The State Of South Carolina
In The Supreme Court

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S.C. SUPREME COURT

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297

RECEIVED
Jul 25 2023
SC Court of Appeals

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie, ...Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson.. Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors, ...Crossclaimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,......................Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports +
Outdoors, is the ....Petitioner.

Respondent's Return to Petition for a Writ of Certiorari

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INTRODUCTION

This Court has made clear that "exceptional circumstances [must] exist" to justify the issuance of a writ of *certiorari* to review the discovery orders of a trial court. *Hollman v. Woolfson*, 384 S.C. 571, 577 (2009) (finding this high threshold satisfied). Here, contrary to Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors's ("Academy's") arguments in its petition for a writ of *certiorari* ("Petition" or "Pet."), no "exceptional circumstances" exist that would warrant this Court's intervention to review the challenged July 3, 2023 or July 10, 2023 discovery orders of the Court of Common Pleas for Spartanburg County (collectively, the "Orders"). *See* Pet. App'x at 001-005; 006-010.

This Court should deny the Petition. It need not and should not consider Academy's substantive arguments because the Petition has been rendered procedurally defective and unnecessary by the trial court's subsequent stay of the challenged Orders pending appellate review. See Exhibit 1, July 18, 2023 Stay Order ("Stay Order") (this Stay Order memorializes the Court's July 11, 2023 oral ruling granting Academy's Motion to Stay).[1] Academy has not amended its Petition to acknowledge the grant of this stay. Academy has not cited – and Plaintiffs are unaware of – *any* case where this Court has granted a petition for *certiorari* to review challenged discovery orders that have been stayed pending appellate review. This is for good reason: such a stay eliminates any plausible foundation for a finding of "exceptional circumstances" warranting departure from the normal appellate process.[2]

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[1] All parties have requested transcripts from the relevant hearings to be provided on an expedited basis but have been not received them at the time of this filing. The lack of a complete appellate record underscores why *certiorari* would be improper and this Court should allow the normal appellate process to take its course.

[2] Plaintiffs question whether this case is ripe even for normal appellate review as discovery orders in South Carolina are generally not appealable absent a contempt finding. *Davis v. Parkview Apts.,* 409 S.C. 266, 281 (2014) ("An order directing a party to participate in discovery is interlocutory

Although this issue is dispositive, Academy's Petition also fails for other reasons. First, Academy waived many of its arguments by failing to properly raise them in the trial court. Second, to the extent this Court reaches Academy's substantive arguments, they are mistaken. Academy attempts to create "exceptional circumstances" by suggesting that this case implicates privacy or Second Amendment rights, trade secrets, an asserted privilege created by an inapplicable federal appropriations rider, and an allegedly massive and undue burden. The reality is that *none* of these concerns are implicated in this case. This is a mundane discovery dispute where a defendant disagrees with a trial court's (correct) discovery rulings, not a unique dispute of significant importance justifying an "[e]xtraordinary [w]rit." SCACR 245(b).[3] Ripeness concerns also infect some of Academy's substantive arguments.

In support of its Petition, Academy has also misrepresented or omitted key details about the trial court's Orders, the oral arguments below, and the nature and significance of the information at issue. This Court should not be misled.

For all of the above reasons, this Court should deny Academy's Petition and allow the normal appellate process to run its course, albeit in a swift manner. To clarify, this case is currently set for trial in November. As documented in the Stay Order, all parties have expressed a desire to proceed expeditiously to trial. *See id*. at 1, 10. However, Plaintiffs have expressed concerns about

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and not directly appealable. Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.") (internal quotation omitted). Illustrating the fact that interlocutory appeals from discovery orders are rare and disfavored, the trial court, in its Stay Order, observed that "filing an appeal of a pre-trial discovery is not typical. In this Court's 20 plus years on the bench, it has not had an occasion to review an appeal of a pre-trial discovery ruling." *Id*. at 7-8 n. 11.

[3] In addition to SCACR 245(b) (cited in Pet. at 2), Academy also references the "public interest" and "special grounds" language from SCACR 245(a). Pet. at 11. Our arguments as to the lack of "exceptional circumstances" also show why there are no "special grounds" warranting this Court's review and why this is not a matter of significant "public interest."

their ability to effectively try the case without access to the requested evidence. Plaintiffs respectfully request that this Court act swiftly to deny Academy's Petition, and will, in the imminent future, be asking the South Carolina Court of Appeals to conduct its review of Academy's arguments in a similarly expedited fashion.

<u>Academy's Misleading Assertions And Omissions Regarding The Orders, The Oral Arguments, The Requested Information, And The Plaintiffs' Theory Of The Case</u>

There is no good reason to describe in depth all of the misrepresentations in Academy's Petition at this point. If this Court does grant *certiorari*, we will, during the merits briefing, correct additional erroneous or incomplete statements by Academy so that the Court has a full and correct understanding of the case before it. However, we do address the most glaring errors directly relevant to this petition simply so that this Court and the public do not have a mistaken understanding of the case.

First, Academy states that Plaintiffs have engaged in efforts to prove that the information sought in discovery from Academy is "minimally relevant" to the case. Pet. at 23. This claim is wrong. Plaintiffs have repeatedly and clearly articulated that the requested information is highly relevant to the prosecution of the case. *See, e.g.,* Pet. App'x at 099 (Motion to Compel) (sales related data is "*critical* as to a central issue in this case – evaluating whether Academy's systems and practices for detecting, stopping and reporting illicit firearms transactions during the period Lawson and Kohlhepp were buying guns from Academy fell below a standard of reasonable care") (emphasis added); *id*. at 101 ("Thus, trace data can be *integral* to helping prove aspects of one or more of Plaintiffs' claims.") (emphasis added).

Second, in an effort to downplay the relevance of trace-related information, Academy incorrectly contends that "[t]here are many non-crime related reasons a firearm may be traced."

Pet. at 34. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives' ("ATF's") disagrees; the National Firearms Commerce and Trafficking Assessment, Vol. 2, Part II (Jan. 11, 2023) (Pet. App'x at 155-86) states that ATF's tracing division is "only authorized to trace a firearm for a law enforcement agency when the firearm is involved in a bona fide criminal investigation. The firearm must have been used or suspected of being used in a crime." *Id.* at 157.

Third, in an apparent effort to dismiss much of the requested information as irrelevant, Academy falsely contends that this case is only "about the sale of . . . twelve firearms to a single individual." Pet. at 1. This is not true. This case is about whether Academy had *systemic* negligent or unlawful practices leading a disproportionate number of its firearms to end up in the hands of criminals due to Academy's failure to detect, stop and report transparent straw sales.[4] *See, e.g.,* Pet. App'x at 034, ¶¶ 98-102 (Johnny Coxie Complaint)[5]; Pet. App'x at 099 (Motion to Compel). The discovery at issue is directly tied to that question.

Plaintiffs allege that such systemic failures played a role in Academy willfully blinding itself to clear red flags of the specific straw purchases by Dustan Lawson that supplied guns--including the murder weapon -- to the serial killer[6] who murdered their loved ones. *See generally* Pet. App'x at 015-092 (all complaints). Guns recovered in criminal investigations and traced back to Academy intrinsically have a higher than normal likelihood that the initial purchaser was acting as an illegal straw purchaser. Information about such transactions thus speaks to the core of Plaintiffs' claims regarding Academy's systemic misconduct.

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[4] A "straw purchase" is one where "a person . . . buys a gun on someone else's behalf while falsely claiming that it is for himself. *Abramski v. United States*, 573 U.S. 169, 169 (2014).

[5] It should be noted that the three Complaints for the now consolidated cases are substantively similar and a citation to one complaint should be viewed as a citation to similar allegations in the other Complaints even if the numbering may not be identical.

[6] Plaintiffs omit this individual's name to avoid giving him further notoriety.

Plaintiffs' claims on these points are directly rooted in well-established South Carolina law. Plaintiffs are not here relying on some unprecedented and strange legal theory. Courts in this State have repeatedly found that where, as here, a victim's claims involve an allegedly systemic pattern of misconduct by a defendant, discovery related to the records of non-parties who may also have been affected by or associated with the pattern of misconduct is relevant and subject to disclosure at the discovery stage. This is true even if these records were not directly involved with the specific incidents leading to Plaintiffs' harm and even if such records might contain sensitive material requiring some level of redaction.[7] Plaintiffs also underscore that the presence of a claim for punitive damages (Pet. App'x at 042, ¶ 145 (Johnny Coxie Complaint)) confirms the importance of understanding the degree to which Academy's pattern of misconduct has persisted even after the recovery of the guns Academy sold to Lawson in a series of transparent straw purchases.

