

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	
 Shannon Shaw,)	 C/A No. 2021-CP-18-02173
)	
Plaintiff,)	
)	
v.)	PLAINTIFF’S MOTION FOR DIRECTED
)	VERDICT ON AGENCY
Amazon.com Inc.; Amazon.com LLC;)	
Amazon.com Services, Inc.; Amazon)	
Logistics, Inc.; MJV Logistics, LLC; and)	
Kevin Anthony Bleicki,)	
)	
Defendants.)	
)	

Pursuant to Rule 50(a), SCRPC, Plaintiff respectfully moves for a directed verdict that Defendants MJV Logistics, LLC, and Kevin Anthony Bleicki were acting as agents of the Amazon Defendants at the time of the collision and that the Amazon Defendants are vicariously liable for the tortious conduct of Bleicki and MJV. The evidence admitted at trial yields only one inference: that the Amazon Defendants maintained the right to exercise control over, and in fact did exercise control over, the means and methods by which MJV and Bleicki performed their work; the equipment used by MJV and Bleicki to perform their work; the timing of when MJV and Bleicki performed their work; and whether Bleicki was to be fired. For the Court to find an independent contractor relationship instead of an agency relationship, the evidence would have to demonstrate that MJV was completely free to deliver Amazon’s packages by any manner and means that MJV saw fit and that Amazon’s sole interest was in the finished product.

The evidence admitted at trial clearly demonstrates that not to be the case. Rather, the evidence overwhelmingly demonstrates that Amazon retained the right to control and actually did exercise control over MJV and Bleicki’s means and methods. As noted below regarding the standard for directed verdict, Defendants cannot point to anything more than a mere scintilla of

evidence in their favor on the control issue. The Supreme Court recently emphasized that a mere scintilla is insufficient to overcome Plaintiff's motion for directed verdict. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023). Because there is no evidence in the record that creates a "genuine issue of material fact" on the control issue, Plaintiff is entitled to a directed verdict that there was an agency relationship and that the Amazon Defendants are vicariously liable for tortious conduct of Blekicki and MJV.

STANDARD FOR DIRECTED VERDICT

"In ruling on a motion for directed verdict, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Long v. Norris & Assoc., Ltd.*, 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000) (citations omitted). "When the evidence yields only one inference, a directed verdict in favor of the moving party is proper." *Id.* (citation omitted). "In ruling on a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence." *Id.* (citation omitted). "If the evidence **as a whole** is susceptible of only one reasonable inference, no jury issue is created and a directed verdict motion is properly granted." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct. App. 2002).

The standard for directed verdict under Rule 50(a), SCRPC, is the same as the standard for summary judgment under Rule 56(c). *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citation omitted). As the Supreme Court recently emphasized, a "mere scintilla of evidence" is insufficient to overcome a motion for summary judgment. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023) (citing *Shelton v. LS&K, Inc.*, 374 S.C. 263, 265, 449 S.E.2d 495, 496 (1994), and other prior cases for the principle that "[t]he existence of a mere scintilla of evidence in support of the nonmoving party's position

is not sufficient to overcome a motion for summary judgment”). Because the standard for directed verdict “mirrors” the standard for summary judgment, a mere scintilla of evidence is also insufficient to overcome a motion for directed verdict. *Id.* (citing *Russell v. Wachovia Banks, N.A.*, 353 S.C. 208, 219, 578 S.E.2d 329, 334 n.4 (2003)). Instead, Defendants must cite specific evidence demonstrating there is a “genuine issue of material fact” in that the “evidence as a whole” is susceptible of more than one reasonable inference.” *Id.* at 461–63, 892 S.E.2d at 300–01 (citations omitted); *Pond Place Partners, Inc.*, 351 S.C. at 15, 567 S.E.2d at 888. The Amazon Defendants are unable to cite any such specific evidence to make that showing.

THE LAW OF AGENCY

“[U]nder the doctrine of *respondeat superior*, the principal is liable in addition to the agent, not by reason of his consent to be liable, but by operation of law.” *S.C. Ins. Co. v. James Ce. Greene and Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986) (citing *Reynolds v. Witte*, 13 S.C. 5 (1879)). “This is most plainly illustrated in those cases where the agent acts against the express instructions of his principal, but within the scope of his employment: the principal is still liable.” *Id.* (citations omitted).

