

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

TempWorks Software, Inc.,

Civil No. **15-CV-04420** (SRN/BRT)

Plaintiff,

**DECLARATION OF
LORI NEASE**

vs.

Nease Personnel Services, Inc.,

Defendant.

Lori Nease, under penalty of perjury, declares and states as follows:

1. That your Declarant, Lori Nease, is the President of Defendant Nease Personnel Services, Inc. (“Nease”).

2. That Plaintiff and Defendant entered in to a contract involving a conversion from independent software to the software created by TempWorks Software, Inc. (“Plaintiff” or “TempWorks”) in 2013. The implementation of the software was disastrous for Nease. Nease ended up going back to its old software at a very high cost to its business. All of this took place in 2013.

3. That during the last three years, TempWorks and Nease have attempted to negotiate a settlement in order to compensate Nease for the cost of the failed transition. The most recent offer by TempWorks was \$17,500 with mutual releases (*see* Exhibit A attached to this Declaration). Nease rejected this offer. After Nease rejected this offer, this lawsuit was commenced by TempWorks.

4. That after this lawsuit was filed, Nease inquired about the \$4,100 TempWorks claimed in its Complaint it had refunded to her company, of which she was not aware.

5. That she learned TempWorks surreptitiously and without her consent wired \$4,100 into Nease's bank account on October 30, 2015, four days after Nease rejected TempWorks' offer to settle for \$17,500.

6. That at no time did Nease agree to settle this dispute for \$4,100.

7. That it is true Nease that demanded \$86,000 to settle this matter on December 11, 2015; however, she is willing to reduce that demand to \$75,000 if she is forced to make a compulsory counterclaim in this matter, thereby assuring that this Court will not have jurisdiction over it.

FURTHER DECLARANT SAYETH NOT, SAVE THAT THIS DECLARATION HAS BEEN EXECUTED IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS.

Nease Personal Services, Inc.

Dated January 28, 2016

By: /s/Lori Nease

Lori Nease

Its: President

EXHIBIT A

CONFIDENTIAL – NOT FOR DISTRIBUTION

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into as of October 27, 2015 (“Date of Execution”), by and between TempWorks Software Inc. (“TempWorks”), Nease Personnel Services Inc. and Lori Nease, individually. The parties to this Agreement are collectively referred to as the “Parties.” Nease Personnel Services Inc. and Lori Nease are collectively referred to as “Nease.”

AGREEMENT

1. Settlement Agreement. The Parties reached settlement on October 27, 2015. The Parties each agree that this Agreement encompasses all of the terms agreed to by them.

2. Confidentiality. The Parties and their attorneys (if applicable) shall keep the specific terms, conditions and covenants of this Agreement confidential except (a) where mutually agreed to in writing by the Parties; (b) where necessary to share such information with the Parties’ accountants or attorneys; (c) where disclosure to a governmental entity is required; or (d) where disclosure is ordered by a court of competent jurisdiction. The Parties and their attorneys (if applicable) shall not communicate with anyone associated with any media or publication entities concerning the terms of this Agreement. This confidentiality provision is a material term of this Agreement, and its violation shall constitute a breach of this Agreement.

3. Payment. TempWorks will make a one-time payment of seventeen thousand, five hundred dollars and zero cents (\$17,500.00) (the “Payment”) to Nease Personnel Services Inc., within seven (7) business days of the Date of Execution. Except as otherwise stated in this Agreement, no Party shall owe no further obligation, financial or otherwise, to any other Party after remittance of the Payment.

4. Non-Disparagement. The Parties agree not to make any statements, written or verbal, or induce, cause, permit 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 any other Party (including TempWorks’ Indemnities, as defined below) to this Agreement, its employees, directors, and officers. The Parties acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients (past and present). The Parties understand and agree that this paragraph is a material provision of this Agreement, that any breach of this paragraph shall be a material breach of this Agreement, and that each Party would be irreparably harmed by violation of this paragraph.

5. Better Business Bureau. Nease agrees that it will delete the Better Business Bureau Complaint No. 57252237, filed against TempWorks, or edit the text in a fashion that completely

obscures the complaint. Upon request by TempWorks, Nease will provide login details to the complaint to TempWorks, and cooperate fully with TempWorks in making the above-referenced changes. If deletion or editing is impossible, Nease agrees that it will cooperate with TempWorks in marking the complaint as having been resolved in a manner satisfactory to Nease. In conjunction with Sections 2 and 4 of this Agreement, Nease will not discuss, communicate, comment, or elaborate on the content or resolution of such Better Business Bureau complaint with any third party, nor induce, cause, permit or encourage others to do so.

6. ASA. Nease agrees that it will withdraw its complaint against TempWorks, which was filed with the American Staffing Association (“ASA”). If withdrawal is impossible, Nease agrees that it will communicate to the ASA that the complaint has been resolved in a manner satisfactory to Nease. In conjunction with Sections 2 and 4 of this Agreement, Nease will not discuss, communicate, comment, or elaborate on the content or resolution of such ASA complaint with any third party, nor induce, cause, permit or encourage others to do so.

7. TempWorks’ Release of Nease. For good and valuable consideration, including, but not limited to, the Payment and the other mutual agreements set forth in this Agreement, the sufficiency and receipt of which Nease expressly acknowledges, TempWorks, for itself and for each of its subsidiary corporations, affiliates, heirs, executors, spouses, administrators, directors, shareholders, officers, insurers, employers, attorneys, agents, representatives, successors, and assigns, hereby releases and forever discharges Nease and each of its parent and subsidiary corporations, related corporations, affiliates, divisions, shareholders, predecessors, successors, assigns, insurers, indemnitors, directors, officers, attorneys, employees, agents, and representatives of and from any and all past or present claims, demands, liabilities, judgments, and causes of action, at law or in equity, known or unknown, asserted or unasserted, liquidated or un-liquidated, absolute or contingent, accrued or not accrued, which TempWorks ever had, presently has, claims to have, or claims to have had against Nease (including negligence), and all of the individuals and entities described above as of the Date of Execution. This release of claims includes, but is not limited to, any and all other claims TempWorks has, claims to have, or believes it may have against Nease as of the Date of Execution.