Fourth, Academy contends that "[i]n the most recent order [the July 10, 2023 Order], the trial court limited the date range for the A&D Logs from November 2, 2008, to November 6, 2017, but the date range in Request No. 12 applies to the other subcategories of Sales Records." Pet. at 8. In reality, the trial court directed the parties to meet and confer as to "[t]he possibility of limiting the time frame for all documents to be produced to the period of November 2, 2008 to November 6, 2017." *See* Pet. App'x at 007 (July 10, 2023 Order (Provision 9)). This period represents one year on either side of the first and last known illegal straw purchase by Lawson at Academy.

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[7] *See Miller v. Ctr. of Hope of Myrtle Beach,* 2020 S.C. C.P. LEXIS 5336, *4 (June 23, 2020) (attached as Exhibit 2) (allowing production of records of non-party patients at drug treatment center that dosed impaired patient involved in car accident giving rise to suit); *Woodlief v. S. Charm Healthcare*, 2021 S.C. C.P. LEXIS 531, *12-14 (Apr. 21, 2021) (attached as Exhibit 3) (requiring production of records pertaining to incidents involving potential neglect/abuse of other patients/residents at nursing home(s) in case involving wrongful death claims of one specific patient/resident).

Academy also fails to meaningfully engage with other provisions of the trial court's July 10, 2023 Order that show an ongoing effort by the judge and the Plaintiffs to try to find further compromises to address Academy's burden concerns. *See* Pet. App'x at 007 (July 10, 2023 Order (Provisions 7 and 8)). This is simply not a case of a trial judge and a plaintiff running amok in discovery. To the contrary, the trial judge here (and the Plaintiffs) are trying to minimize burden concerns. Moreover, Academy's failure to mention these efforts apparently seeks to paper over the fact that Academy's burden arguments are not, in any event, ripe for appeal.

Finally, Academy claims that "[a]ny contention by Plaintiffs that they have a substantial need for the requested records is rebutted by the fact that Plaintiffs' expert, Joe Vince, submitted a 51-page expert report opining that Academy's policies and training were inadequate." Pet. at 24. Not so. Academy's effort to use Plaintiffs' expert's report to cast the requested information as unimportant omits the fact that Plaintiffs' expert expressly stated, in that report that, his "findings [we]re preliminary and subject to being amended or modified when and if [he] receive[d] other important materials such as . . . Academy's Acquisition and Disposition Records [and] records of crime-gun trace data." Pet. App'x at 489 (Expert Report of Joe Vince). Obviously, that critical omission by Academy leaves a very serious misimpression.

ARGUMENT[8]

I. The Trial Court's Subsequent Decision To Stay The Challenged Orders Renders Academy's Petition Procedurally Defective And Unnecessary

This Court should deny Academy's Petition as procedurally defective without reaching Academy's substantive arguments because the trial court has now stayed both challenged Orders

[8] Plaintiffs incorporate by reference all prior arguments and authorities in both their briefing and the various hearings related to the challenged Motion to Compel and the Orders but seek to present condensed versions of these arguments below.

pending appellate review. *See* Exhibit 1 (Stay Order); Pet. App'x at 597-602 (Notice of Appeal). Obviously, in light of the trial court's Stay Order, there are no "extraordinary circumstances" here and Academy will have the ability to pursue its appeal in the South Carolina Court of Appeals. In fact, the Court of Appeals has already acknowledge the Notice of Appeal and assigned the matter an Appellate Number. See Exhibit 4 (July 18, 2023 Initial Letter from Appellate Court). Academy will not have to disclose any information covered by the challenged Orders[9] until after all of Academy's objections have been rejected following appellate review. *See* Exhibit 1 at 9 (Stay Order).[10] And we emphasize, again, that Academy has not cited – and Plaintiffs are not aware of – any case where this Court has ever granted *certiorari* to review challenged discovery orders when those orders have been stayed pending appellate review.

Hollman – upon which Academy relies (Pet. at 16) –merely underscores why granting a writ of *certiorari* here would be improper. In *Hollman,* this Court, in support of its conclusion that "exceptional circumstances" were present, observed that failure to grant *certiorari* would "moot any claim petitioners could raise on appeal that the discovery was erroneously allowed" because the relevant discovery process would actually proceed in terms of non-parties being forced to engage in interviews based on their disclosed, unredacted medical records. *See Hollman*, 384 S.C. at 577-78. Here, none of the challenged discovery will proceed given the issuance of the Stay Order.

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[9] In response to inquiries from the parties as to the scope of the Stay Order, J. Hayes, via an email on July 19, 2023, made clear that the scope of the stay extended to all the documents which he had ordered produced, including the acquisition and disposition books. (Attached hereto as Exhibit 8).

[10] The court included a provision in its Stay Order wherein it will reconsider the stay on August 17, 2023 after a further hearing with the parties. *Id*. at 9. However, the future possibility of a lifting of the stay does not create any imminent risk of harm justifying "exceptional circumstances." If the trial court were, in fact, to consider lifting the stay on that date, Academy would have an opportunity to re-petition for *certiorari.*

Another case that Academy cites emphasizes that "judicial economy" is an important factor to consider in deciding whether or not to grant *certiorari*. *See Laffitte v. Bridgestone Corp.,* 381 S.C. 460, 472 (2009) (granting *certiorari*) (cited in, *e.g.,* Pet. at 2-3). If this Court were to grant Academy's Petition it would create a precedent that a defendant who objects to a discovery order that has been stayed pending the normal course of appellate review can skip the Court of Appeals and directly appeal to this Court by conjuring up "exceptional circumstances." That would set a dangerous precedent: this Court would likely then be inundated with similarly time consuming and ill-founded petitions for *certiorari* and "judicial economy" would be severely undermined rather than advanced.

II. Academy Waived Many Of Its Substantive Arguments

The trial court's challenged July 3, 2023 Order overruling Academy's objections based on relevance and the Tiahrt Appropriations Rider (125 Stat. 552, 609-610 (2011)) closely paraphrased an oral ruling by the Court on these points that was issued on June 28, 2023 after extensive oral argument on June 26, 2023. Academy had numerous opportunities to raise all arguments and objections against the Motion to Compel and the underlying discovery requests prior to the June 28, 2023 oral ruling. These opportunities included not only oral argument on June 26, 2023, but also Academy's initial Memorandum in Opposition to the Motion to Compel (Pet. App'x at 444-474 (dated June 22, 2023)) and Academy's voluminous discovery letters with the Plaintiffs stretching back to when the relevant discovery inquiries were first filed in 2020.

At *no point* in its discovery filings, in its briefing, or at the June 26, 2023 oral argument[11] did Academy ever argue that disclosure of the relevant information would implicate the Second

[11] All representations as to the content of the oral argument are based on Plaintiffs' counsels' best recollection of the relevant hearings, but Plaintiffs reserve the right to modify or amend these points once the transcripts are received if any inaccuracies are discovered.

Amendment, that the requested information constituted a trade secret, or that disclosure of the information would result in irreparable reputational harm to Academy. Instead, Academy only raised these arguments – arguments raised in its present Petition – for the first time in its Supplemental Memorandum in Opposition (Pet. App'x at 582-590 (dated Jun. 30, 2023)). This belated brief was not requested by the trial court and was filed *after the trial court had already issued its oral ruling granting Plaintiffs' Motion to Compel.* Academy has also raised for the first time, only in its Petition, an argument that the Protection of Lawful Commerce in Arms Act ("PLCAA, 15 U.S.C. §§ 7901-7903) applies to limit the scope of discovery. *See* Pet. at 34-35.[12] No such argument was raised in the trial court.

As can be seen from the text of the Orders, the trial Court never made any specific ruling on the above arguments raised for the first time in Academy's Supplemental Memorandum in Opposition and in its Petition here. Under these circumstances, this Court should decline to consider any of these above arguments. Otherwise, the trial court is being "sandbagged" in an entirely unfair and inappropriate way.