The test to determine the existence of agency is whether the purported principal has the right to control the conduct of its purported agent in the performance of his work. *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009) (citations omitted). “It is not the actual control then exercised, but whether there exists the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment.” *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 594, 564 S.E.2d 110, 112 (2002)¹ (quoting *Young v. Warr*, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969)). “The right to control does not require the

¹ *Overruled on other grounds, Wilkinson*, 382 S.C. at 300, 676 S.E.2d at 702.

[actual] dictation of the thinking and manner of performing the work. It is enough if the employer has the right to direct the person by whom the services are to be performed, the time, place, degree, and amount of said services.” *Shatto v. McLeod Reg’l Med. Ctr.*, 406 S.C. 470, 477, 753 S.E.2d 416, 420 (2013) (quoting *Nelson*, 343 S.C. at 110, 538 S.E.2d at 280)).

The determination of whether someone is an agent or independent contractor depends on the facts of the particular case. *Young*, 252 S.C. at 189, 165 S.E.2d at 802. “An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work.” *Id.* (quoting 56 C.J.S. *Master and Servant* § 3(1)). “[W]here one who performs work for another represents the will of that other, not only as to the result, but also as to the means by which the result is accomplished, he is not an independent contractor but an agent.” *Young*, 252 S.C. at 189, 165 S.E.2d at 802 (quoting 2 C.J.S. *Agency* § 2(d)) (other citations omitted). “[T]he right of power of control retained by the person for whom the work is being done is uniformly regarded as the essential criterion for determining whether” the person performing the work is an agent or employee as opposed to an independent contractor. *Id.* (citing *DeBerry v. Coker Freight Lines*, 234 S.C. 304, 108 S.E.2d 114 (1959)). Significantly, these appellate opinions do not set forth that the principal must control *every single aspect* of the agent’s work or micromanage the agent in order for there to be an agency relationship. To the contrary, the relationship relies in agency *unless the only* interest of the principal is in the “finished product.” *Young*, 252 S.C. at 189–90, 165 S.E.2d at 802 (observing that “the relationship is one of agency when the employer reserves control and an interest in the performance of the work *other than the finished product*”) (citations omitted; emphasis added).

In evaluating the existence of the right to control, and thus an agency relationship, “the Court examines four factors which serve as a means of analyzing the work relationship as a whole:

- (1) direct evidence of the right or exercise of control;
- (2) furnishing of equipment;
- (3) method of payment; [and]
- (4) right to fire.”

Wilkinson, 382 S.C. at 299, 676 S.E.2d at 702.

Important to this case, the fact that the parties have a contract identifying MJV Logistics as an independent contractor is not determinative of whether an actual relationship existed. *Kilgore Group, Inc. v. S.C. Employment Sec. Comm’n*, 313 S.C. 65, 69, 437 S.E.2d 48, 50 (1993). A “mere declaration does not make the contract something other than agency if a proper construction of its terms shows that the relation is one in fact of principal and agent.” *Tate v. Claussen-Lawrence Const. Co.*, 168 S.C. 481, 167 S.E. 826, 829 (1933); *see also Todd’s Ice Cream, Inc. v. S.C. Employment Sec. Comm’n*, 281 S.C. 254, 255, 315 S.E.2d 373, 376 (Ct. App. 1984) (holding that the terms of the contract do not control whether an agency relationship, as opposed to an independent contractor relationship, exists) (citing *Young v. Warr*, 252 S.C. 179, 165 S.E.2d 797 (1969)); *Burriss v. Texaco, Inc.*, 361 F.2d 169, 172 (4th Cir. 1966) (observing that under South Carolina law, the terms of a contract are not conclusive on the question of independent contractor where there is evidence which establishes a true agency relationship).

