

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 15-81782-CIV-MARRA

KIM PETER TILLMAN,

Plaintiff,

vs.

ADVANCED PUBLIC SAFETY, INC. and  
TRIMBLE INC.,

Defendants.

---

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S  
SUPPLEMENTAL BRIEF REGARDING ATTORNEYS’ FEES**

Plaintiff, Kim Peter Tillman (“Mr. Tillman”), pursuant to the Court’s Order Requiring Supplemental Briefing [DE 274] and Endorsed Order [DE 276], hereby files his Response in Opposition to Defendant, Advanced Public Safety, Inc.’s (“APS”) Supplemental Brief in Support of Motion for Attorneys’ Fees [DE 277] (the “Brief”). In support, Mr. Tillman states:

**SUMMARY OF ARGUMENT**

This case against Defendants, APS and Trimble, Inc. (“Trimble”), consisted of five (5) claims the parties acknowledged are grouped in two (2) separate categories – retaliation claims and contract claims. The contract claims involved five (5) different contracts: two (2) Representative Agreements which APS was a party, and three (3) Compensation Plans which Trimble was a party. APS prevailed on summary judgment as to the issues arising out of the Representative Agreements and is entitled to its attorneys’ fees, but only with respect to the 2004 Representative Agreement.

APS’s Brief ignores the Court’s ruling that APS is only entitled to recover *its* fees “specifically arising out of” the 2004 Representative Agreement between APS and Mr. Tillman. APS’s Brief is over-inclusive and improperly seeks recovery of essentially *all* of the fees (\$252,271.50) incurred by *both* APS and Trimble, or solely Trimble. This is improper given the Court’s ruling that Trimble has “no entitlement” to recover any fees.

APS attempts to evade the Court’s Order that only APS (and not Trimble) is entitled to recover its fees “specifically arising out of the defense of the 2004 Representative agreement”, arguing that all of Mr. Tillman’s claims are “inextricably intertwined” with his claim for breach of the 2004 Representative Agreement. However, this case involves two distinct categories of

claims, the retaliation claims and the contract claims. Whether APS breached the 2004 Representative Agreement for failing to pay Mr. Tillman commissions is not inextricably intertwined with whether the Defendants' termination of Mr. Tillman in 2014 was retaliatory.

APS's Brief ignores the Court's Order and applicable law governing the award of attorneys' fees. APS failed to redact the Trimble billing entries that are now irrelevant in light of the Court's Order. Moreover, APS improperly seeks thousands of dollars for travel time without meeting its burden that there was a lack of competent local counsel available.

Based on the Court's Order and the narrow issue to which APS is entitled to recover *its* attorneys' fees, the Court should award \$5,730.00 in attorneys' fees.

### **THE CLAIMS, VERDICT, AND COURT'S ORDER ON FEES**

Defendants terminated Mr. Tillman's employment in 2014 and Mr. Tillman filed a lawsuit which included five (5) claims that are easily grouped into two (2) groups. Second Am. Compl. [DE 102]. Mr. Tillman, who maintained Defendants' reason for his termination was pretextual, asserted claims that alleged he was unlawfully retaliated against in violation of the Florida Whistleblower Act (Count I), the Iowa Civil Rights Act (Count IV), and the Sarbanes-Oxley Act (Count V) (the "Retaliation Claims"). Mr. Tillman asserted separate claims that alleged Defendants refused to pay him compensation under two theories, Breach of Contract (Count II) and Promissory Estoppel (Count III) (the "Contract Claims").

On February 1, 2018, after years of contentious litigation, the jury rendered a verdict in Mr. Tillman's favor. *See* Jury Verdict [DE 241]. The jury found APS and Trimble took adverse employment action against him in violation of the Florida Whistleblower Act. *Id.* at 1. The jury also found APS and Trimble breached a contract with Mr. Tillman. *Id.* at 2.<sup>1</sup> Thus, Mr. Tillman prevailed on one of his Retaliation Claims and one of his Contract Claims and the overall relief in this matter is in favor of Mr. Tillman, the party recovering judgment in the amount of \$603,301.54 plus interest, fees, and costs. *See* Final Judgment [DE 280].

