

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: CONTRACT/OTHER

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David & Hiba Stemm, LLC,  
a Kentucky limited liability company,  
and James David Stemm, individually,  
Hiba George-Stemm, individually,

Court File No:

Plaintiffs,

**COMPLAINT**

v.

TEMPWORKS MANAGEMENT  
SERVICES INC.,

Defendant.

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Plaintiffs, for their causes of action against Defendant, state and allege as follows:

**I.**

That Plaintiffs James David Stemm ("Stemm") and Hiba George-Stemm are residents of Florida.

**II.**

That Plaintiff David & Hiba Stemm, LLC ("Stemm, LLC") is a Kentucky limited liability company in good standing with its principal place of business located at 105 Cardinal Drive, Greensburg, Kentucky 42743.

### **III.**

Defendant TEMPWORKS MANAGEMENT SERVICES INC. ("TempWorks"), a Minnesota corporation, has its offices located at 3140 Neil Armstrong Boulevard, Suite 205, Eagan, MN 55121, was organized on March 18, 2011, and is in good standing with the Minnesota Secretary of State.

### **IV.**

That Stemm has extensive experience in the temporary placement industry. He joined *Employment Plus, Inc.* in Bloomington, IN in 1998. He was hired to design, implement and manage a Risk Management program for the small, four office staffing company. As the business grew, Stemm's roles and responsibilities grew as the sole operational member of the organization. By 2004 the company had grown to over twenty locations in three states (Indiana, Kentucky, and Illinois) with Stemm serving in an Operations Manager capacity. Stemm was in charge of setting up, implementing and overseeing all new office and onsite locations and operations company-wide, including software and software training.

### **V.**

In 2010, Stemm hired and placed Eric Pattison in Indianapolis, Indiana, who would later be hired by Stemm, LLC. At this time, the division was billing, on average, in excess of \$50,000 per month and generating in excess of \$9,000 per month in net profit when Stemm resigned in October 2011.

## **VI.**

After his resignation, Stemm decided to begin doing business in Indiana and Massachusetts in the temporary placement services industry. Having performed exhaustive due diligence, Stemm contacted TempWorks Management. His initial contact with Tempworks Management was with Jack Terrana, VP of Sales ("Terrana"). Stemm and Terrana began a dialogue in earnest in October 2011, and Stemm began the process of gathering the information and providing same to TempWorks to activate his account.

## **VII.**

In February 2012, Stemm began working on a fully integrated website with Dave Schoofs of TempWorks. The site was to incorporate the software and provide state-of-the-art functionality for both applicants and clients.

## **VIII.**

At this time, TempWorks was to provide the services of a website and software, as well as ancillary business services. TempWorks was not the provider of Workers' Compensation Insurance nor was TempWorks responsible for payroll funding. To that end, Stemm obtained two Lines of Credit with US Bank for the purpose of funding payroll and purchased Workers' Compensation and General Liability insurance policies through *CTK Insurance* – a recommendation of Terranna.

## **IX.**

In early 2013, Stemm was contacted by TempWorks about a new program it was offering. This program offered insurance, payroll, payroll funding, and other services to start-ups which would directly provide Stemm with everything he needed to start his businesses in Indiana and Massachusetts. This made TempWorks more appealing to Stemm and he intensified his preparations to go into business as soon as possible with TempWorks, starting in Indiana. Negotiations with TempWorks intensified as well.

#### **X.**

In June 2013, in reliance upon TempWorks to provide the turn-key operation in Indiana it had promised him, Stemm contacted Eric Pattison and asked Mr. Pattison if he would be interested in opening a branch of *180 Personnel* in Indianapolis, confident that *180 Personnel* could succeed given previous success in that market and established relationships with clients.

#### **XI.**

In July 2013, Stemm was providing estimated payroll by state and codes and discussing various items back and forth with TempWorks. These conversations culminated in TempWorks sending Stemm a contract to sign and have notarized in order that the parties could “officially” enter into the agreement and begin the various processes necessary to do business including, but not limited to, getting access to the software and being trained on the software.