As demonstrated below, in evaluating the four factors of control and the evidence admitted at trial, the only inference one can yield is that the Amazon Defendants retained the right to control the means and methods by which MJV and Blekicki performed their work. That is, the evidence is abundant and clear that the Amazon Defendants had an interest “other than the finished product.”

Young, 252 S.C. at 189–90, 165 S.E.2d at 802. The Court should therefore enter a directed verdict on the issue.

THE EVIDENCE ADMITTED AT TRIAL

Amazon’s right to control (and actual control) over MJV and Blekicki’s means and methods has been demonstrated through: (1) the testimony of Kevin Blekicki; (2) the testimony of Kelvin Buggs; (3) the published deposition testimony of Amazon’s corporate representative, P.J. Bongiorno; and (4) the contract documents between Amazon and MJV. This evidence is summarized as follows:

1. Testimony of Kevin Blekicki

Mr. Blekicki testified regarding the control exercised over him by Amazon, not MJV, as follows:

- His job title was “Amazon Delivery Associate.”
- He served as “the face of Amazon” to Amazon’s customers.
- The onboarding process through which he obtained his job as an Amazon Delivery Associate was controlled by Amazon.
- As part of the onboarding process, Blekicki submitted information to Amazon through the Amazon website. This information included his photograph and driver’s license number.
- Amazon performed the background check on him prior to his being hired and allowed to drive an Amazon delivery van.
- Amazon provided his training as to Amazon’s rules for drivers and how to follow the rules.
- Amazon provided and controlled his written driver examination as well as the actual driving test.
- Amazon required him to watch training videos on distracted driving.

- He was required to use phone apps provided by Amazon to perform his work and deliver packages.
- Amazon controlled “the means and methods” by which he performed his work and controlled “everything [he] did.”
- Wearing his Amazon uniform was mandated by Amazon.
- He was required to deliver Amazon packages via an Amazon-branded, Amazon-owned delivery van.
- Through the Amazon app, Amazon instructed Blekicki where to deliver each package on each day, such as a customer’s back door or garage.
- Amazon controlled the method by which he loaded his van each morning, including where exactly in the van to place each package before heading out to make deliveries.
- Amazon instructed him how to drive the van.
- Amazon provided and controlled the specific routes that he was required to follow each day.
- Through the eDriving Mentor app, which was installed on Blekicki’s personal cell phone, Amazon monitored Blekicki’s movements in the van.
- Everyday, Blekicki reported to work at the Amazon hub, which was branded with the Amazon logo and other indicia that it was an Amazon workplace. *See* Plaintiff’s Exhibit 17 (photos of the worksite).
- If Amazon’s monitoring detected seatbelt infractions, Amazon would withhold incentive pay. *See* Plaintiff’s Exhibit 21.5 (Blekicki’s message to co-workers regarding same).

None of this testimony was controverted on cross-examination by Blekicki’s counsel.

Counsel for the Amazon Defendants had the opportunity but chose not to cross-examine Blekicki.

2. Testimony of Kelvin Buggs

The owner of MJV, Kelvin Buggs, testified as follows regarding Amazon's control of the means and methods to be used by MJV and its drivers:

- In order to become an Amazon Delivery Service Partner (“DSP”), Mr. Buggs had to “pass” an interview with Amazon.
- In order to own and operate a DSP, Amazon mandated that Mr. Buggs operate in the Charleston area. He wanted to set up the DSP in the Upstate or Midlands, but Amazon controlled where he could operate, and it required him to operate in the Lowcountry.
- Amazon provided Mr. Buggs a step-by-step instruction manual on how to set up MJV as a DSP. The Amazon Operations Manual (Plaintiff's Exhibit 6), gave Mr. Buggs detailed instructions on “**many of the required steps to launch your business**” as an Amazon DSP,² including but not limited to:
 - Bank Accounts
 - Fuel Cards
 - Minimum Insurance Requirements
 - Background Checks
 - Payroll Operations
 - Recruitment of Drivers
 - *See also* Amazon Operations Manual (Plaintiff's Exhibit 6) at AMZ000137–175 (setting forth the numerous steps “required” by Amazon).
- To become an Amazon-branded DSP, Mr. Buggs had to agree to use vans provided by Amazon through a fleet agreement directed by Amazon.

