuously employed with the Company through the date that the bonus is earned. Bonuses are to be paid within 45 days after the end of the following quarter.

4. Company Vehicle.

A company car or truck no more than two years old will be provided once the company hits the 5,000 a month units sold consecutively for 6 months. All licenses and insurance will be paid by the company. Choice of car is yours contingent on approval from Alan Carver CEO.

5. Stock Grant.

You are also granted 3 shares of Dechoker LLC Operations private stock as a sign on bonus which will be signed over within 8 months of start date and signed over by January 1, 2016.



5. Business and Living Expenses.

The Company will reimburse you for all reasonable business expenses and living expenses incurred in connection with your employment, upon presentation of appropriate documentation, in accordance with the Company's expense reimbursement policies and you will be eligible to participate in the travel policy established by the Company generally for its senior management. The Company will also pay your legal, financial and other advisory fees incurred in connection with negotiating this Agreement up to a maximum of one hundred and fifty thousand dollars (\$150,000) (based on your attorneys' and advisors' normal time charges).

6. Confidential Information and Non-Solicitation Agreement.

Like all Company employees, you will continue to be required, as a condition of your employment, to abide by Company rules and policies. You must sign the Company's Employee Confidential Information and Non-Solicitation Agreement, which, among other things, prohibits unauthorized use or disclosure of the Company's proprietary and confidential information and the unauthorized disclosure or use of any third party proprietary and confidential information. That agreement shall continue in full force and effect. You further agree that you will not bring onto Company premises any unpublished documents or property belonging to any former employer or other person to whom you have an obligation of confidentiality. In addition, as a condition of employment, you agree that you will not assist any person or organization in competing with the Company, in preparing to compete with the Company or in hiring any employees of the Company.

Throughout the duration of your employment, you agree to disclose to the Company in writing, any continuing outside working relationships with other customers or entities with whom you are working or will work (whether or not for compensation), as well as any potential conflicts of interest, sources of income or other business endeavors.

By accepting the role of COO you confirm you understand and agree, that this at-will relationship cannot be changed or retracted,



You will be entitled to 36 months severance salary if terminated based termination date current salary. This includes a any type of demotion of change of title that can be construed as a demotion. If within 12 months of your date of hire you resign, you understand you will have no severance package. After 12 months your resignation will result in one years salary severance package.

7. Change of Control.

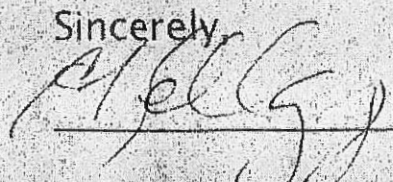
The Company recognizes that upon a Change of Control, it is appropriate to provide you with accelerated vesting if your employment is involuntarily terminated without cause or you are constructively terminated following such a Change of Control. Accordingly, if within 60 months from your date of hire, if your employment is involuntarily terminated with or without Cause, or you are Constructively Terminated following such Change in Control, then upon such termination you will be entitled to 10 times your base salary at the time of your termination. If you voluntarily resign your employment you will only receive 1 time your salary.

9. Additional Information.

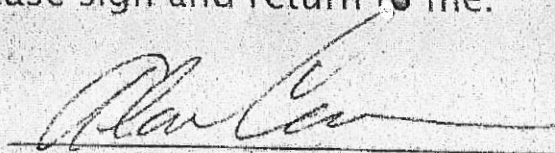
This letter, the Employee Confidential Information and Non-Solicitation Agreement and the Option Exercise Agreement contain all of the terms of your employment with the Company and supersede any prior understandings or agreements, whether oral or written, between you and the Company. This letter may not be amended or modified except by an express written agreement signed by you and the Chief Executive Officer.

Upon acceptance of this letter, please sign and return to me.

Sincerely,

 12-9-16

Christopher Kellogg
Chief Operating Officer



Alan Carver, Dechoker Owner and CEO

DIVIDER

NO.16-CI-05356

JEFFERSON CIRCUIT COURT
DIVISION 3
JUDGE MITCH PERRY

CHRISTOPHER KELLOGG

PLAINTIFF

v.

DECHOKER, LLC

DEFENDANT

DEFENDANT'S ANSWER TO COMPLAINT

Defendant, Dechoker, LLC, ("Dechoker"), by counsel, for its Answer to the Complaint filed by Christopher Kellogg ("Plaintiff" or "Kellogg"), hereby states as follows:

JURISDICTION AND VENUE

1. Dechoker lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1 of the Complaint and therefore denies same.

2. Dechoker admits the allegation contained in paragraph 2 of the Complaint that Dechoker, LLC is a Florida Limited Liability company doing business in Louisville, Jefferson County, Kentucky.

3. Dechoker admits the allegation contained in paragraph 3 of the Complaint.

4. Dechoker lack knowledge or information sufficient to form a belief about the truth of the allegation in paragraph 4. The allegations set forth are jurisdictional statements to which no response is required. To the extent a response is required, Dechoker denies the allegations.

5. Dechoker lack knowledge or information sufficient to form a belief about the truth of the allegation in paragraph 5. The allegations set forth are jurisdictional statements to which no response is required. To the extent a response is required, Dechoker denies the allegations

FACTUAL ALLEGATIONS

6. Dechoker lacks knowledge or information sufficient to form a belief about the truth of the allegation in paragraph 6 that Kellog is a current shareholder and therefore denies the same.

Dechoker admits that Kellogg is a former employee.