Based upon the Court's summary judgment ruling, both Defendants moved for recovery of their attorneys' fees. *See* [DE 262]. However, Judge Marra made a very specific ruling regarding the extent which Defendants are entitled to recover attorneys' fees:

---

<sup>1</sup> Although the jury attempted to award Mr. Tillman \$730,000.00 for Defendants' Breach of Contract, *see* [DE 241], Mr. Tillman's Breach of Contract claim was limited to two specific issues by virtue of the Court's Order on Summary Judgment. *See* Order Granting Motion for Summary Judgment in Part [DE 163]; Agreed Order on Defendants' Motion for New Trial [DE 260].

To the extent that Defendant Advanced Public Safety, Inc. seeks attorneys' fees *specifically arising out of the defense of the 2004 Representative Agreement* with Plaintiff, culminating in the Court's Order Granting Motion for Summary Judgment in Part [DE 163], its entitlement thereto is hereby confirmed. Defendant Trimble, Inc. has *no* entitlement thereto.

[DE 273] at 3-4 (italics added). It is indisputable that Judge Marra's Order limits APS to recover only those attorneys' fees "specifically arising out of the defense of the 2004 Representative agreement" and prohibits Trimble from recovering any of its attorneys' fees.

### ARGUMENT

Mr. Tillman is not arguing that the hourly rates charged by defense counsel were unreasonable. However, the invoices attached to APS's Brief demonstrate that the specific time expended and the total fees sought are over-inclusive and seek fees far beyond the limited scope of Judge Marra's Order and APS's entitlement.

#### **I. APS cannot recover for fees incurred for the benefit of co-Defendant, Trimble Inc.**

The Court ruled that Trimble is not entitled to its fees. [DE 273]. APS's Brief makes no reduction for the fact that all of the fees sought were jointly incurred by both APS and Trimble. A copy of the invoices addressed to Trimble, but sought by APS, are attached as **Exhibit "1."**<sup>2</sup>

In addition to seeking 100% of fees invoiced to Trimble and presumably jointly incurred for the benefit of both Defendants, APS's Brief also seeks to recover for fees that are expressly for the benefit of Trimble only. This is a fatal error to APS's request because Trimble, Inc. (f/k/a Trimble Navigation Ltd.) has no legal basis to recover any of its fees. Allowing APS to recover fees incurred for the express benefit of Trimble Navigation Ltd. n/k/a Trimble, Inc. would violate the Court's Orders. Order on Entitlement [DE 273] at 4 ("Defendant Trimble, Inc. has no

---

<sup>2</sup> All of the invoices attached to APS's Brief were addressed, not to APS, but to Trimble's corporate counsel: Trimble Navigation Limited, Attn: Heidi Wuestefeld, Corporate Counsel. *See, e.g.*, [DE 277-3] at p.1. Many of the invoices identify the client for which the fees were incurred as Trimble Navigation, Ltd. (now known as Trimble, Inc.). *See id.* ("CLIENT: NAV – TRIMBLE NAVIGATION LIMITED"). The 2004 Representative Agreement between APS and Mr. Tillman (which the Court ruled is the only basis that provides APS a potential recovery of fees) states: "In the event legal action is instituted in order to enforce or interpret this contract, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs incurred." APS has failed to satisfy its burden to show it has "incurred" fees, especially considering Defendants' own documentation confirms that it was Trimble that was invoiced by Defendants' counsel, suggesting, if not proving, Trimble had the financial obligation to pay Defendants' counsel. *See* Order Granting Plaintiff's Unopposed Motion to File Documents Under Seal [DE 284] (referencing documents showing APS did not "incur" the fees referenced in the submitted invoices). Black's Law Dictionary defines "incur" as "to suffer or bring on oneself (a liability or expense)." Black's Law Dictionary, 8th Edition, 782 (2004). APS has not suffered any of these fees that are the liability or expense (or at least a joint expense) of co-Defendant, and its former parent corporation, Trimble.