² Amazon Operations Manual (Plaintiff's Exhibit 6) at AMZ000137.

- Amazon controlled the use of the vehicles including how and when they could be operated.
- MJV could use the Amazon vans issued to MJV only during business hours and only to deliver Amazon packages.
- Amazon reserved the right to inspect the vans at any time.
- Amazon controlled the technology installed in the vans.
- Amazon required DSPs, including MJV, to install the Flex and eMentor apps on cell phones (Rabbits) that the DSPs were required to provide to Amazon Delivery Associates every day.
- MJV had no choice but to hire only those drivers who passed Amazon’s qualifications, background checks, and testing.
- Amazon had “ultimate approval” of who could drive for MJV.
- Amazon determined how MJV was paid based on the size of the fleet and number of routes that MJV had, which was controlled by Amazon.
- Amazon designed road safety standards that MJV was required to follow.
- Amazon required MJV to provide health insurance to drivers that met Amazon’s standards.
- Amazon imposed upon MJV mandatory paid-time-off (PTO) requirements for drivers.
- Amazon controlled the initial training of MJV’s drivers.
- Amazon retained the right to discipline and ultimately terminate drivers.
- Amazon retained the right to access MJV’s payroll records and audit the payroll file.
- Drivers were required to arrive for every shift at the Amazon Delivery Hub controlled by Amazon.
- While Mr. Buggs tried to say that drivers show up to an adjacent parking lot where he initiated the practice of daily “standup meetings” each morning, he ultimately conceded

that the standup meetings were mandated by Amazon with specific instructions set forth in the Operations Manual.

- Mr. Buggs's own office was within the Amazon Delivery Hub controlled by Amazon.
- MJV was required to outfit delivery drivers in Amazon uniforms (vests). When it is cold or raining, the drivers may wear a coat, but the Amazon vest must be worn outside of the coat.
- Amazon Logistics, Inc., owned the van that Blekicki was driving. *See* Plaintiff's Exhibit 63 (Certificate of Title).
- Amazon dictated which gas stations delivery drivers could use to fill up Amazon's vans.
- Amazon provided fuel cards and directly paid for the fuel that went into the vans. The use of these fuel cards was mandated by Amazon.
- Amazon controlled the assignment of which packages went into a truck for a particular route.
- Amazon controlled the number of packages for each route each day.
- Amazon controlled and created each route that delivery drivers had to follow.
- Mr. Buggs admitted that while he can divide the routes into multiple drivers, he had no discretion or authority to actually change the routes.
- Amazon monitored and tracked each driver's performance through Coretex and eMentor apps, which were proprietary to Amazon and which Amazon dictated that drivers have installed on their phones and use while driving.
- Amazon required MJV to take drivers involved in a collision, like Blekicki in this case, to get a drug test immediately after the collision.

- Mr. Buggs admitted that he completed a checklist during his deposition regarding elements of Amazon’s control of MJV and drivers like Blekicki. *See* Plaintiff’s Exhibit 67 (Amazon Control of DSP Checklist). At trial, Mr. Buggs confirmed his agreement that:
 - **“Amazon requires DSPs to operate exclusively under its trademark;”**
 - **“Amazon requires DSPs to follow and operate pursuant to its method of operations” (emphasis added);**
 - **“Amazon prohibits DSPs from engaging independent contractors or any other subcontractors to perform services for the DSPs without Amazon’s consent;”**
 - **“Amazon controls the training of Delivery Associates;”**
 - **“Amazon retains the ability to discipline and terminate Delivery Associates;”**
 - **“Amazon requires Delivery Associates wear Amazon-branded clothing;”**
 - **“Amazon determines the make, model, and style of delivery van to be used for delivery of Amazon packages;”**
 - **“Amazon requires DSP operators to sign contracts with specific fleet companies for delivery vehicles;”**
 - **“Amazon requires DSP delivery vans to contain Amazon logos;”**
 - **“Amazon constantly monitors and supervises the work of Delivery Associates;”**
 - **“Amazon sets insurance coverage requirements and benefits that DSP operators must provide to its own drivers;”**
 - **“Amazon maintains control and access to payroll accounts of its DSPs;”**