III. If The Court Does Reach Academy's Substantive Arguments, It Should Reject These Arguments As Incorrect

A. Neither Privacy Rights Nor The Second Are Implicated

Academy's suggestion that producing records under the terms of the challenged Orders would invade Academy's customer's privacy rights or "chill the exercise of [customer(s')] Second

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[12] Moreover, our understanding is that Academy plans to file a motion for summary judgment on PLCAA grounds in the trial court in the near future. PLCAA's impact on this case is, thus, at most a question that will be pending before the trial court, and PLCAA-related issues are obviously not ripe for appeal. As to reputational harm, the fact that Academy can anonymize all records disposes of this concern in the same manner as it eliminates Academy's privacy and Second Amendment arguments. *See infra* at 11-12.

Amendment right(s)" (Pet. at 25-31)[13] collapses under even cursory review. It is unclear if any privacy rights even exist in relation to the requested information. Nevertheless, the fact that the Orders allow for the redaction of the requested records eliminates any concerns regarding privacy rights or the Second Amendment to the extent that these rights might otherwise be implicated.

First, it is highly questionable whether firearms purchasers have any reasonable "expectation of privacy" (as Academy contends in Pet. at 29) in the requested records. The Supreme Court of the United States recently confirmed that, in general, "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties . . . even if the information is revealed on the assumption that it will be used only for a limited purpose." *Carpenter v. United States*, 138 S. Ct. 2206, 2216-17 (2018) (internal quotation omitted) (the general rule did not apply to the "novel circumstances" of cellphone information revealing a user's location, which was entitled to protection). In affirming the continued vitality of the general rule, the Court emphasized considerations leading it to find the absence of a protected privacy interest in bank records in a prior criminal case, including that 1) the customer "could assert neither ownership nor possession of the documents; they were business records of the banks"; and 2) that the bank statements contained information "exposed to [bank] employees in the ordinary course of business." *Id.*

It is undisputed, here, that many of these records (such as Form 4473s, acquisition and disposition logs documenting firearms transfers and trace-related documents involving the dates on which certain customers purchased firearms) involve information Academy's customers "voluntarily turn[ed] over" to a third party (Academy). The considerations that have previously

[13] Moreover, there is a serious question whether Academy has standing to raise either privacy or Second Amendment rights belonging to others. However, Plaintiffs will assume, *arguendo*, that Academy does have standing.

led the Supreme Court to apply the general rule (no protected privacy interest exists) apply. Specifically, these records do not belong to Academy customers and are, instead, Academy records produced in the normal course of business and, in many instances, exposed to multiple Academy employees. Further, Academy also concedes that many of these records are subject to review by government agents (Pet. at 26) who may use information in these records in *criminal prosecutions* against Academy customers. This risk of disclosure of firearms-related records for possible use in criminal prosecution is, further, a matter of public knowledge given the public nature of many criminal indictments relating to firearms offenses (including those related to straw purchasing). In fact, in this case, Dustan Lawson was indicted and that public indictment references his false statements on one or more Form 4473s. *E.g.,* Exhibit 5 at 8 (Indictment of Dustan Lawson). Plaintiffs, thus, do not believe that there is a reasonable expectation of privacy that could serve as a foundation for any privacy interests on behalf of Academy customers.

However, even assuming that such privacy rights exist, this Court has made clear that South Carolina discovery rules “do not differentiate between information that is private or intimate and that to which no privacy interests attach” such that “the Rules often allow extensive intrusion into the affairs of both litigants and third parties.” *Hamm v. S.C. Pub. Serv. Comm'n,* 312 S.C. 238, 241 (1994) (allowing discovery despite objection that public disclosure of contracts would result in harm). Thus, even if Academy’s customers had privacy rights in regards to the requested information, such rights would need to be carefully balanced against Plaintiffs’ right to develop evidence relevant to their case.

Second, assuming such privacy rights exist, the July 10, 2023 Order carefully and appropriately balanced any potential privacy interests of firearms purchasers against Plaintiffs’ need to access these highly relevant records and *expressly gave Academy an option to anonymize*

all records by replacing customer names and addresses with unique identifiers (*e.g.,* replacing "John Smith" with "Customer 1"). Pet. App'x 006-007 (July 10, 2023 Order (Provisions 2, 3, 6)). The potential risk that, at some future date, anonymized records of John Smith's firearms purchases where he appears as "Customer 1" may ultimately be disclosed or used in the narrow confines of civil litigation involving claims against a firearms dealer like Academy does not plausibly invade John Smith's privacy rights.

Similarly, it is highly speculative that this risk would plausibly "chill" a customer's desire or ability to purchase firearms at any point. Multiple other South Carolina trial courts have already recognized that allowing discovery of sensitive records with the option of having the names of third parties redacted appropriately protects privacy interests that might otherwise be implicated and removes them as a ground for resisting discovery.[14] There is no basis to conclude that similar redactions are insufficient to remove any privacy or Second Amendment concerns that might otherwise be implicated in this case.

The express provisions of the extensive Amended Confidentiality Order ("ACO") further bolster the conclusion that the current discovery framework has removed any privacy or Second Amendment concerns as a valid basis for Academy resisting its discovery obligations. Although Academy does not mention this point in its Petition, under that Amended Confidentiality Order, counsel for all parties (and the Court) have agreed that, if Academy designates this information confidential (as it clearly believes), this information will not be used "for any purposes whatsoever

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[14] *See Miller,* 2020 S.C. C.P. LEXIS 5336 at *4 (June 23, 2020) (attached as Exhibit 2) ("Plaintiff's motion to compel is granted. Non-party patient names can be redacted for privacy reasons, if necessary"); *Woodlief v.*, 2021 S.C. C.P. LEXIS 531 at *12-14 (attached as Exhibit 3)(requiring production of records pertaining to incidents of potential abuse/neglect involving patients/residents at nursing home other than the decedent while observing that "sensitive and identifying information for any particular resident can be redacted").

except for the prosecution of the consolidated actions" and will be returned or destroyed at the close of the litigation. Exhibit 6, at 5(a), 11(b) (Amended Confidentiality Order). The trial court, despite acknowledging these "stringent" protections further underscored that it would be willing to go beyond these protections and consider "additional protocols to protect sensitive confidential information if the parties present the need for such measures." *Id*. at 3-4.

Academy relies on *Hollman* as its primary authority regarding privacy concerns (Pet. at 30-31) but, *Hollman*, once again, actually undercuts Academy's position. In *Hollman*, this Court granted *certiorari* not to foreclose any access to private medical records of non-party patients but, instead, to prevent the use of *unredacted* copies of such records to identify non-party patients so that the plaintiffs there could conduct *interviews* of these individuals. Plaintiffs are, here, under the terms of the applicable trial court Orders, seeking *anonymized* records of sales and trace related information with customer names omitted.[15] They do not seek to contact or interview any Academy customers and, to the extent Academy redacts the records, would have no any ability to do so.

Hollman further implied that, despite the extreme sensitivity of private medical information, redaction like that proposed here by the Plaintiffs might have, in any event, been sufficient to balance patient privacy rights against the need for information relevant to one or more claims. Specifically, in criticizing the trial court for reneging on its initial prohibition on contacting non-party patients in the protective order, this Court observed that, absent the assurance of that prohibition, "there is a possibility petitioners . . . would have sought to redact the records." *See*

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[15] Academy also had the option to produce some trace-related spreadsheets under "attorney's eyes only" designation and to have Plaintiffs' counsel redact this information. Pet. App'x at 006 (July 10, 2023 Order (Provisions 1-3)). However, Academy seems to feel that this option is not tenable and that anonymization must occur. *See* Pet. at 27.

384 S.C. at 580-82. *Miller* and *Woodlief* are consistent with *Hollman* in finding that such redactions do, in fact, obviate otherwise implicated privacy concerns. And, in any event, as noted above, the trial court has left the door open to "additional protocols" to protect private information should Academy make the required showing. *See id*. at 3-4. This last point underscores that Academy's privacy argument, in addition to being meritless, is not even ripe for appellate review.

Academy attempts to resurrect its confidentiality-based arguments in two ways. Both are futile.

First, Academy appears to suggest that Plaintiffs' counsel is improperly seeking the requested information for reasons other than the prosecution of this case and cannot be trusted to comply with the terms of the Amended Confidentiality Order. *Compare, e.g.,* Pet. at 28 ("Plain and simple, the Brady Center wants the Sales Records and Trace Records to further its advocacy objectives.") *with* Exhibit 6 at 5(a) (ACO) (express prohibition on use of information "for any purposes whatsoever except for the prosecution of the consolidated actions"). This allegation is false and unfounded.