entitlement thereto.”); Order Requiring Supplemental Briefing [DE 274] at 1 (“Judge Marra determined that only Defendant Advanced Public Safety, Inc. (and not Defendant Trimble, Inc.) is entitled to attorney’s fees...”). Allowing APS to recover fees incurred by Trimble would also violate applicable law because Trimble is not a party to the 2004 Representative Agreement that provides APS a limited entitlement to the recovery of fees. *Florida Cmty. Bank, N.A. v. Red Road Residential, LLC*, 197 So.3d 1112, 1115 (Fla. 3d DCA 2016) (holding that the burden lies with the party seeking fees to establish its status as a party to the contract).

To aid the Court in its analysis of whether the fees sought are “specifically arising out of the 2004 Representative Agreement with Plaintiff”, Exhibit 1 includes notations of Mr. Tillman’s objections based upon the narrative descriptions provided:

**RA** (in green): Sufficiently related to Representative Agreement that provides APS with a basis for ½ recovery. Mr. Tillman gave APS the benefit of certain fee narratives that show fees were incurred for “commissions” or “contracts” even though those fees likely include fees incurred by Defendants arising out of the other four (4) contracts at issue, *other than* the 2004 Representative Agreement.

**Trimble** (in red): shows fees relating specifically to Trimble.

**Travel** (in red): Attorney travel time is not recoverable as a matter of law.

Mr. Tillman is required to “describe with reasonable particularity each time entry or nontaxable expense to which [he] objects.” S.D. Fla. L. R. 7.3(a). As detailed in Section II *infra.*, APS cannot recover fees beyond the narrow scope of its entitlement. Therefore, Mr. Tillman objects to any time entry not marked as “**RA**.”

APS’s overreaching is most evident in fee narratives that disclose that the fees were for the benefit of only Trimble – not APS. *See, e.g.*, Ex. 1 at 20 (7/21/16 entry: “Draft/revise **Trimble's** responses to plaintiff’s first set of interrogatories [sic]”; 73 (1/3/17 entry: “Review and analysis of plaintiff’s second set of interrogatories to **Trimble**”) (emphasis added). A significant portion of these attorneys’ fees are relating to a “virtual server” discovered by Defendants that resulted in an e-discovery dispute. *See, e.g.*, Ex. 1 at 29-110. The documents were compiled from agreed-upon search terms that did not include the term “Representative Agreement” or any of the specific customers whose sales commissions Mr. Tillman claimed under the 2004 Representative Agreement. According to counsel’s own fee invoices, such fees relate to searches run by “Trimble” (not APS) relating to e-discovery. *See* Ex. 1 at 60, 107, 108. The collection of this e-discovery would have been paid for by “Trimble.” Ex. 1 at 90. Given that the invoices

prove that Trimble had control over this server and the documents related to the issues arising from Retaliation Claims, APS has not met its burden that any of the fees relating to these searches “specifically aris[e] out of” APS’s defense of the 2004 Representative Agreement.<sup>3</sup>

In sum, the Court held Trimble is not entitled to recover any fees and, the invoices, which were expressly invoiced to Trimble, include fees incurred for the benefit of both Defendants and some fees that were incurred solely for the benefit of Trimble. The fees that benefited both Defendants or simply Trimble are undeniably outside the scope of the Court’s Order.

**II. APS can *only* recover fees “specifically arising out of the defense of the 2004 Representative agreement.”**

As discussed above, Mr. Tillman brought two categories of claims, Retaliation Claims and Contract Claims. Mr. Tillman ultimately prevailed at trial on one of his related Retaliation Claims and on one of his Contract Claims. Defendants’ counsel previously acknowledged and described the two separate categories of claims as follows:

Additionally, he has five claims in his complaint. But if you look at those claims, **they're really two categories**. So he has a Florida Whistleblower claim, Sarbanes-Oxley, age discrimination, promissory estoppel and unpaid commissions. Breach of contract. I'm sorry. **The first three, Florida Whistleblower Act, age and SOX**. As a Defendant, all of our defenses are -- is the same. We have to prove or set forth that we had a legitimate, nondiscriminatory reason for terminating him. That is our burden in this case. So as to those three claims, the defenses and the documents are going to be the same. **Similarly with the breach of contract and the promissory estoppel, you're looking at the same type of documents.**

*See 2/24/2017 Hearing Transcript at 11:25-12:12 (emphasis added).* Simply put, APS’s defense to the Contract Claims, whether it failed to pay Mr. Tillman wages owed, was separate and distinct from its defense to the Retaliation Claims, whether Defendants had a legitimate, nondiscriminatory reason for terminating Mr. Tillman.

To sidestep the Court’s previous ruling that only APS is entitled to recover its fees “specifically arising out of the defense of the 2004 Representative agreement”, APS argues that all of Mr. Tillman’s claims are “inextricably intertwined” with his claim for breach of the 2004 Representative Agreement. Brief at 4. This argument is inherently inconsistent with the explanation above by Defendants that there are “really two categories” of claims.

---

<sup>3</sup> APS can never meet its burden of showing that the documents at issue arise out of the defense of the 2004 Representative Agreement. The search terms focused on technical issues relating to the Retaliation Claims, such as: “Smart Connect”; “ZebraLoader; Vaporware; “Supporting Zebra Printer in QuickTicket”; CPCL; CPCL & USB.

APS mentions that Mr. Tillman sought the same unpaid commissions and bonuses through both his Contract Claims and as damages for his Retaliation Claims. This argument is intentionally imprecise. The unpaid commissions and bonuses were governed by five (5) different contracts with two (2) different corporate defendants. Before his retaliatory termination in 2014, Mr. Tillman was employed by Defendants for over a decade and his employment was governed by five (5) different contracts: two Representative Agreements (2003, 2004) and three Compensation Plans (2012, 2013, 2014). Mr. Tillman worked for APS from 2002-2012. In January 2012, Mr. Tillman became a Trimble employee and the Compensation Plans that governed his compensation were contracts with Trimble – not APS. Trimble’s Answer [DE 107] at 2, ¶6. Only one of the five contracts provides APS with a limited basis to seek the recovery of its fees: the 2004 Representative Agreement between APS and Mr. Tillman.

Defendants previously recognized this distinction and identified the unpaid commissions that do not relate to the two Representative Agreements:

This case involves **two types of Contracts**: (1) Representative Agreements (“Agreement”) when Plaintiff was and independent contractor – November 2002 through January 29, 2012 and (2) Compensation Plans (“Plans”) when Plaintiff was an employee – January 30, 2012 through September 16, 2014.

...

Plaintiff’s **Representative Agreements relate to** these claims for commissions for all opportunities listed in Ex. E, **except**: (1) balance of DuPage commissions due to termination; (2) IL DuPage, Cloud Services Contract, (3) Cook County Annual Maintenance; (4) Vermillion Circuit Court; and (5) Moultrie Circuit Court.

Motion for Final Summary Judgment [DE 136] at 19, 21 (emphasis added). After listing the five claims of unpaid commissions that do not relate to the two Representative Agreements (2003, 2004), the Defendants dropped a footnote further specifying that the above-mentioned unpaid commissions are governed by Mr. Tillman’s Compensation Plans with Trimble: “Those claims [the five claims listed as not relating to the Representative Agreements] are governed by Tillman’s 2012 and 2013 Plans as will be discussed later in this motion.” *Id.* at n.6.

Defendants’ own Motion for Final Summary Judgment maintained that the commissions at issue should be treated differently based upon the terms of the applicable contracts. Defendants successfully argued to the Court that certain of the commissions at issue were not owed to Mr. Tillman because of the terms of the 2004 Representative Agreement. *See Order*

Granting Motion for Summary Judgment in Part [DE 163]. However, Mr. Tillman is still the prevailing party on Count II (Breach of Contract). Mr. Tillman successfully argued to the jury that he was entitled to different commissions pursuant to the Compensation Plan with Trimble. *See Jury Verdict* [DE 241] (awarding damages for breach of contract).