- **“Amazon requires DSPs to submit to audits, at any time, of a DSP’s facilities and records, including paystubs and other payroll items, insurance policies, and other documents to ensure compliance with Amazon’s Program Policies;”**
- **“Amazon—not the DSP—controls package assignments;”**
- **“Amazon assigns the routes;”**
- **“Amazon provides the delivery instructions;”**
- **“Amazon sets the number of packages Delivery Associates must deliver each day on each route and the length of the routes;”**
- **“Amazon requires Delivery Associates to deliver packages to Amazon customers in a precise order and schedule along an exact route that drivers must follow;”**
- **“Amazon does not allow DSP operators, or Delivery Associates, to modify delivery routes or package counts;”**
- **“Amazon tracks Delivery Associate performance, including, but not limited to, the number of packages delivered, the pace and efficiency at which drivers deliver packages, the location of DSP drivers at any given time, whether drivers touched their cell phones while driving, and driving behaviors like whether drivers were wearing their seat belts, moving over the speed limit, or accelerating or stopping too quickly as reported through the Chime, Flex, and/or Mentor Apps;” and**
- **“Amazon maintains complete discretion to terminate or punish a Delivery Associate by issuing tier infractions or driver defects.”** (emphasis added).

- As to Amazon’s right to terminate delivery drivers, Mr. Buggs gave the example of one of his drivers running over a dog on a rural dirt road. “Amazon offboarded my driver.”

On cross-examination of Mr. Buggs, the only testimony as to the agency issue that counsel for MJV elicited was that the Amazon contract identified DSPs like MJV as “independent contractors.” MJV elicited no testimony that controverted any of the specific testimony summarized above. Further, counsel for the Amazon Defendants had the opportunity but chose not to cross-examine Mr. Buggs.

In the face of the astonishing amount of control by Amazon set forth above in Mr. Buggs’s testimony— which is all rooted in the actual terms of the Amazon-MJV contract documents and Operations Manual³—the contract’s half-hearted effort to denominate MJV an independent contractor does not mean much of anything. *See, e.g., Tate v. Claussen-Lawrence Const. Co.*, 168 S.C. 481, 167 S.E. 826, 829 (1933) (finding that a “mere declaration does not make the contract something other than agency if a proper construction of its terms shows that the relation is one in fact of principal and agent”); *see also Kilgore Group, Inc. v. S.C. Employment Sec. Comm’n*, 313 S.C. 65, 69, 437 S.E.2d 48, 50 (1993) (finding that a contract’s identifying the relationship as an independent contractor relationship instead of an agency relationship is not determinative); *Todd’s Ice Cream, Inc. v. S.C. Employment Sec. Comm’n*, 281 S.C. 254, 255, 315 S.E.2d 373, 376 (Ct. App. 1984) (same).

³ *See* Plaintiff’s Exhibit 3 (DSP Program Agreement); Exhibit 4 (Vehicle Use Agreement); Exhibit 5 (Program Policies); and Exhibit 6 (Operations Manual).

3. Testimony of P.J. Bongiorno (Amazon's Rule 30(b)(6) Representative)

Mr. Bongiorno, an attorney and Amazon's Senior Manager of DSP Relations, reluctantly agreed to many of the elements of Amazon's right to control the work of MJV and its drivers. He acknowledged that at all times relevant to the subject collision in 2021:

- MJV was an Amazon-branded DSP and therefore it operated Amazon-branded and Amazon-issued vans.
- Delivery drivers were required to wear Amazon uniforms.
- Amazon Delivery Associates at MJV delivered only Amazon packages on Amazon routes.
- Blekicky was driving an Amazon van on an Amazon route while wearing an Amazon uniform.
- As an Amazon-branded DSP, MJV had to agree to Amazon's terms of operation.
- While disagreeing that Amazon controls the means and methods used by MJV and its drivers to deliver packages, Mr. Bongiorno agreed that MJV and its drivers had to follow certain "requirements that lead to that outcome." Plaintiff notes that this is, of course, mere semantics.
- Mr. Bongiorno agreed that Amazon prohibited MJV from hiring independent contractors or subcontractors to deliver packages.
- Amazon required drivers, including Blekicky, to attend orientation for training, which includes in-person training.
- Amazon had the right to issue driver infractions, tiered 1 through 3, and ultimately had the right to "prohibit a driver from performing services." (This of course means that Amazon retained the right to fire DSP drivers.)