Plaintiffs' counsels have repeatedly explained, in great detail, how the requested information is highly relevant to the prosecution of this case in terms of helping prove Academy's systemic negligent and unlawful conduct and achieving civil justice on behalf of three murdered South Carolinians who died as a direct and foreseeable result of Academy's actions. *See, e.g., supra* at 3-5. It is for this reason – and this reason alone – that Plaintiffs seek this information. Additionally, neither Plaintiffs' counsel at the Brady Center nor their South Carolina co-counsel have any desire to risk their licenses and reputations by defying an unambiguous prohibition in the Amended Confidentiality Order (consented to by all parties) and using the requested information

outside of the context of this case. Ultimately, Academy – rather than the Plaintiffs – appears to want to transform this discovery dispute into a political matter.

Second, Academy contends that anonymizing the relevant records through unique identifiers would be "a virtually impossible task" (Pet. at 36). This argument proves too much. It reveals that Academy's arguments about important ideals like privacy rights and the Second Amendment are being used as a cover for a mundane disagreement between an aggrieved defendant and the trial court as to whether a mandated discovery process is too burdensome. Surely, such an everyday civil trial court issue is not the type of matter that this Court should address before a normal appeal is decided. In any event, as addressed below (*see infra* at 19-20) Academy's burden concerns are not ripe for review, are not credible, and cannot justify its continued refusal to disclose relevant information.

B. The Requested Information Does Not Constitute "Trade Secrets"

As with Academy's privacy arguments, the primary authorities upon which Academy mistakenly relies – *Laffitte,* 381 S.C. 460, and *Hartsock v. Goodyear Dunlop Tires N. Am. Ltd*., 813 S.E.2d 696 (S.C. 2018) (cited in Pet. at 20-24) – actually demonstrate why its "trade secret" arguments are wrong.

Both of these cases dealt with chemical formulas related to and/or the design of tires. Such technical, specialized information is categorically different from the anonymized firearms-sales related records and records related to trace inquiries that are the subject of the Orders. All the cases cited by Academy in support of the proposition that customer lists can constitute trade secrets under South Carolina law involved situations where employees of a given business could have used or were using *non-anonymized* lists of customers *to assist competitive businesses* (such as by

soliciting customers). Pet. at 21-22. Contrary to Academy's argument, a heightened balancing test applicable to "trade secrets" (Pet. at 20-24) was not required by the trial court here because the information requested does not plausibly constitute "trade secrets." This is especially true because the requested information is routinely shared with the federal government for law enforcement purposes having absolutely nothing to do with Academy's asserted commercial financial interests. Further, even assuming that the requested information did contain trade secrets, Plaintiffs note that they are not Academy's business competitors but a group of attorneys seeking the information for non-commercial reasons and are subject the rules of a strict Amended Confidentiality Order that already explicitly provides protection for trade secrets and prevents use of such information for economic purposes unrelated to this litigation. See Exhibit 6 at 3, 5(a) (ACO).

However, even assuming that the trial court was required to apply a special balancing test before granting the Motion to Compel, the court did, contrary to Academy's representation, properly apply such an analysis. *Compare* Pet. at 20-24 *with* Exhibit 1 at 8 (Stay Order) ("In performing the balancing test offered by Academy to the information sought to stayed from production, this Court has examined the protections from disclosure provided by the consent Confidentiality Order to information ordered produced in the pre-trial discovery orders"). And, even if the information did contain trade secrets and require a greater than normal showing of relevance (as Academy contends in its Pet. at 20-24), the trial court did, in one or more of its oral pronouncements, find that Plaintiffs had demonstrated relevance above and beyond the normally low bar required at the recovery stage.[16]

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[16] *See* prior caveats about oral arguments at n. 11.

C. The Tiahrt Appropriations Rider Does Not Apply

Academy recites a variety of arguments and authorities regarding the asserted applicability of the Tiahrt Appropriations Rider to create a relevant privilege in civil litigation that does not involve the federal government or its agencies in any way. Pet. at 13-19. However, the United States Department of Justice ("DOJ") – the agency charged with enforcing federal laws including the Tiahrt Appropriations Rider – has expressly endorsed Plaintiffs' position that the Tiahrt Appropriations Rider has no application under the circumstances of this case.

Specifically, the DOJ formally that the Tiahrt Appropriations Rider "does not restrict the discovery of . . . the private business records of a [firearms dealer]." *Lopez v. Badger Guns*, No. 10-CV-018530 (Wis. Cir. Ct. Mar. 30 2012), Memorandum of Intervenor United States of America at 2 (Pet. App'x at 377-99). This Court should not reject the federal government's own limited reading of federal law and, instead, adopt an interpretation by which the Tiahrt Appropriations Rider interferes with South Carolina court's normal authority to oversee the discovery process. Further, the DOJ position is consistent not only with the plain text of the statute, Plaintiffs' interpretation and the trial court's interpretation, but also with the interpretation of multiple courts beyond the Court of Common Pleas for Spartanburg County. *See City of New York v. Beretta U.S.A. Corp.*, 429 F. Supp. 2d 517, (E.D.N.Y 2006); *Lopez,* No. 10-CV-018530 (Wis. Cir. Ct. Jun. 25, 2012) (Pet. App'x at 366-76).

Academy's interpretation of the Tiahrt Appropriations Rider as containing a prohibition on any disclosure of trace-related information even as to actors outside the federal government and unrelated to the use of federal funding (Pet. at 13-19) flies in the face of one of the most basic principles of statutory construction – that statutory provisions must be interpreted "as a whole." *Conroy v. Aniskoff*, 507 U.S. 511, 515 (1993). *All* of the language of the Tiahrt Appropriations

Rider appears in the context of a limitation on the use of "funds appropriated under this or any other Act" as used in the operations of a federal agency (ATF). 125 Stat. 552, 609-610 (2011) (the header for the section containing the Tiahrt Appropriations Rider is "Bureau of Alcohol, Tobacco, Firearms and Explosives: Salaries and Expenses"). Academy's effort to create an artificial distinction by suggesting that *some* protections in the Tiahrt Appropriations Rider are limited in scope by that language but that there is a *separate immunity provision* which applies even as to information in the possession of a gun dealer and which does not implicate federal funding (*see* Pet. at 13-19) falls flat in light of this textual reality. Removing any doubt as to this point, the specific language upon which Academy relies --"all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence" (125 Stat. at 610 (cited in Pet. at 15)) – is specifically cabined in scope to "such data." Academy acknowledges that "such data" is "a reference to the beginning of the provision" (Pet. at 15)[17] but fails to understand that this concession is fatal to its interpretation. The beginning of the Tiahrt Appropriations Rider, which Plaintiffs agree colors the meaning of "such data," includes the limitation as to the use of the "funds appropriated under this or any other Act" and the header limiting the application of the text to the ATF.

[17] Academy's Petition is, admittedly, somewhat confusing in that it calls the specific language regarding "immun[ity]" a "provision" of the Tiahrt Appropriations Rider, but then states that "such data" – which occurs at the start of that "provision" – references back to the "beginning of the provision." Pet. at 15. Grammatically, "such data" must be referring back to some antecedent language in the statutory text rather than referring to itself. Thus, when Academy says that this language is referring to the "beginning of the provision," the only logical reading is that "provision" in that clause means the *entire* Tiahrt Appropriations Rider as a provision of federal law. Despite Academy's confusing terminology, Plaintiffs (as explained above) agree that "such data" does, in fact, need to be read in light of all of the antecedent language of the Tiahrt Appropriations Rider, including the limitations to the funding context and to ATF.

Academy's effort to suggest that the Tiahrt Appropriation's Rider's reference to "such data" as including "information required by licensees" expands the scope of the Tiahrt Appropriations Rider beyond information possessed by the ATF, improperly severs this language from the context in which it occurs – namely the clause beginning with "funds appropriated" under the header limiting application of the text to the ATF. *Compare* Pet. at 16 *with* 125 Stat. at 609 ("[N]o funds appropriated under this or any other Act may be used to disclose [1] part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or [2] *any information required to be kept by licensees* . . . ") (emphasis added to language relied upon by Academy and numbers added for clarity). The only way appropriated funds could be implicated in the disclosure of "information required to be kept by licensees" is if this information had, in fact, already been turned over to the ATF and was being maintained by the ATF.

