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DRAFT OF ORAL ARGUMENT

TO: Sylvia Baca

FROM: Applicant

DATE: July 27, 2021

RE: Industrial Sandblasting, Inc. v. Samuel Morgan

Dear Ms. Baca,

Attached below is a draft of the oral argument that you asked me to prepare for you regarding whether the noncompetition covenant is valid as applied to our client Samuel Morgan ("Mr. Morgan").

Respectfully,

Applicant

Applicable Law

The applicable law in this case is Columbia Stat. Ann. Section 24-6-53(a). This statute regulates noncompetition covenants in contracts between employers and employees and therefore applies to the contract between Industrial Sandblasting and Mr. Morgan.

Under this statute, a noncompetition covenant is only valid when it is **strictly limited** in (1) **time**; (2) **geographic scope**; and (3) the **scope of the services prohibited**. This determination requires the court to balance the the employer's interests against that of the employee.

Here, the noncompetition covenant in the contract between Industrial Sandblasting and Mr. Morgan is invalid because the (1) **covenant is not strictly limited to the requirements of Section 24-6-53(a)** and the (2) **balance of interests between Industrial Sandblasting and Mr. Morgan tips in favor of Mr. Morgan**.

I will address each issue in turn beginning with the requirements of **Section 24-6-53(a)**.

(1) Duration of the Covenant

Although the case law of our jurisdiction does not state a specific time period which makes a restriction per se unreasonable, current case law places the burden on the employer to show that the time restriction is necessary to protect the employer during the employee's transition to work. Industrial Sandblasting cannot meet this burden in this case.

Here, Industrial Sandblasting wants to keep Mr. Morgan from working in the industry for one year minimum in order to train somebody to replace Mr. Morgan's position. However, this reason is invalid since Industrial Sandblasting already hired a replacement for Mr. Morgan a week before Mr. Morgan left Industrial Sandblasting.

Therefore, Industrial Sandblasting cannot support a basis for necessity and the court should invalidate the noncompetition covenant.

(2) Geographic Scope

A geographic restriction is valid if it covers territory where the employee works or does business. In *Fawcett Railway Relief, Inc. v. Columbia Rail Services, Inc.*, the court invalidated a restriction that covered geographic area in which the employee never had contact.

Here, the noncompetition covenant covers all of Columbia. However, Mr. Morgan's primarily works and does business in Columbia City.

Therefore, under *Fawcett*, this court should invalidate the noncompetition covenant because it covers the entirety of Columbia even though Mr. Morgan only works and does business primarily in Columbia City.

(3) Scope of Services Prohibited

A noncompetition covenant can reasonably restrict an employee's work for a competitor if such work is identical to that performed for the former employer.

Industrial Sandblasting will likely claim that it can reasonably restrict Mr. Morgan's work for Columbia Coatings on the this basis and because it also provided Mr. Morgan training. However, Industrial Sandblasting did not provide Mr. Morgan's training since Mr. Morgan paid for his own training.

Therefore, this court should invalidate the noncompetitive covenant since it essentially prohibits Mr. Morgan from working for a competitor in any capacity.

Conclusion

In determining the validity of the noncompetition covenant under **Section 24-6-53(a)**, this court must **balance the interests** between Industrial Sandblasting and Mr. Morgan and find that the interests tip in Mr. Morgan's favor because (1) **Industrial Sandblasting does not need one year to replace Mr. Morgan**; (2) the **noncompetition covenant covers the entirety of Columbia even though Mr. Morgan primarily works and conducts business in Columbia City**; and (3) **Industrial Sandblasting did not train Mr. Morgan and therefore cannot prohibit him from working with any competitor in any capacity**.

Question #1 Final Word Count = 609

END OF EXAM