#### **XII.**

On July 22, 2013, Stemm received the contract from TempWorks. On July 26,

Stemm flew to Indianapolis to finalize the agreement with Eric Pattison and to discuss the basic structure of the business, explain the relationship with TempWorks and set-up an account that Mr. Pattison could access and use for business purposes. Stemm also requested a few changes to the language of the contract. Stemm got a new contract on July 26, 2013 from Bob Pugliano at TempWorks ("Pugliano"), with the following instructions:

Please sign and notarize at your earliest convenience and if you would, email back to this address with a copy to me. (Tcoonboarding.com) Once received, Ashlee Brace, our Senior Underwriter will contact you for the next steps.

### **XIII.**

That on August 13, 2013, Plaintiffs executed the written contract with TempWorks and delivered it to TempWorks. Stemm emailed Pugliano on August 15 and Pugliano confirmed that he received the contract and that he would schedule 180 Personnel's kick-off call with Senior Underwriter Ashlee Brace ("Brace").

### **XIV.**

After TempWorks received the signed contract, both parties performed their duties pursuant to it in earnest. Stemm assumed TempWorks had also signed it, and did not learn otherwise for several months.

**XV.**

That after August 13, 2013, Plaintiffs committed substantial resources towards building their businesses in Indiana and Massachusetts. Plaintiffs conservatively estimate that the costs associated with these endeavors exceeded \$13,500.

**XVI.**

Plaintiffs also paid to TempWorks approximately \$3,605 for website development services. However, the bulk of the compensation to be paid to TempWorks by Plaintiffs was through minimum payments called for by the contract.

**XVII.**

Over the course of the next few weeks Stemm and Pattison had software training facilitated and conducted by TempWorks. They also took various other necessary steps with Brace to get ready to start assigning temporaries.

**XVIII.**

In reliance on his contract with TempWorks, Stemm, LLC signed other contracts with background screening companies and drug testing companies, signed an office lease in Massachusetts, bought General Liability insurance, and bought business cards, brochures, and marketing materials, all in anticipation of placing the first employees in Indianapolis on or before October 1, 2013.

## **XIX.**

On August 26 Stemm flew back to Indianapolis to visit prospective *180 Personnel* clients with Eric Pattison face-to-face. Stemm and Pattison met with several clients over the course of two full days of sales. Each client gave them their reassurance that they were excited to do business with *180 Personnel*. Stemm personally recounted to each one the reasons he wanted to start his own company and provide an intimate, fully customer centric experience for a handful of loyal clients in each market without all the trappings of huge corporations.

## **XX.**

Stemm and Pattison were excited to tell their prospects about all the things that the new software could do and how they could facilitate all of the client's needs online – many things that they couldn't offer with the software being used by a \$150 Million company (*Employment Plus, Inc.*).

## **XXI.**

On September 18, Stemm was told by Brace that TempWorks did not have insurance coverage in Massachusetts. She informed Stemm that she didn't know if Pugliano had apprised him of that the week before. He had not. Although certainly shocking and devastating in its own right, Stemm still had to focus on Indianapolis, which he believed was almost ready to begin doing business.

## **XXII.**

By September 24, *180 Personnel* had received requests from Indianapolis clients for Workers' Compensation Certificates of Insurance (COI). This is proof that employees placed at a client's facility were covered by workers' compensation insurance. Stemm requested the COIs from Brace at TempWorks on September 24. Brace informed Stemm that she had received confirmation that "your codes are being bound today" and that "I should have your COIs tomorrow."

## **XXIII.**

On September 25, Stemm was told by Mike Sepsey ("Sepsey") of Direct HR – the company that underwrites the employees of TempWorks that *180 Personnel* would be placing – that DirectHR didn't insure employees being placed through a temp agency. Sepsey had no idea what *180 Personnel* did, even though Stemm had been told by Brace to send *180 Personnel* applicants directly to him at Direct HR for approval. Stemm immediately called Pugliano and told him what Stemm was told by Sepsey. Pugliano's initial concern was that Stemm contacted Sepsey directly. Pugliano assured me that it was a simple misunderstanding and that he would have it cleared up "within a half an hour".

