

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Reemployment Assistance Appeals  
THE CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143**

**PETITIONER:**

Employer Account No. - 2794771  
GULFCOAST SOFTWARE SOLUTIONS LLC  
300 S MADISON AVE STE 4  
CLEARWATER FL 33756-5741

**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2012-16721L**

**ORDER**

This matter comes before me for final Department Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the Recommended Order dated July 11, 2012, is reinstated. It is further ORDERED that the determination dated December 29, 2011, is REVERSED.

### JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **January, 2013**.



\_\_\_\_\_  
Altemese Smith,  
Assistant Director,  
Reemployment Assistance Services  
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

*Shanendra Y. Barnes*  
\_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
DATE

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the \_\_\_\_\_ day of January, 2013.

*Shanendra Y. Barnes*  
\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

GULFCOAST SOFTWARE SOLUTIONS L  
300 S MADISON AVE STE 4  
CLEARWATER FL 33756-5741

BENZARTI IMED  
1930 ELLIOTT DRIVE  
CLEARWATER FL 33763

DAVID R PHILLIPS  
625 COURT STREET  
CLEARWATER FL 33756

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DOR BLOCKED CLAIMS UNIT  
ATTENTION MYRA TAYLOR  
P O BOX 6417  
TALLAHASSEE FL 32314-6417

State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

**Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2794771  
GULFCOAST SOFTWARE SOLUTIONS L  
300 S MADISON AVE STE 9  
CLEARWATER FL 33756-5741

**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2012-16721L**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Director, Reemployment Assistance Services  
Department of Economic Opportunity

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest to a determination of the Respondent dated December 29, 2011, which held that the employee providing services as account manager/outside salesperson was the Petitioner's employee.

**Issue:** Whether services performed for the Petitioner by the Joined Party employed as account manager/outside salesperson constitutes employment pursuant to Sections 443.036(19), 443.036(21), 443.1216, Florida Statutes.

**Findings of Fact:** A hearing was scheduled on May 10, 2012. All parties were provided notice of the hearing, the Joined Party did not appear. A Recommended Order in favor of the Petitioner was issued on July 11, 2012. The Joined Party requested reopening of the hearing on July 17, 2012. A second hearing was scheduled for September 24, 2012. All parties were provided notice of the second hearing. The Joined Party did not appear at the second hearing.

**Conclusions of Law:** Rule 73B-10.035(18), Florida Administrative Code, provides:

Request to Re-Open Proceedings. Upon written request of the Petitioner or upon the special deputy's own motion, the special deputy will for good cause rescind a Recommended Order to dismiss the case and reopen the proceedings. Upon written request of the Respondent or Joined Party, or upon the special deputy's own motion, the special deputy may for good cause rescind a Recommended Order and reopen the proceedings if the party did not appear at the most recently scheduled hearing and the special deputy entered a recommendation adverse to the party. The special deputy will have the authority to reopen an appeal under this rule provided that the request is filed or motion entered within the time limit permitted to file exceptions to the Recommended Order. A threshold issue to be decided at any hearing held to consider allowing the entry of evidence on the merits of a case will be whether good cause exists for a party's failure to attend the previous hearing. If good cause is found, the special deputy will proceed on the merits of the case. If good cause is not found, the Recommended Order will be reinstated.

Since the Joined Party did not appear at the September 24, 2012, hearing to present evidence of good cause to reopen the hearing, the Recommended Order dated July 11, 2012, is reinstated.

**Recommendation:** It is recommended that the Recommended Order dated July 11, 2012, be reinstated. It is recommended that the Petitioner's appeal of the December 29, 2011, determination be REVERSED.

Respectfully submitted on September 24, 2012.

DONE and ORDERED at TALLAHASSEE, FL this **24th** day of **September, 2012**.

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Kris Lonkani, Special Deputy  
Reemployment Assistance Appeals



Mailed to:  
Petitioner  
Respondent

DAVID R PHILLIPS  
625 COURT STREET  
CLEARWATER FL 33756

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1-4857  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DOR BLOCKED CLAIMS UNIT  
ATTENTION MYRA TAYLOR  
P O BOX 6417  
TALLAHASSEE FL 32314-6417

BENZARTI IMED  
1930 ELLIOTT DRIVE  
CLEARWATER FL 33763



Rick Scott  
*Governor*

Hunting F. Deutsch  
*Executive Director*

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July 20, 2012

IMED BENZARTI  
1930 ELLIOTT DRIVE  
CLEARWATER FL 33763

Re: Docket Number: 2012-16721L

Dear Sir or Madam:

This is in reply to your request for reopening of the above referenced case.