Academy notes that *City of Chicago v. U.S. Dep't of Treasury*, 423 F.3d 777 (7th Cir. 2005) did not agree in the limitation of "such data" to information which would require the use of federally appropriated funds. *See id*. at 15. Plaintiffs respectfully submit that the Seventh Circuit misconstrued the plain text of the statute on this point. However, in any event, Plaintiffs note that this distinguishable case 1) was addressing information in the possession of the ATF and 2) predates the DOJ briefing in *Lopez*. It does not apply to this dispute where Plaintiffs are seeking information from Academy.

D. Academy's Burden Concerns Are Not Ripe For Review And, In Any Event, Are Not Credible

As noted above, Academy fails to meaningfully acknowledge that the July 10, 2023 Order directed the parties to continue to meet and confer to discuss additional limitations to alleviate

Academy's burden concerns. *See infra* at 5-6. Academy's burden objections have not been fully resolved, and this issue is not ripe for appellate review either by this Court or the Court of Appeals. In fact, the trial court emphasized this point in correspondence with the parties addressing why the trial court was not adopting Academy's proposed additions to the July 10, 2023 Order. Specifically, the trial court underscored that, "[Academy's proposed] language that this Court has 'rejected' all of the defendant Academy's arguments *misrepresents this Court's ruling*. A more correct statement is that, but for the quality of Academy's arguments, the present discovery ruling would be substantially different." Exhibit 7 (July 10, 2023 Email Correspondence with Judge Hayes) (emphasis added). The trial court issued this ruling in response to correspondence from Plaintiffs' counsel that the "rejected" language was inconsistent with our understanding that the court's ruling had left privacy and burden as open issues still subject to additional rulings or limitations. Exhibit 7 (July 10, 2023 Email Correspondence with Judge Hayes); *see also* Exhibit 1 at 3-4 (Stay Order) (confirming this understanding with specific regards to privacy).

As to the merits of Academy's burden concerns (Pet. at 36-37), they are, at best, dubious. Academy is a sophisticated, two-billion-dollar company represented by a large and well-staffed law firm. Much of the information requested is electronic[18] and maintained through Academy's routine business practices. All of the requested trace-related records are stored in Academy's corporate headquarters in Texas. See Pet. App'x at 483-84, ¶ 23-6 (Affidavit of Perry Davis). Further, the trial court's July 10, 2023 Order acknowledges that Academy's counsel is already in possession of multiple relevant documents (namely, trace-related spreadsheets) and ordered production of other documents to occur on a rolling basis. Pet. App'x 006 (July 10, 2023 Order

[18] To the extent Academy bases its burden argument on the difficulty of dealing with paper records (*see* Pet. at 27), these arguments have no application to electronic information.

(Provisions 1, 4)). Academy would need to conduct no search efforts in regard to documents already provided to its counsel and can break its production of records into manageable chunks. Further, should production of sales-related records prove overly burdensome, Academy has the option to make relevant sales records available for inspection rather than absorbing the cost of producing them. *Id*. at 007 (July 10, 2023 Order (Provision 7)).

Further, *Miller* and *Woodlief* demonstrate that, contrary to Academy's contentions (*see* Pet. at 36-37), there is nothing abnormal or improper about the Orders or the burden of redaction that Academy may assume at its option to redact arguably sensitive records. Additionally, Academy has had *over three years* to engage with Plaintiffs and the trial court to discuss how to balance its burden concerns against confidentiality considerations and to begin gathering and redacting materials. Instead, despite being afforded numerous opportunities to meet and confer (*see* Pet. App'x at 151-54 (Discovery Timeline)), Academy failed to even provide an explanation as to why production would supposedly be burdensome until June 22, 2023 via the affidavit of Perry Davis. To the extent Academy has refused to participate in the discovery process so as to enable appropriate balancing and has failed to begin diligently collecting and redacting materials, Academy has brought the current burden on itself. It, thus, cannot now use burden as an excuse to resist its discovery obligations.

Academy's counterarguments as to the scope of the Orders and associated burden are unpersuasive. First, Academy appears to misleadingly downplay the limited scope of the challenged Orders and applicable timelines they instituted in an effort to try to create the misimpression that the trial court required *all* the requested information to be imminently produced. *See*, *e.g.,* Pet. at 31 ("The trial court ordered the production of an inordinate number of irrelevant firearms records on an unprecedented scale beginning today at 1:30 p.m."). The trial

court, in its Stay Order, identified this improper effort to inflate the scope of the burden associated with complying with the Orders in relation to Academy's (now granted) motion for a stay and stated that "[t]he [broad] description of the information Academy seeks to protect by requesting the Stay stands in stark contrast to the [limited] items ordered produced in the pre-trial discovery orders" subject to defined deadlines. *See* Exhibit 1 at 8-9, n. 14 (Stay Order). Second, despite Academy appearing to suggest that Plaintiffs' discovery requests are overbroad to the extent they cover stores other than the Greenville and Spartanburg facilities (*see* Pet. at 1-2), it is *Academy* that has alleged that it would more burdensome to segregate trace-related information and only produce such information as to these stores. *See* Pet. App'x at 484, ¶ 25-6 (Affidavit of Perry Davis).

As a final point, we re-emphasize the puzzling intersection of Academy's privacy and burden arguments. Academy (tenuously) claims that there are significant privacy interests involved in this case. *See supra* at 9-11, 15. Nevertheless, Plaintiffs and the trial court offered reasonable redaction protocols that should completely allay any residual privacy concerns. *See supra* at 5-6, 11-14. Academy's response was to reject these protocols as unduly burdensome without proposing any alternatives, and then to claim that the burden associated with the possible redaction protocols effectively precluded all disclosure even as to documents it has already turned over to its counsel. *See supra* at 15. This Court should not create a precedent that rewards a defendant for stonewalling the discovery process and refusing to meaningfully engage in finding solutions to concerns it raises in the first instance.

CONCLUSION

For the reasons state herein, this Court should deny Academy's petition for a writ of *certiorari* and allow this case to proceed through the normal appellate process.

July 19, 2023

Respectfully Submitted,

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EXHIBIT 1

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Cindy Coxie, as Special Administrator for the Estate of Johnny Coxie, Plaintiff, vs. Academy, Ltd., d/b/a Academy Sports and Outdoors and Dustan Lawson, Defendants. and Academy, Ltd. d/b/a Academy Sports + Outdoors, Cross-claimant, vs. Dustan Lawson and Todd Christopher Kohlhepp, Cross-Defendants.	Civil Action No. 2018-CP-42-04297 **ORDER GRANTING STAY**

This matter came before the Court on the Defendant Academy's Motion For Stay. In its motion, Academy states that it seeks a stay of the enforcement of this Court's prior pre-trial discovery orders requiring production of certain sales and trace records in response to the Plaintiff's Motion to Compel. Academy requests the stay because it has filed an appeal of the orders to the appellate courts. Academy asserts that it will seek an "immediate" review of the pre-trial discovery orders and that it intends to request the appellate courts to resolve its appeal "expeditiously". Academy asserts in its motion that the appeal of the pre-trial discovery orders is not for the purpose of delaying the start of the trial set for November 27, 2023.

For the reasons stated herein and as outlined herein, the Motion to Stay is granted. As ordered herein, the parties shall reconvene virtually with this Court on August 17, 2023 at 1:00 p.m., for further review.

BACKGROUND

The above captioned matter (2018-CP-42-04297) is a consolidated case of three (3) separate lawsuits filed by the personal representative of three (3) gun shot victims murdered by cross-defendant Todd Christopher Kohlhepp.[1] Prior to consolidation, the three (3) cases were styled as: Cindy Coxie as Special Administrator of the Estate of Johnny Coxie v. Academy, Ltd, d/b/a Academy Sports and Outdoors, Dustin Lawson and Kohlhepp, Civil Action No. 2018-CP-42-04397; Carl Muller, solely as the Personal Representative for the Estate of Charles David Carver and not individually v. Academy, Ltd, d/b/a Academy Sports and Outdoors, Dustin Lawson, and Todd Kohlhepp, 2019-CP-42-02962; and Mary McCraw, as Special Administrator for the Estate of Megan Leigh Coxie v. Academy, Ltd., d/b/a Academy Sports and Outdoors, Dustin Lawson, and Todd Kohlhepp, Civil Action No. 2019-CP-42-02965.[2]

Generally, and broadly, the allegations central in all three cases are that the murders of Johnny Coxie, Megan Leigh Coxie, and Charles David Carver were the result of Kohlhepp shooting the three (3) victims with gun(s) unlawfully provided to him by cross-defendant Lawson who was a straw purchaser of the guns from defendant Academy. Plaintiffs allege that Academy should have known Lawson was a straw purchaser when he was purchasing firearms from November 2012 to July 2016.[3] Defendant Academy has denied all factual allegations and

[1] Joint Motion for Complex Designation, paragraph (3)a.