- Amazon selected the van models for Amazon-branded vans, including Amazon's vans issued to MJV.
- Amazon required DSPs to sign deals with certain vehicle fleet companies.
- DSP vans could not be branded with any DSP logos unless mandated by local authorities.
- Amazon mandated installation and use of Amazon apps on drivers' phones, including the Flex, Chime, and eDriving (Mentor) apps.
- The Flex app on the mandatorily-issued Rabbit (cell phone) contained package and route details supplied by Amazon.
- For certain packages, Amazon mandated that drivers take a "Photo on Delivery" to prove that the package was delivered to the customer.
- All driver data collected through the Amazon apps was available to Amazon.
- Amazon had authority to access a DSP like MJV's payroll records at any time for auditing purposes.
- Amazon, not the DSP, divided the packages for each truck each day.
- Amazon, not the DSP, created and assigned the daily routes that had to be followed by the DSP and its drivers.
- The DSP could divide the route into multiple drivers but had no authority or discretion to change the route.
- Amazon tracked the number of packages delivered by each driver.
- Amazon's Coretex app tracked each driver's compliance with Amazon's route plan and pace, and Amazon paid attention to the driver-compliance information collected through the Coretex app.
- Each driver's location at any given time was available to Amazon through the Coretex app.

- Amazon’s Mentor app tracked each driver for phone distractions while operating an Amazon van.
- Amazon generated weekly score cards for each DSP.
- Starting in 2019, Amazon began installing new Netrodyne technology in Amazon delivery vans. This technology uses cameras to monitor Amazon Delivery Associates even more closely while they are driving Amazon vans. While Amazon had not yet installed this technology in the Amazon vans used by MJV as of September 24, 2021, it was clear from Mr. Bongiorno’s testimony that this was so only because Amazon had not decided to do so yet. Amazon had the right to install that technology in the vans used by MJV if Amazon had chosen to.
- Amazon imposed the following requirements of drivers upon Amazon’s DSPs:
 - Each driver had to be at least twenty-one years old with a valid driver’s license;
 - Each driver had to pass Amazon’s driving test before the driver could drive an Amazon van;
 - Each driver also had to first pass Amazon’s written driving test;
 - Each driver had to pass a background check;
 - Each driver had to pass a motor-vehicle background check.
- **At the end of his testimony, Mr. Bongiorno, on behalf of Amazon, affirmed that Amazon maintained the right and authority to terminate a delivery driver. While he attempted to claim Amazon would fire a DSP driver only for “egregious conduct,” the fact remains that Amazon had the right to fire a driver.**

Defendants did not introduce any cross-examination of Mr. Bongiorno to refute the evidence of the right to control set forth above.

ARGUMENT

The evidence admitted at trial overwhelmingly demonstrates that, without a doubt, the Amazon Defendants retained the right to control the means and methods used by MJV and Blekicki in performing their work. In fact, the only rational inference one can take from the evidence is that Amazon in fact *did* exercise control over the means and methods. Amazon also retained the right to control and did control the equipment used by MJV and Blekicki, as Amazon provided essentially every piece of equipment used by MJV and Blekicki to deliver packages. Further, Amazon retained the right to terminate delivery drivers like Blekicki. In sum, Amazon retained the right to control, and did control, the means and methods of every single function performed by the DSPs and delivery drivers.