As recognized by Defendants, this case involves two categories of claims, the Retaliation Claims and the Contract Claims. There is not a “common core of facts” between the 2004 Representative Agreement and the Retaliation Claims. Whether APS failed to pay Mr. Tillman wages owed under the 2004 Representative Agreement was a separate analysis from whether, in 2014, Defendants’ reason for terminating Mr. Tillman was retaliatory in violation of various statutes. *See Mann v. Falk*, 11-14432-CIV, 2013 WL 12095524, at \*6 (S.D. Fla. Feb. 11, 2013) (Matthewman, J.) (finding two claims under the FLSA, one claim for failure to pay overtime and one claim for retaliation for complaining about unlawful pay practices, are “not completely intertwined and are somewhat distinct from one another” despite arising out of the same statute).

**A. APS’s invoices are over-inclusive.**

APS should not be permitted to recover fees incurred by both Defendants that are not “specifically arising out of the defense of the 2004 Representative Agreement.” The invoices submitted by APS are demonstrably over-inclusive. For example, the invoices include entries relating to a dispute about work product protection of internal investigations performed by Trimble relating to Mr. Tillman’s allegations that Defendants were engaged in unlawful activity. Ex. 1 at 39-44; 82-84. However, this internal audit did not relate to whether APS breached the 2004 Representative Agreement. Order After *In Camera* Review [DE 113] at 2 (“Plaintiff asserted that the “resulting ‘internal audit’ conducted by Defendants in reaction to his whistleblowing is critical evidence that will demonstrate Defendants’ then-existing retaliatory intent.”). Defendants’ Response to Plaintiff’s original Motion to Compel represented that “this audit was a direct result of communication from Plaintiff which accused Defendants of improper revenue recognition, discrimination and potential violations of the Sarbanes Oxley Act.” [DE 62] at 10. These fees relate to the Retaliation Claims and Defendants cannot now argue that the withheld documents arise out of the 2004 Representative Agreement. The fees incurred litigating the disclosure of these documents are not awardable under the limited scope of entitlement.

Similarly, APS seeks fees relating to the deposition of Michael Sparks, whose testimony related to the Retaliation Claims, specifically the SmartConnect product and Defendants' premature recognition of revenue. Ex. 1 at 18-19. Mr. Sparks testified at trial, but did not discuss the terms of Mr. Tillman's 2004 Representative Agreement.

Another example of the over-inclusive nature of APS's submission is the fact it includes fees incurred related to expert witnesses. *See* Ex. 1 at 60. Defendants engaged Jeffrey Rubenstein to provide expert opinions on the "SmartConnect" product which Mr. Tillman objected to selling (thus forming the basis of his Retaliation Claims).<sup>4</sup> Mr. Rubenstein offered no expert opinions relating to the 2004 Representative Agreement between Mr. Tillman and APS.

APS's submission includes fees relating to the deposition of Lori Ciccone. *See* Ex. 1 at 88; 111. Ms. Ciccone served as the Rule 30(b)(6) designated witness regarding Trimble's revenue recognition and ethics and conduct policies. Ms. Ciccone was the Director of Internal Audit for Trimble and did not start working at Trimble until *after* Mr. Tillman's termination. Ms. Ciccone testified at trial via deposition designation regarding those policies despite the Court's adverse ruling against Mr. Tillman relating to the 2004 Representative Agreement. *See* Trial Deposition Designations [DE 247] at 2-3. Thus, Ms. Ciccone's testimony, and defense counsel's related fees, have no relevance to APS's defense of the 2004 Representative Agreement.

APS's submission includes fees relating to Hal Marshall, the Trimble Human Resource Manager. *See* Ex. 1 at 87-89; 91. Mr. Marshall testified at trial regarding the termination of Mr. Tillman in 2014. Mr. Marshall's testimony, and defense counsel's related fees, have no relevance to APS's defense of the 2004 Representative Agreement.