The request alleges good cause for not appearing at the last scheduled hearing. A new hearing will be scheduled to provide you with an opportunity to show good cause for not appearing. If good cause is established, the Special Deputy will proceed to the merits of the case. If good cause is not established, the Special Deputy will not re-open the record regarding the merits of the case and will reinstate the Recommended Order.

This case will be re-assigned to the Special Deputy, and another hearing will be scheduled. You will be notified of the date and time of the telephone hearing.

Sincerely,

Cynthia McKinney  
Special Deputy Program Administrator

**DEPARTMENT OF ECONOMIC OPPORTUNITY – Reemployment Assistance Appeals**  
MSC 347 CALDWELL BUILDING • 107 EAST MADISON STREET • TALLAHASSEE, FL 32399-4143  
Phone 850-921-3511 • Fax 850-921-3925 • TTY/TDD 1-800-955-8771 • Voice 1-800-955-8770

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Voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.

Copies mailed to:

DOR Protest Coordinator  
Wage Determination Unit  
Petitioner  
Joined Party

GULFCOAST SOFTWARE SOLUTIONS L  
300 S. MADISON AVE  
SUITE 9  
CLEARWATER FL 33756-5741

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625 COURT STREET  
CLEARWATER FL 33756

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1 4624  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

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**DEPARTMENT OF ECONOMIC OPPORTUNITY**

**Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING

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**PROTEST OF LIABILITY  
DOCKET NO. 2012-16721L**

**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Interim Executive Director,  
Reemployment Assistance Services  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated December 29, 2011.

After due notice to the parties, a telephone hearing was held on May 10, 2012.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

**Issue:**

Whether services performed for the Petitioner by the Joined Party constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(21); 443.1216, Florida Statutes.

**Findings of Fact:**

1. The Petitioner's president appeared and testified at the hearing. The Joined Party did not appear at the hearing. A tax specialist II appeared and testified on behalf of the Respondent.
2. The Petitioner is an LLC established in 2007 for the purpose of running a loss prevention company.
3. The Joined Party entered into an agreement with the Petitioner. The Joined Party agreed to present information about the Petitioner's products to local restaurants.
4. The Joined Party was paid 40% of the profits from any sale he made on behalf of the Petitioner. The Joined Party's check was held until the Petitioner was paid. The Joined Party requested a draw in August 2011.

5. The Joined Party was free to work for a competitor.
6. The Petitioner did not provide a workplace. The Petitioner provided a secure laptop for the Joined Party to use in demonstrations.

### Conclusions of Law:

7. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Unemployment Compensation Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.
8. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).
9. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987).
10. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.
11. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:
  - (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.
  - (2) The following matters of fact, among others, are to be considered:
    - (a) the extent of control which, by the agreement, the business may exercise over the details of the work;
    - (b) whether or not the one employed is engaged in a distinct occupation or business;
    - (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
    - (d) the skill required in the particular occupation;
    - (e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
    - (f) the length of time for which the person is employed;
    - (g) the method of payment, whether by the time or by the job;
    - (h) whether or not the work is a part of the regular business of the employer;
    - (i) whether or not the parties believe they are creating the relation of master and servant;
    - (j) whether the principal is or is not in business.
12. Comments in the Restatement explain that the word "servant" does not exclusively connote manual labor, and the word "employee" has largely replaced "servant" in statutes dealing with various aspects of the working relationship between two parties. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1<sup>st</sup> DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366 (Fla. 1<sup>st</sup> DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an

independent contractor often cannot be answered by reference to “hard and fast” rules, but rather must be addressed on a case-by-case basis.

13. The record reflects that the Petitioner did not exercise control over where, when, or how the work was performed.
14. The Petitioner provided a secure laptop for demonstration purposes.
15. The relationship between the Petitioner and the Joined Party was handled like an agreement between business rather than the creation of a master-servant relationship.
16. A preponderance of the evidence presented in this case reveals that the Petitioner did not exercise sufficient control over the Joined Party as to create an employer-employee relationship between the parties.

**Recommendation:** It is recommended that the determination dated December 29, 2011, be REVERSED.

Respectfully submitted on July 11, 2012.




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KRIS LONKANI, Special Deputy  
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke Lòd Rekòmande a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke Lòd Rekòmande a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:  
July 11, 2012

Copies mailed to:

Petitioner  
Respondent  
Joined Party

BENZARTI IMED  
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