While the Amazon-MJV contract identified their relationship as an independent contractor relationship, this is meaningless under these facts and amounts to nothing more than a scintilla of evidence against the voluminous evidence of control, both Amazon's right to control and its actual control. *See, e.g., Tate v. Claussen-Lawrence Const. Co.*, 168 S.C. 481, 167 S.E. 826, 829 (1933) (finding that a "mere declaration does not make the contract something other than agency if a proper construction of its terms shows that the relation is one in fact of principal and agent"); *see also Kilgore Group, Inc. v. S.C. Employment Sec. Comm'n*, 313 S.C. 65, 69, 437 S.E.2d 48, 50 (1993) (finding that a contract's identifying the relationship as an independent contractor relationship instead of an agency relationship is not determinative); *Todd's Ice Cream, Inc. v. S.C. Employment Sec. Comm'n*, 281 S.C. 254, 255, 315 S.E.2d 373, 376 (Ct. App. 1984) (same).

The same is true about the simple fact that MJV technically wrote Blekicki's paychecks. There is no *genuine* issue of material fact as to Amazon's right to control the means and methods, and the only rational decision that the jury could make is that Amazon did have the right to control

the means and methods by which MJV and Blekicki performed their work. Consequently, a directed verdict on the issues of agency and Amazon's vicarious liability is proper.

I. EVALUATION OF THE FOUR RIGHT-TO-CONTROL FACTORS

As set forth above, in evaluating whether Amazon retained the right to control MJV and Blekick's work, the Court is to consider the following four factors: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; [and] (4) right to fire." *Wilkinson*, 382 S.C. at 299, 676 S.E.2d at 702.

Of course, the first factor has two components: direct evidence of the *right to* control and direct evidence of *actual* control. The evidence delineated above on both the right to control and actual control by Amazon is mountainous. Under the facts of this case, this factor unequivocally proves Amazon's right to control and alone warrants a directed verdict. In the face of all of this direct evidence of the right to control and actual control, the fact that the contract identified MJV as an independent contractor is meaningless. It is a mere scintilla of evidence that is insufficient to overcome Plaintiff's motion for directed verdict. *See Kitchen Planners, LLC*, 440 S.C. at 461, 892 S.E.2d at 300 (clarifying prior decisions and emphasizing that a mere scintilla of evidence is insufficient to overcome a dispositive motion such as this one).

In addition, factors 2 and 4 are also clearly in favor of the right to control. As set forth above regarding factor 2—the furnishing of equipment—Amazon provided essentially every piece of equipment used by MJV and Blekicki in delivering Amazon packages, including the delivery vans, the fuel that powered the vans, the packages to be delivered, the routes and sequence of delivering packages, the delivery instructions, the multiple, mandatory phone apps to be installed and used, and the driver's uniform. This factor weighs 100% in favor of the right to control.

Likewise, as to factor 4—the right to fire—both MJV (through Buggs) and Amazon (through Bongiorno) acknowledged that Amazon retained the right to fire Blekicki and other DSP drivers. This factor, too, weighs 100% in favor of the right to control.

Under the facts of this case, with such extensive evidence of the right to control and actual control, the fact that MJV paid Blekicki (factor 3) is trivial and must be disregarded as a mere scintilla of evidence insufficient to overcome Plaintiff’s motion for directed verdict. The other factors are so heavily in favor of Amazon’s right to control MJV and Blekicki that the issue should be decided as a matter of law. The jury could not rationally determine that MJV’s writing Blekicki’s paycheck outweighs all of the other factors that so substantially establish Amazon’s right to control. There is no genuine issue of material fact as to Amazon’s right to control, and the Court should therefore direct a verdict on the issue.

CONCLUSION

For these reasons, Plaintiff respectfully moves the Court to direct a verdict that MJV and Blekicki were serving as agents of the Amazon Defendants at the time of the collision and that Amazon is therefore liable for the tortious conduct of Blekicki and MJV.

Respectfully submitted,

YARBOROUGH APPLGATE LLC

s/ David B. Yarborough, Jr.

David B. Yarborough, Jr.

William E. Applegate IV

Alexandra N. Heaton

291 East Bay Street, Second Floor

Charleston, SC 29401

843-972-0150 office

843-277-6691 fax

david@yarboroughapplegate.com

william@yarboroughapplegate.com

alex@yarboroughapplegate.com

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Attorneys for Plaintiff