[2] As alleged in the complaints, the murders of the three (3) victims occurred between December 2015 to November 2016. The body of the deceased, Megan Leigh Coxie, was discovered in November 2016 after she had been missing since December 2015.

[3] Academy, Ltd.'s Memorandum In Opposition to Plaintiff's Motion to Compel filed June 22, 2023.

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the application of the legal theories asserted by the plaintiffs to establish liability against Academy.[4]

Cross-defendant Kohlhepp is incarcerated in the South Carolina Department of Corrections and has not made an appearance in these lawsuits. This Court has been informed that cross-defendant Lawson is incarcerated in a federal prison and is representing himself pro se. All of the plaintiffs and Defendant Academy have been represented by numerous attorneys, including out-of-state attorneys admitted pro hac vice to represent both the plaintiffs and Academy.

After extensive briefing and arguments, Academy's SCRCP 12(b)(6) Motion to Dismiss was denied in July of 2019.[5] Thereafter, a consent Joint Scheduling Order was issued in December 2019. Consolidation of the cases for purpose of scheduling and confidentiality orders occurred in April 2020. A separate consent Confidentiality Order was entered in April 2020.[6] In the Confidentiality Orders, the parties agreed to detailed and stringent rules and procedures for

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[4] In its Answer, Academy asserts, among other things, certain provisions of PLCAA (15 U.S.C. section 7901, et. seq.) as a defense/immunity from the allegation made by Plaintiff.

[5] The 12(b)(6) motion is the only motion filed that can be considered a merit base review. Moreover, as reflected in this Court's ruling denying the 12(b)(6) motion, the need for additional discovery was made clear.

> "This case presents many novel issues of law and analysis. Defendant Academy acknowledges the novelty of this case and the arguments presented to this Court where, in its Reply in Support of the Motion to Dismiss, the defendant states that there is no binding precedent from the United States or South Carolina Supreme Courts. The defendant further advises this Court that it is free to make its own determination of how the PLCAA exceptions to immunity should be applied. Again, this is a novel case where a more-developed record will assist in evaluating the application of the PLCAA, its immunity provisions, and its predicate exception to Academy's actions. As evinced by the factual arguments made in the memoranda, it is this court's impression that many of the parties' disputes are founded largely upon factual matters that will require development and argument that goes beyond the four corners of the complaint…
>
> …Also, this Court notes that the allegations in the complaint can reasonably be read to include allegations against Academy that involve conduct going beyond the sale of guns to the co-defendant Lawson."

[6] The terms and provisions of the nine (9) page Amended Confidentiality Order electronically signed on June 8, 2022, and agreed to on June 6, 2022, by the attorneys for the Plaintiffs and Academy, is hereby incorporated by reference.

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the protection, use and disclosure of confidential materials. The Confidentiality Orders' protections extend beyond the termination of the litigation.

Additionally, as referenced herein in making its rulings concerning the pre-trial discovery, this Court has indicated it will require additional protocols to protect sensitive confidential information if the parties present the need for such measures.

After entry of several subsequent consent scheduling orders, the parties were contacted in December of 2022 concerning a potential trial date in 2023. After receiving input from the attorneys of the need for a two (2) week and possibly a third week for trial, South Carolina Court Administration was contacted in early 2023 to set a definite trial date in the later part of 2023. This Court was informed that the trial request would not be considered for scheduling until after the general statewide circuit court terms for the second half of 2023 were assigned and published. After the general order establishing statewide circuit court terms for July to December 2023 were published, Court Administration accommodated this Court's request for a two (2) to three (3) week day certain trial assignment and restructured this Court's schedule.[7] Thus, the potential three (3) week trial is set to begin on November 27, 2023.

The Motion to Compel that resulted in the pre-trial discovery orders was filed on March 29, 2023. The Clerk of Court noticed the parties on May 23, 2023 of the June 26, 2023 hearing. On June 22, 2023, Academy filed its response to the Motion. The initial virtual hearing on the motion was conducted on June 26. After conducting a second meeting with the attorneys on

[7] Referencing the scheduling process is not a criticism of Court Administration. It is noted for the purpose of understanding the difficulties to the parties, lawyers (both in state and out-of-state), the lay and expert witnesses, and the judicial process of the state as a whole in attempting to schedule a case of this nature. Additionally, but for the fact that this Court was already assigned to Spartanburg County for the three (3) weeks requested for trial, this Court would have been required to consult with the Chief Administrative of any county whose schedule would be affected by the re-scheduling of this case prior to being approved by Court Administration.

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June 28, 2023, a Form 4 Order was executed on July 3, 2023. The July 3, 2023 Form 4 provided the following:

The Court, having reviewed and considered Plaintiffs' Motion to Compel filed on March 29, 2023, Defendant Academy, Ltd.'s ("Academy's") responsive filings dated June 22 and June 23, 2023 and oral argument by the parties on June 26, 2023, hereby GRANTS Plaintiffs' Motion to Compel and ORDERS the parties to meet and confer as to potential compromises related to Academy's burden objections prior to returning to this Court for a status conference on July 6, 2023 at 10 A.M. Academy's objections to disclosure founded on relevance and the Tiahrt Appropriations Rider are hereby OVERRULED. This ruling is based on the following findings:

1. The information sought by Plaintiffs meets the definition of relevance under South Carolina law at the discovery stage.
2. The Tiahrt Appropriations Rider does not create a privilege for Defendant Academy, Ltd. applicable in this case. The Court notes several points in support of this conclusion. First, Plaintiffs are not seeking information from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Second, privileges applicable in civil litigation are to be narrowly construed. Third, the Court believes that Congress did not intend the Tiahrt Appropriations Rider to apply in these circumstances.
3. The parties have negotiated an extensive Amended Confidentiality Order to address concerns regarding confidentiality. However, to the extent necessary to protect especially sensitive materials, the parties and the Court may consider additional protective protocols.
4. The Court does not believe that there have been sufficient discussions as to what compromises may be agreeable to alleviate Academy's burden concerns. The parties, pursuant to S.C.R.P. Rule 11, are directed to negotiate on this point outside of the Court's presence, prior to a July 6, 2023 status conference to be held by the Court at 10 A.M.

A second virtual conference with attorneys on July 6, 2023, a second Form 4 Order was issued on July 10, 2023. More specifically, the order required a production of limited documents. Moreover, the Order required the lawyers to continue to negotiate as to concerns related to "burden". The Court also ordered specific measures to further assure protection of private information. The second Order provided the following:

The Court, in furtherance of its Monday, July 3, 2023 Order Granting Plaintiffs' Motion to Compel, ORDERS the following:

