

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10-cv-00028**

SHAWN SMITH,

Plaintiff,

v.

WAVERLY PARTNERS, LLC, and
ALLIEDBARTON SECURITY
SERVICES, LLC d/b/a HRPLUS,

Defendants.

**WAVERLY PARTNERS, LLC's
MOTION PURSUANT TO RULE
50(b) AND RULE 59**

NOW COMES Defendant Waverly Partners, LLC, by and through counsel, and moves the Court pursuant to Rule 50(b) of the Federal Rules of Civil Procedure for judgment as a matter of law. In the alternative, Defendant moves the Court for a new trial pursuant to Rule 59. Accordingly, Defendant shows unto the Court as follows:

1. At the close of evidence in the trial of this matter, Defendant moved the Court, pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, for judgment as a matter of law on the issues of contract formation and breach; and agency of co-Defendant AlliedBarton, which Motion the Court denied.
2. The jury awarded damages on Plaintiff's breach of contract claim. However, at the filing of this Motion, the Court has not yet entered a final judgment in this matter.
3. Defendant renews its Rule 50(a) Motion, pursuant to Rule 50(b), and respectfully requests that the Court enter judgment for Defendant as a

matter of law on the grounds, set forth in greater detail in the accompanying Memorandum, that there was no evidence at trial to support (1) the existence of a contract between Plaintiff and Defendant in which Defendant agreed to obtain a background check limited solely to Plaintiff's "past employment"; (2) that Defendant breached any such contract; and (3) the jury's consequent finding that Defendant was liable for Plaintiff's damages.

4. Defendant further respectfully requests that the Court conditionally grant a new trial on all issues should this judgment for Defendant be overturned upon appeal.
5. In the alternative, Defendant prays for a new trial on the grounds that the jury's verdict was against the clear weight of evidence and would constitute a miscarriage of justice, pursuant to Rule 59.
6. Defendant separately prays for a new trial, pursuant to Rule 59, on the following additional grounds, also set forth in greater detail in the accompanying Memorandum:
 - a. failure of the jury to follow the Court's instructions;
 - B. undue prejudice arising from Plaintiff's emotive and extraneous testimony;
 - C. confusion arising from the immaterial issue of agency of AlliedBarton;

- d. unforeseeability of Plaintiff's damages; or
- e. any reason not stated in this Motion that would justify a new trial of this matter.

WHEREFORE, Defendant prays the Court for an Order granting entry of judgment as a matter of law for Defendant and dismissing, with prejudice, Plaintiff's breach of contract claim. Alternatively, Defendant prays the Court for an Order granting a new trial on all issues.

This 18th day of October, 2012.

TEMPLETON & RAYNOR, P.A.

/s/Kenneth R Raynor
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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2012, I electronically filed **Waverly Partners, LLC's Motion Pursuant to Rule 50(b) and Rule 59** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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This 18th day of October, 2012.

/s/Kenneth R Raynor

Kenneth R Raynor
TEMPLETON & RAYNOR, P.A.