7. Dechoker denies the allegations set forth in Paragraph 7 of the Complaint.

8. Dechoker admits the allegations set forth in Paragraph 8 of the Complaint.

9. Dechoker denies the allegations set forth in Paragraph 9 of the Complaint.

10. Dechoker admits the allegations set forth in Paragraph 10 of the Complaint.

11. Dechoker denies the allegations set forth in Paragraph 11 of the Complaint.

12. Dechoker denies the allegations set forth in Paragraph 12 of the Complaint.

13. Dechoker denies the allegations set forth in Paragraph 13 of the Complaint.

14. Dechoker denies the allegations set forth in Paragraph 13 of the Complaint.

15. Dechoker denies the allegations set forth in Paragraph 14 of the Complaint.

16. Dechoker denies the allegations set forth in Paragraph 15 of the Complaint.

17. Dechoker denies the allegations set forth in Paragraph 16 of the Complaint.

18. Dechoker denies the allegations set forth in Paragraph 17 of the Complaint.

19. Dechoker denies the allegations set forth in Paragraph 18 of the Complaint.

CLAIMS

A. Breach of Contract

20. Dechoker incorporates by reference each statement contained in paragraph 1 through 19 above.

21. Dechoker denies the allegations contained in paragraph 21.

22. Dechoker lack knowledge or information sufficient to form a belief about the truth of

the allegations contained in paragraph 22 of the Complaint, and therefore denies them.

B. KRS 337 WAGE AND HOUR VIOLATION

23. Dechoker incorporates by reference each statement contained in paragraph 1 through 22 above.

24. Dechoker denies the allegations set forth in paragraph 24 of the Complaint.

25. Dechoker denies the allegations set forth in paragraph 25.

C. FAILURE TO ALLOW ACCESS TO COMPANY RECORDS (KRS 275.185)

26. Dechoker incorporates by reference each statement contained in paragraph 1 through 25 above.

27. Dechoker denies the allegations contained in paragraph 27 of the Complaint to the extent the allegations are inconsistent with KRS 275.185 or the attendant case law.

28. Dechoker denies the allegations contained in paragraph 28 of the Complaint.

D. MANDATORY RECOVERY OF ATTORNEY'S FEES AND COSTS

29. Dechoker incorporates by reference each statement contained in paragraph 1 through 28 above.

30. Dechoker denies the allegations contained in paragraph 30 of the Complaint to the extent the allegations are inconsistent with KRS 337.385 or the attendant case law.

31. Dechoker denies each and every allegation not explicitly admitted herein.

32. Dechoker denies that Plaintiff is entitled to any of the relief requested, or to any relief whatsoever.

33. Dechoker reserves the right to amend this Answer.

AFFIRMATIVE DEFENSES
FIRST DEFENSE

Plaintiff fails to state a claim in whole or in part upon which relief can be granted.

SECOND DEFENSE

Dechoker acted at all times in good faith and in accordance with all applicable local, state, and federal laws, statutes, ordinances, regulations and rules.

THIRD DEFENSE

At no time did Dechoker act with malice, oppression, fraud, intent, willfulness, recklessness, and/or gross negligence.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by doctrines of waiver, estoppel, contributory negligence, laches, and unclean hands because Plaintiff's own conduct resulted in his termination from employment with Dechoker.

FIFTH DEFENSE

Plaintiff has failed to mitigate his alleged damages.

SIXTH DEFENSE

Plaintiff's claim for damages is barred, in whole or in part, by offset, payment, or compensation and benefits received by Plaintiff through subsequent employment or otherwise.

SEVENTH DEFENSE

To the extent Plaintiff suffered any damages or losses for which he seeks to hold Dechoker responsible, those damages or losses were caused in whole or in part by Plaintiff's own acts, conduct, or omissions.

EIGHTH DEFENSE

Any damages awarded should be barred as to Dechoker or reduced in an amount commensurate with its comparative fault.

NINTH DEFENSE

Plaintiff's claims for damages must be reduced or dismissed to the extent that after acquired evidence demonstrates that Plaintiff engaged in conduct which would have otherwise resulted in his termination.

TENTH DEFENSE

Dechoker reserves the right to supplement or amend its Answer with additional affirmative defenses.

ELEVENTH DEFENSE

Plaintiff's Complaint and the claims contained therein are barred because Defendant fully performed any and all duties, contractual or otherwise, it arguably owed to Plaintiff under applicable law.

TWELFTH DEFENSE

Any award of judgment to Plaintiff in this action would unjustly enrich Plaintiff.

THIRTEENTH DEFENSE

Plaintiff's Complaint is barred by the Statute of Frauds.

FOURTEENTH DEFENSE

Attorney's fees are not afforded under any claim pled by Plaintiff in his Complaint.

WHEREFORE, having fully responded to the Plaintiff's Complaint, Dechoker respectfully requests the following:

1. That the Plaintiff's Complaint be dismissed in its entirety with prejudice;

2. That the Court enter a judgment in favor of Dechoker and direct that the Plaintiff recover nothing.

3. That Dechoker be awarded its costs and expenses, including attorneys' fees, if appropriate; and

4. Any and all other relief to which Goodwill may now or hereafter be entitled.

Respectfully submitted,

s/ Samuel G. Hayward
Samuel G. Hayward
ADAMS HAYWARD & WELSH
4036 Preston Highway
Louisville, Kentucky 40213
T: (502) 366-6456
F: (502) 366-4095
samuelghayward@hotmail.com

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Answer was served this 21st day of December, 2016, upon:

Scott P. Zoppoth
Bradley S. Zoppoth
635 W. Main Street, Suite 400
Louisville, KY 40202
spz@zoplaw.com
bsz@zoplaw.com
Counsel for Plaintiff

s/ Samuel G. Hayward
Samuel G. Hayward