## **XXIV.**

That despite numerous requests and conversations, TempWorks still had not been able to produce or provide a COI by Friday, September 27. Despite being reassured that it had been taken care of and that TempWorks was merely waiting on a paper from Sepsey at Direct HR, they could not tell Stemm anything for certain. Stemm was growing increasingly

frustrated and concerned. Stemm was told Friday morning that Sepsey was going to call the COO of TempWorks directly to give her ‘the paperwork’ that would clear it all up. Stemm called the COO of Tempworks directly and she had no knowledge of the issue and abruptly ended the conversation. Stemm called and spoke with the President of TempWorks, David Durgarian (“Durgarian”), and expressed his concerns to him. Durgarian assured Stemm that he would find out something and have the COO call him “within a half hour.” Stemm asked that she (the COO) be the only one to contact him. Durgarian agreed. More than a half hour went by and Stemm got a call from Casey Kraus in Sales, but Stemm wanted to speak with Durgarian. Stemm continued to try and reach the COO and Durgarian, by the receptionist informed Stemm that she had been instructed to send Stemm to the COO’s voicemail and that was all that she was willing to do. Stemm sent an email to Durgarian and the COO expressing concerns and frustrations.

#### **XXV.**

That on September 27, Stemm received the following voicemail from Pugliano: “David, it’s Bob from TempWorks it’s about 2:10 or, yeah, about 2:10 in the afternoon on Friday. Umm, I got direction from the CEO of my company as well as from the COO given the circumstances that we are not going to move forward with your company at this time. If you have any questions you’re welcome to call me. My number is 724.457.1870. I’ll also send you an email as well. Thank you.”

#### **XXVI.**

After receiving this voicemail, Stemm immediately called Pugliano to inquire as to

what “the circumstances” were that led TempWorks to this decision. Pugliano said that he was not told specifically, only that “due to circumstances”. Stemm emailed Durgarian and the COO to inquire about what circumstances led to this. To-date, Stemm has received no communication whatsoever from anyone, in any department, at TempWorks.

#### **XXVII.**

That Plaintiffs, in reliance upon their contract with TempWorks, spent in excess of \$18,500 for expenses relating to setting-up their businesses in Indiana and Massachusetts. Some of these expenses, like real estate leases, are ongoing, and Plaintiffs continue to pay them.

#### **XXVIII.**

That among other things, Plaintiffs hired Eric Pattison as a full-time employee to manage their business in Indiana. Plaintiffs also signed contracts with background screening companies and drug testing companies, signed an office lease in Massachusetts, bought General Liability insurance, and bought business cards, brochures, and marketing materials, all in anticipation of placing the first employees in Indianapolis on or before October 1, 2013. When TempWorks refused to move forward, all of these expenditures were lost. Some of them, like the real estate leases, are continuing obligations.

**XXIX.**

That the businesses in Indiana and Massachusetts were ready to become fully operational in the fall of 2013. Plaintiffs had arranged for clients to begin using employees referred by Plaintiffs, and Plaintiffs had committed to provide these employees to their clients in Indiana. Plaintiffs made promises to both clients and employees in reliance upon the representations by TempWorks that they would be fully operational.

**XXX.**

That without warning, on September 27, 2013, TempWorks unilaterally terminated the contract with Plaintiffs. Because TempWorks was no longer willing to provide payroll and insurance services, Plaintiffs were unable to perform the contracts in place with their clients in Indiana. Plaintiffs had no alternative to closing operations.

**XXXI.**

That Plaintiffs relied completely upon TempWorks to assist it with respect to setting-up and assisting in the operations of its businesses in Indiana and Massachusetts.

**XXXII.**

That based upon their prior experience in the industry, Stemm, LLC believes that it will sustain lost profits in the range of \$60,000 to \$100,000 in the first year of the contract, and in excess of \$100,000 for year two and the following years of the contract. Plaintiffs are entitled to the lost profits from the operations they were forced to close.

**XXXIII.**

That for the first time, on November 14, 2013, TempWorks indicated that it was not able to find an executed copy of the contract and claimed there was no contract between the parties.

**XXXIV.**

That as a result of the abrupt unilateral termination of the contract, Plaintiffs have sustained, and continue to sustain, substantial damages, in an amount to be proven at trial, but known to be in excess of \$50,000.