8. Nease’s Release of TempWorks. For good and valuable consideration, including, but not limited to, the Payment and the other mutual agreements set forth in this Agreement, the sufficiency and receipt of which consideration TempWorks expressly acknowledges, Nease, for itself and for each of its parent and subsidiary corporations, heirs, executors, spouses, administrators, directors, shareholders, officers, insurers, employers, attorneys, agents, representatives, successors, and assigns, hereby releases and forever discharges TempWorks, TempWorks Management Services, Inc., ARA Inc. d/b/a Paperless Staffing, and each of their parent and subsidiary corporations, predecessors, successors, assigns, insurers, indemnitors, directors, officers, attorneys, employees, agents, and representatives (collectively, or in reference to any one of them, “TempWorks’ Indemnities”) of and from any and all past or present claims, demands, liabilities, judgments, and causes of action, at law or in equity, known or unknown, asserted or unasserted, liquidated or un-liquidated, absolute or contingent, accrued or not accrued,

which Nease ever had, presently has, claims to have, or claims to have had against TempWorks' Indemnities' (including negligence), and all of the persons and entities described above as of the Date of Execution. This release of claims includes, but is not limited to, all claims Nease has, claims to have, or believes it may have against TempWorks' Indemnities as of the Date of Execution.

9. Destruction. TempWorks and Nease shall be mutually obligated to destroy any and all property, information, files, intellectual property or other documents in their possession which are owned by their counterparty to this Agreement. This obligation for destruction shall include, but is not limited to, any and all software, if any, provided by TempWorks to Nease, and any and all data provided by Nease to TempWorks.

10. Non-Solicitation. For a period of two (2) years following the Date of Execution, TempWorks shall neither (i) solicit for temporary staffing business any client or customer of Nease Personnel Services Inc. which Nease Personnel Services Inc. entered into the TempWorks software, nor (ii) induce, cause, permit, assist or encourage any third party to do so.

11. Non-Assignment of Rights. The Parties represent and warrant that none of them have sold, assigned, transferred, conveyed or otherwise disposed of to any third party, by operation of law or otherwise, any rights, action, cause of action, suit, debt, obligation, account, contract, agreement, covenant, guarantee, controversy, judgment, damage, claim, counterclaim, liability or demand of any nature whatsoever relating to any matter covered by this Agreement.

12. Non-Admission of Liability. By making and entering this Agreement, the Parties do not admit that they have done anything wrong.

13. Enforcement. In the event that Sections 2, 4, 5 or 6 of this Agreement are breached, the Parties agree that TempWorks (without limiting any other legal or equitable remedies available to it), shall be entitled to obtain equitable relief without the posting of any bond, including, without limitation, injunctive relief to prevent the breaching party's failure to comply with the terms and conditions of this Agreement, and may recover its attorneys' fees and costs involved in pursuing such matter from the other Party in the event that such action is successful (as evidenced by an order from a judge approving the relief requested), including attorney's fees involved in litigating a successful claim for damages accompanying the breach.

14. Payment of Costs and Expenses. The Parties agree to pay their own respective costs and expenses (including attorneys' fees and other professional fees and expenses, if applicable) in connection with the negotiation, preparation, execution, and delivery of this Agreement. No party shall have any right to recover from any opposing party, or its attorneys, any sanctions, costs, attorney fees, punitive damages, statutory damages, other damages, or other monies of any kind or nature incurred by that party related to any claims any party has or could have asserted as of the Date of Execution.

15. Jurisdiction and Venue. The validity, interpretation, construction, performance, enforcement, and remedies of or relating to this Agreement, and the rights and obligations of the Parties to this Agreement, shall be governed and construed in all respects by the substantive laws of the State of Minnesota (without regard to the conflict of laws rules or statutes of Minnesota or any other jurisdiction that might result in the application of other law). All disputes arising under or related to this Agreement shall be commenced and maintained exclusively in the federal and state courts situated in the County of Dakota, State of Minnesota, and all Parties hereby irrevocably submit to the jurisdiction and venue of any such court.

16. Interpretation. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one or more parties hereto by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document, it being acknowledged and agreed that all of the Parties have participated in the preparation and review of this Agreement.

17. Complete Agreement. The Parties agree that this Agreement contains the entire agreement between them, and supersedes all prior or contemporaneous agreements and understandings, oral or written, between them as of the Date of Execution regarding those subjects.

18. Modifications and Waivers. No term or provision of this Agreement may be varied, changed, modified, waived or terminated orally, unless in an instrument in writing signed by the party against whom the enforcement of the variation, change, modification, waiver or termination is sought. The waiver by any party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof, nor shall any failure to enforce any provision hereof operate as a waiver at such time or at any future time of such provision or of any other provision hereof.

19. Execution in Counterparts. This Agreement may be signed in any number of counterparts, with the same effect as if the signature thereto were upon the same instrument. Complete sets of counterparts shall be lodged with and delivered to each party to this Agreement.

20. Notices. All notices, requests and demands given to or made pursuant to this Agreement, shall be in writing and delivered to the Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Agreement as of the Date of Execution:

TEMPWORKS SOFTWARE INC.

NEASE PERSONNEL SERVICES INC.

By: _____

By: _____

Title: _____

Title: _____

LORI NEASE, INDIVIDUALLY