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1. Academy is ordered to produce all Excel spreadsheets relating to trace data currently in its counsel's possession as soon as possible but no later than Tuesday, July 11, 2023 at 1:30 P.M.
2. In an effort to provide further protection of the privacy rights of non-parties beyond the extensive protections already provided for in the Amended Confidentiality Order, the Court offers Academy two options for how to produce the relevant Excel spreadsheets. First, Academy may redact the customer names and addresses and replace them with unique customer identifiers (such as "Customer 1") sufficient to allow Plaintiffs to perform their analysis of the records. Alternatively, Academy may, produce these spreadsheets with all customer information unredacted and marked "Attorney's Eyes Only."
3. If Academy chooses to produce documents unredacted and under an "Attorney's Eyes Only" designation, Plaintiffs are entitled to insert their own unique customer identifiers prior to sharing any documents with their expert(s).
4. Academy is ordered to produce all trace-related emails on a rolling basis, with the first batch of emails to be produced on or before Friday, July 21, 2023
5. Academy is ordered to gather the Acquisition and Disposition books for the Greenville and Spartanburg, South Carolina stores (#219 and #215) for the time period of November 2, 2008 to November 6, 2017 and to make them available to Plaintiffs no later than Monday, August 8, 2023.
6. In an effort to provide further protection of the privacy rights of non-parties beyond the extensive protections already provided for in the Amended Confidentiality Order, Academy may redact the customer names and addresses in the Acquisition and Disposition books and replace them with unique customer identifiers (such as "Customer 1") sufficient to allow Plaintiffs to perform their analysis of the records. If this is done, such unique numeric identifiers need to match the numeric identifiers used by Academy to identify specific customers referenced in the relevant trace-related spreadsheets (or other trace-related documents, including, but not limited to, trace-related emails).
7. If production of the requested Acquisition and Disposition records proves too burdensome, the parties may meet and confer as to the possibility of allowing Plaintiffs a reasonable opportunity to inspect the records so as to alleviate Academy's burden.
8. Plaintiffs are entitled to discovery of the Form 4473s in Academy's possession relating to firearm sales at the Greenville and Spartanburg, South Carolina stores (#219 and #215). The parties are ordered to meet and confer as to the issue of burden specifically as it relates to the production of Form 4473s and will provide further input to the Court at the next conference scheduled for Wednesday, July 12, 2023 at 1:30 PM.
9. In addition to further discussion as to the Form 4473 production, the parties are ordered to meet and confer with respect to Academy's production of sales receipts relating to firearm sales at the Greenville and Spartanburg, South Carolina stores (#219 and #215) and the possibility of limiting the time frame for all documents to be produced to the period of November 2, 2008 to November 6, 2017.

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On July 11, 2023, the Court received an email copy of Academy's Motion to Stay. Subsequently, this Court conducted a brief virtual meeting with the attorneys. Among other things, the attorneys were informed that this Court had not received a copy of the Notice of Appeal. After receiving brief comments, this Court informed the attorneys that he was inclined to grant the stay as this Court viewed an appeal as jurisdictional in nature. The attorneys were also informed of this Court's concern that certain matters asserted in the Motion for Stay were not presented previously to this Court and certain language in the motion was asking this Court to grant the motion based upon an improper reason inconsistent with this Court's ethical duties.[8] More importantly, the Court also expressed its desire to keep the November 27, 2023, trial date. The Court's observation from the brief discussion was that the attorneys concurred with keeping the November trial date. The lawyers were also advised of this Court's concern that summary judgement motions had been filed.[9] This Court also expressed its expectation that the lawyers continue to work towards the trial date even though the previous ordered production dates would be stayed.[10]

Discussion

When making its initial announcement that the Motion for Stay would be granted, this Court relied upon its understanding that the filing of an appeal deprived a trial court of further jurisdiction over the matter. In reviewing SCApp Rule 205, this Court, broadly and generally, continues to be of the same opinion.[11] Notwithstanding, Academy did not rely upon Rule 204 in its motion, but rather referenced other authorities as the basis for its request for the stay.

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[8] SCAppCR Rule 501, Canon 3B(2).

[9] By prior email, the attorneys were advised of the approaching trial date and that summary judgement motions should be filed in a manner that allowed sufficient time for them to be heard and decided.

[10] Again, Academy's intent of seeking an immediate and expedited review by the appellate courts is noted.

[11] Even though Appellate Courts shall have exclusive jurisdiction over the appeal; a trial court shall have jurisdiction to entertain petitions for writs of supersedes as provided by Rule 241. Rule 205 also provides that a trial court is

In its motion, Academy requested the Stay based upon the broad discretion vested in this Court to supervise the progression and disposition of cases before it in the interests of justice and judicial economy. This discretion included the authority to grant a Stay of a matter pending before the Court. Talley v. John-Mansville Salves Corp, 328 SE2d 621, 623 (S.C. 1985). A Stay is appropriate unless circumstances demonstrate that potential harm against whom the stay is operative outweighs the purpose of the stay. Merritt Bros. v. Marine Midland Realty Credit Corp., 414 S.E.2d 167, 169 (S.C. 1992); Capital City, 674 S.E.2d at 531.

Based on the authorities provided by Academy, this Court's original belief that the stay was determined solely through a jurisdictional lens, was not completely correct. The analysis should have also been accomplished through a discretionary lens. Again, as previously stated a "stay is appropriate unless circumstances demonstrate that the potential harm against whom the stay is operative outweighs the purpose of the stay". Id.

In performing the balancing test offered by Academy to the information sought to stayed from production, this Court has examined the protections from disclosure provided by the consent Confidentiality Order to information ordered produced in the pre-trial discovery orders.[12] This Court has also considered the anticipated issues left to be addressed by this Court as determined from Academy's prior 12(b)(6) Motion to Dismiss and this Court's prior decision to not grant the motion based on the need to develop the issues through the discovery process.[13] This Court has also considered the pending trial date which all parties wish to maintain and the limitations and responsibilities of management of the trial date. This Court has also considered

not prohibited from proceeding with matters not affected by the appeal. This Court understands that filing an appeal of a pre-trial discovery is not typical. In this Court's 20 plus years on the bench, it has not had an occasion to review an appeal of a pre-trial discovery ruling.

[12] The Court has assumed all parties desire closure.

[13] Again, no motions for summary judgement have been filed that address the merits related to liability or defenses.

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and respected the role the Appellate Court may have in addressing the issues presented by an appeal of this Court's pre-trial discovery decision.

Therefore, this Court's decision is to grant the stay of (1) the Excel spreadsheets relating to trace data currently in counsel's possession by Tuesday, July 11, 2023, and (2) all trace-related emails on a rolling basis, with first batch to be produced on or before July 21, 2023.[14]

Again, in examining the appropriateness of the Stay, this Court has also considered the expressed desire of the parties to maintain the November 27, 2023 start date for the trial and the effect that an indefinite Stay will have on completing discovery and the trial start date.

Based upon the unique circumstances of the present motion, this Court grants the Stay from the production of document previously discussed.

Again, the parties are ordered to reconvene virtually before this court at 1:00 p.m. August 17, 2023, to reconsider the issue of the Stay, and provide an update to this court on discovery and negotiations of the issues contained in this Court's prior discovery orders.

While this Court has noted frustration and disagreement from both sides with its rulings related to discovery issues and this Stay, the Court expects the attorneys and their clients to cooperate in good faith with the development of the case with the desire of maintaining the November 27th trial date.

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[14] The description of the information Academy seeks to protect by requesting the Stay, stands in stark contrast to the items ordered produced in the pre-trial discovery orders. The breath of Academy's concern is articulated on Page No. 2 of its Motion wherein it asserted the following:

> [t]he subject records contain highly sensitive information related to more than 100,000 firearms purchases. In addition to the names, addresses, and other information associated with third party customers, the records would include the types and amounts of firearms sold at two Academy stores for a long period of time, as well as disclose the general buying habits of a large group of residents of the upstate of South Carolina who have shopped at these stores. Significantly, the information requested by Plaintiffs would include trace requests for firearms sold at any of the more than 260 Academy stores nationwide. Many of these traces would no doubt relate to ongoing law enforcement criminal investigations. Also requested are the 4473 forms for firearms sales at the two stores. These forms are the property of the ATF, a non-party to these actions.

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If this Court can be of assistance to the attorneys prior to the next meeting, they are encouraged to reach out.

IT IS SO ORDERED.

______________________________	______________________________
Date	J. Mark Hayes, II Circuit Court Judge

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Spartanburg Common Pleas

Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al

Case Number: 2018CP4204297

Type: Order/Stay

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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EXHIBIT 2

User Name: Jenna Klein
Date and Time: Wednesday, July 19, 2023 10:33:00AM EDT
Job Number: 201664838

Document (1)

1. *Miller v. Ctr. of Hope of Myrtle Beach, 2020 S.C. C.P. LEXIS 5336*

   Client/Matter: -None-

   Search Terms: Miller v. Ctr. of Hope of Myrtle Beach, 2020 S.C. C.P. LEXIS 5336

   Search Type: Natural Language

   Narrowed by:

Content Type	Narrowed by
Cases	-None-

No *Shepard's* Signal™
As of: July 19, 2023 2:33 PM Z

Miller v. Ctr. of Hope of Myrtle Beach

Court of Common Pleas of South Carolina, Horry County, Fifteenth Judicial Circuit

June 23, 2020, Filed

C/A No. 2018-CP-26-02617

Reporter
2020 S.C. C.P. LEXIS 5336 *

Billy W. Miller, Individually and as Personal Representative of the Estate of Joan C. Banks a/k/a Joan Cooleen Banks-Miller, Plaintiff, v. Center of Hope of Myrtle Beach, LLC, Defendant.