APS's submission includes fees relating to Jacqueline Bartlett. *See* Ex. 1 at 29-31. Ms. Bartlett served as the Rule 30(b)(6) designated witness regarding "(1) The development, marketing, functionality...of the SmartConnect product; (2) The interaction between APS's QuickTicket application...and the SmartConnect product; and (3) Any and all internal discussions...regarding whether SmartConnect provided deliverables to customers or had been described as "vaporware." Thus, her testimony was relevant only to the Retaliation Claims. Ms.

---

<sup>4</sup> Plaintiff engaged Ronald Schnell to serve as expert witness on the "SmartConnect" product. Plaintiff also engaged Roderick Moe, CPA as an economics expert to calculate the total amount of Mr. Tillman's lost wages and future damages for Mr. Tillman's Retaliation Claims. Mr. Moe provided no opinions on the Contract Claims or the 2004 Representative Agreement. Accordingly, APS's request to recover its attorneys' fees relating to Mr. Moe's report and deposition is inappropriate. Ex. 1 at p. 68.

Bartlett's testimony, and defense counsel's related fees, have no relevance to APS's defense of the 2004 Representative Agreement.

APS also included fees for the deposition of Sean Garrison. Mr. Tillman's allegation that Mr. Garrison was paid commissions on deals under circumstances similar to deals that Mr. Tillman was not paid was the central allegation of his age discrimination claim. *See* Ex. 1 at 93 ("Review and analysis of Iowa Civil Rights complaint and response and Tillman deposition testimony to prepare for taking deposition of Sean Garrison"). Mr. Garrison's testimony was not relevant to Mr. Tillman's claim that Defendants breached the 2004 Representative Agreement. Accordingly, APS cannot recover for fees relating to Mr. Garrison. Ex. 1 at 70; 100.

APS was required to "redact[] billing entries that are now irrelevant in light of Judge Marra's ruling" that "only Defendant Advanced Public Safety, Inc. (and not Defendant Trimble, Inc.), is entitled to attorney's fees specifically arising out of the defense of the 2004 Representative Agreement with Plaintiff." [DE 274] at 1-2. These examples demonstrate that APS has not met its burden of showing the fees sought are within the scope of entitlement. APS's failure to redact the Trimble entries is also inconsistent with the case it cites in its Brief.

In *Beekman*, Judge Marra issued an order granting in part and denying in part defendant's motion for attorneys' fees and ruled that defendant was solely entitled to fees for one specific claim and with respect to one of the plaintiffs only. *Beekman v. eXL Legal, PLLC*, 16-CV-80506, 2017 WL 3614386, at \*1 (S.D. Fla. Aug. 11, 2017) (Matthewman, J.). Unlike APS's submission here, the Court found the defendant in *Beekman* "properly eliminated from the billing entries any time incurred solely" for the other claim that Judge Marra held defendant was not entitled to, as well as the claims relating to the other plaintiffs. *Id.* at \*4. Additionally, the Court considered "the overall relief obtained" by the defendant and found that it was "indisputable that [d]efendant prevailed on all claims." *Id.* at \*4. Here, Mr. Tillman prevailed at trial, winning a verdict on both of his two alternative theories, the Retaliation Claims and Contract Claims.

Instead of satisfying its burden to submit invoices specifically arising out of the defense of the 2004 Representative Agreement, APS included hundreds of thousands of dollars in fees, within invoices addressed to Trimble, relating to issues completely unrelated to the defense of the 2004 Representative Agreement, creating a windfall for APS should it be awarded all of its requested fees. This Court has held that such a result is improper. *See Pronman v. Styles*, 12-

80674-CIV, 2016 WL 3661940, at \*6 (S.D. Fla. Mar. 15, 2016) (Matthewman, J.) (“Defendant bears the burden of documenting the appropriate hours and should not get a windfall for failing to lay out the specific counts that each legal activity encompassed.”), *report and recommendation approved*, 12-80674-CIV, 2016 WL 3636867 (S.D. Fla. Apr. 6, 2016). Because APS’s entries are over-inclusive, its requested amount of fees should be reduced to only include those marked as “**RA**.” *See id.* (finding an “80% reduction” across-the-board of requested fees is appropriate, where moving party failed to meet his burden of establishing entitlement to and documentation of the hours billed because moving party did not and could not show how much of his “legal billing pertain[ed] solely” to the claim which entitled him to fees).