**XXXV.**

That TempWorks' conduct—acts, language or silence—amounted to a representation or a concealment of material facts, and that TempWorks knew or should have known they were untrue.

**XXXVI.**

That the truth concerning these facts were unknown to Plaintiffs at the time when such conduct was done, and at the time when it was acted upon by Plaintiffs.

**XXXVII.**

That TempWorks' conduct was done with the intention, or at least with the expectation, that it would be acted upon by Plaintiffs, or under such circumstances that it is both natural and probable that it would be so acted upon.

**XXXVIII.**

That TempWorks' conduct was relied upon by Plaintiffs, and, thus relying, Plaintiffs were led to act upon it and did in fact act upon it in such a manner as to change their position for the worse.

**XXXIX.**

That based upon these facts, TempWorks should be equitably stopped from denying their conduct caused Plaintiffs to rely upon TempWorks to Plaintiffs' detriment and should be ordered to pay Plaintiffs their damages in an amount to be proven at trial, but known to be of in excess of \$50,000.

**COUNT ONE**

**BREACH OF CONTRACT**

**XL.**

Plaintiff hereby realleges and incorporates herein by reference paragraphs I through XXXIX.

**XLI.**

That the statements and actions of the parties establish an agreement, even though TempWorks may claim it never signed the contract. All parties were operating under the belief they had a valid contract until TempWorks unilaterally terminated it without notice, reason or justification on September 27, 2013.

**XLII.**

That, among other things, the performance of the terms of the contract between June

and September 2013 by all parties evidence the fact a contract was made.

**XLIII.**

That Defendant assented and ratified the terms of the written contract by its performance of its terms, and that Plaintiffs also performed in reliance upon Defendant's promises that the contract was in full force and effect.

**XLIV.**

That despite demands being made upon TempWorks, TempWorks refuses to recognize its contract with Plaintiffs, and has breached the contract entered into in August 2013 and has refused to perform it, damaging Plaintiffs in an amount to be proven at trial, but known to be of in excess of \$50,000.

**COUNT TWO**

**PROMISSORY ESTOPPEL**

**XLV.**

Plaintiff hereby realleges and incorporates herein by reference paragraphs I through XLIV.

**XLVI.**

That there was a firm agreement between Plaintiffs and Defendant to perform the terms of the written contract, even if Defendant claims it may have failed to sign it.

**XLVII.**

That TempWorks made clear and definite promises that it had an agreement with Plaintiffs and Plaintiffs justifiably and reasonably relied on those promises.

**XLVIII.**

That Plaintiffs in fact relied upon the promises of TempWorks and signed other contracts and incurred expenses based upon that reliance to their detriment.

**XLIX.**

That Plaintiffs, in reliance upon their contract with TempWorks, have expended substantial amounts relating to setting-up their businesses in Indiana and Massachusetts, and continue to necessarily spend money on real estate leases and the like.

**L.**

That the promises made by TempWorks must be enforced to prevent injustice, and/or TempWorks is liable to Plaintiffs for damages to be proven at trial but known to be in excess of \$50,000.

WHEREFORE, Plaintiff respectfully prays for the following relief:

1. Judgment against Defendant for in excess of \$50,000 pursuant to Count One of this Complaint.
2. Judgment against Defendant for in excess of \$50,000 pursuant to Count Two of this Complaint.
3. For an Order declaring that TempWorks is equitably estopped from denying its promises and misrepresentations to Plaintiffs which caused Plaintiffs to rely on TempWorks to their detriment, and assessing damages for Plaintiffs reasonable and justifiable reliance upon TempWorks' promises and misrepresentations to their detriment.
4. For an award of Plaintiffs' costs and disbursements.

5. For such other and further relief as this Court deems just and equitable.

**GEORGE E. ANTRIM, III PLLC**

**By** /s/George E. Antrim, III  
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**ATTORNEYS FOR PLAINTIFFS**

**ACKNOWLEDGEMENT**

The parties by their attorneys acknowledge that sanctions may be imposed under certain circumstances in a civil action pursuant to Minnesota Statutes Section 549.211.

Dated: February 7, 2014

/s/George E. Antrim, III  
George E. Antrim, III (#120534)