**B. APS cannot recover for attorney travel time.**

APS improperly seeks dozens of hours, totaling thousands of dollars for travel time. Ex. 1 (time entries identified as “Travel”). Most of this travel time is for Defendants’ counsel to travel from their offices in Tampa to West Palm Beach, the location of the division where Defendants intentionally transferred the case after Mr. Tillman filed this case in Iowa. *See* Defendants’ Motion to Transfer [DE 11]. Because APS has not established that no attorney in West Palm Beach was competent to handle APS’s defense, these fees for travel time are unreasonable and should not be awarded. *Chandler v. Chandler*, 330 So. 2d 190, 191 (Fla. 2d DCA 1976) (holding that travel time is not awardable unless it is shown that there was no local attorney competent to handle the issues involved in the matter).

**CONCLUSION**

Judge Marra’s Order specifically limited APS to recover only those attorneys’ fees “specifically arising out of the defense of the 2004 Representative agreement.” [DE 273] at 3. The total amount of fees incurred by both Defendants “specifically arising out of the defense of the 2004 Representative Agreement.” is less than \$11,460.00. *See* Ex. 1 (entries marked as “**RA**” referencing not just the Representative Agreement but also broad concepts such as “commissions”). The Court further ruled that Trimble has “no entitlement thereto.” [DE 273] at p. 4. The Court should only award APS 50% of the amount incurred by both Defendants that arguably arises out of the defense of the 2004 Representative Agreement, \$5,730.00.<sup>5</sup>

---

<sup>5</sup> Pursuant to S.D. Fla. L. R. 7.3(a), APS’s Motion was required to “disclose the terms of any applicable fee agreement.” APS’s Brief fails to address what percentage (if any) APS is required to reimburse to Trimble for the invoices sent directly to Trimble. Any of the fees that the Court finds are “specifically arising out of the defense of

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the below Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

*/s/Roger W. Feicht*

\_\_\_\_\_  
Roger W. Feicht  
Florida Bar No. 84982  
E-mail: [rfeicht@gunster.com](mailto:rfeicht@gunster.com)

J. Anthony Nelson  
Florida Bar No. 126351  
Email: [jnelson@gunster.com](mailto:jnelson@gunster.com)  
Gunster, Yoakley & Stewart, P.A.  
777 S. Flagler Drive, Suite 500 East  
West Palm Beach, FL 33401  
Telephone: (561) 655-1980  
Facsimile: (561) 655-5677  
*Attorneys for Plaintiff*

**SERVICE LIST**

*Kim Peter Tillman v. Advanced Public Safety, Inc. and Trimble Navigation, Ltd.*  
Case No. 15-81782-CIV-MARRA

Kelly Charles-Collins, Esq.  
William G.K. Smoak, Esq.  
Starr Linette Brookins, Esq.  
Smoak, Chistolini & Barnett, PLLC  
320 W. Kennedy Blvd., 4<sup>th</sup> Floor  
Tampa, FL 33606  
[kcollins@flatrtrialcounsel.com](mailto:kcollins@flatrtrialcounsel.com)  
[courtdocuments@flatrtrialcounsel.com](mailto:courtdocuments@flatrtrialcounsel.com)  
*Counsel for Defendants Advanced Public Safety, Inc. and Trimble, Inc.*

WPB\_ACTIVE 8493829.1

---

the 2004 Representative agreement” should be reduced by 50% to avoid giving a windfall to APS by reimbursing it for fees incurred for the benefit of or paid by Trimble a party which has no legal basis to recover fees.