Core Terms

motion to compel, request for production, discovery, Interrogatory, protective order, patient, motion for a protective order, motions, privacy, reasons, allegations, limitations, methadone, redacted, Parties, liquid, dose

Judges: **[*1]** Honorable Clifton Newman, Circuit Court Judge.

Opinion by: Clifton Newman

Opinion

ORDER ON PLAINTIFF'S MOTION TO COMPEL AND DEFENDANT'S MOTION FOR PROTECTIVE ORDER

This matter came before the Court on February 5, 2020 on Plaintiff's motion to compel certain discovery from Defendant Center of Hope Myrtle Beach, LLC ("Defendant" or "COHMB") and Defendant's competing motion for a protective order concerning the same discovery. Present before the Court were David Marshall and Preston Brittain for Plaintiff, and Andy Halio and Gene Connell for COHMB. After reviewing the parties' submissions and hearing oral arguments, the Court grants both motions in part, and denies both motions in part, as set forth herein.

CASE BACKGROUND

This matter arises from a motor vehicle accident that occurred shortly before noon on April 5, 2017 between a vehicle operated by Deborah Bullock and a vehicle occupied by Bill and Joanie Miller. It is alleged that Bullock caused the accident by crossing the centerline of Mr. Joe White Avenue and colliding head-on with the Miller's vehicle. Joanie Miller was killed in the crash, and Bill Miller suffered personal injuries.

The at-fault driver, Deborah Bullock, was a patient at COHMB — an opioid **[*2]** treatment center in Myrtle Beach that provides daily doses of liquid methadone to its patients. Plaintiff alleges Bullock received her 100 mg. dose of liquid methadone approximately 30 minutes before the accident. Plaintiff filed this action against COHMB alleging that its treatment of Bullock was negligent and reckless and contributed to her impairment at the time of the accident. Plaintiff seeks actual and punitive damages for himself and on behalf of his late wife's estate. COHMB has denied all allegations of liability. The instant motions relate to Plaintiff's Fourth Set of Interrogatories and Sixth Set of Requests for Production to COHMB.

LEGAL STANDARD

Rule 26, SCRCP, outlines the scope of permissible discovery in civil actions: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." **[*3]** Further, Rule 26 provides that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

This rule has been interpreted by our Supreme Court to allow "broad pre-trial discovery." *Hamm v. S.C. Pub.*

Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). "The Rules do not differentiate between information that is private or intimate and that to which no privacy interests attach. . . . Thus, the Rules often allow extensive intrusion into the affairs of both litigants and third parties." *Id.* (quoting Seattle Times Co. v. Rhinehart, 467 U.S. 20, 30 (1984)). Under Rule 26(b)(1), SCRCP, discovery is available to develop any factual issues in question. Bailey v. Owen Elec. Steel Co., 301 S.C. 399, 401, 392 S.E.2d 186, 187 (1990). Our Supreme Court has approved discovery requests that show "a reasonable expectation of obtaining information that will aid the dispute's resolution." Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010).

On the other hand, there are limitations to discovery under certain circumstances. For instance, Rule 26(c) allows a party to obtain a protective order where the discovery sought is oppressive or unduly burdensome. Additionally, Rule 33(b)(9) limits the number of Interrogatories a party may serve to 50 without leave of court.

DISCUSSION

I. Plaintiff's motion to compel.

Plaintiff's motion to compel **[*4]** concerns 6 interrogatories and 10 requests for production. The Court rules as follows:

- Interrogatory No. 1 — Plaintiff's motion to compel is denied.
- Interrogatory No. 2 — Plaintiff's motion to compel is denied.
- Interrogatory No. 3 — Plaintiff's motion to compel is denied.
- Interrogatory No. 4 — Plaintiff's motion to compel is granted.
- Interrogatory No. 5 — Plaintiff's motion to compel is granted.
- Interrogatory No. 6 — Plaintiff's motion to compel is granted.
- Request for Production No. 1 — Plaintiff's motion to compel is denied as the request was previously asked and answered.
- Request for Production No. 2 — Plaintiff's motion to compel is granted as to inspections, records, recommendations, and reports since 2012.
- Request for Production No. 3 — Plaintiff's motion to compel is denied.
- Request for Production No. 4 — Plaintiff's motion to compel is denied.
- Request for Production No. 5 — Plaintiff's motion to compel is granted. Non-party patient names can be redacted for privacy reasons, if necessary.
- Request for Production No. 6 — Plaintiff's motion to compel is granted. Non-party patient names can be redacted for privacy reasons, if necessary.
- Request for Production No. 7 **[*5]** — Plaintiff's motion to compel is denied.
- Request for Production No. 8 — Plaintiff's motion to compel is denied.
- Request for Production No. 9 — Plaintiff's motion to compel is granted.
- Request for Production No. 10 — Plaintiff's motion to compel is granted as to COHMB, LLC.

II. Defendant's motion for protective order.

The above rulings resolve COHMB's motion for protective order. Where the Court has denied Plaintiff's motion to compel, it has granted COHMB's motion for protective order.

CONCLUSION

For the reasons set forth herein, Plaintiff's motion to compel is granted in part, denied in part, and Defendant's motion for protective order is granted in part, and denied in part.

IT IS SO ORDERED.

The Honorable Clifton

Newman Circuit Court Judge

End of Document

EXHIBIT 3

LexisNexis®

User Name: Jenna Klein
Date and Time: Wednesday, July 19, 2023 10:33:00AM EDT
Job Number: 201664885

Document (1)

1. *Woodlief v. S. Charm Healthcare, 2021 S.C. C.P. LEXIS 531*

Client/Matter: -None-

Search Terms: Woodlief v. S. Charm Healthcare, 2021 S.C. C.P. LEXIS 531

Search Type: Natural Language

Narrowed by:

Content Type	Narrowed by
Cases	-None-

No *Shepard's* Signal™
As of: July 19, 2023 2:33 PM Z

Woodlief v. S. Charm Healthcare

Court of Common Pleas of South Carolina, Lexington County

April 21, 2021, Filed

Civil Action No.: 2019-CP-32-02660

Reporter
2021 S.C. C.P. LEXIS 531 *

Bradley Woodlief, as Personal Representative of the Estate of Grace Miller, Plaintiff, vs. Southern Charm Healthcare, Inc., Hopewell Healthcare, Inc., The Ensign Group, Inc., Jane Doe No. 1, whose true identity is currently unknown, John Doe No. 1, whose true identity is currently unknown, Jane Doe No. 2, whose true identity is currently unknown, John Doe No. 2, whose true identity is currently unknown, John Doe Company No. 1, whose true identity is currently unknown, and John Doe Company No. 2, whose true identity is currently unknown, Defendants.

Core Terms

residency, Interrogatory, allegations, staff, responses, facilities, training, discovery, resources, policies, annual report, requests, manage, personnel file, documents, parties, records, marketing, ownership, licensed

Judges: [*1] Honorable Daniel D. Hall, Presiding Judge, Thirteenth Judicial Circuit.

Opinion by: Daniel D. Hall

Opinion

ORDER

This matter comes before the Court upon Plaintiff's Motion to Compel discovery responses from Defendants Southern Charm Healthcare, Inc., Hopewell Healthcare, Inc. and The Ensign Group, Inc. to Plaintiff's First Set of Interrogatories Nos. 3, 9, 14, 17, 18, 22, 23, and Plaintiff's Requests for Production Nos. 2, 4, 6, 11, 12, 14, 16, 18, 31, 32, and 48. A hearing was held before me via virtual courtroom on March 29, 2021. Bradley D. Hewett, Esq., represented the Plaintiff. Cheslyne S. Brighthop, Esq. represented Defendants. After carefully considering the arguments of counsel and the submittals of the parties, I hereby GRANT Plaintiff's Motion to Compel.

Background

1. This wrongful death and survival action arises out of care and treatment rendered to Decedent Grace Miller at Opus Post-Acute Rehabilitation ("Opus Post-Acute"), a skilled nursing facility located in Lexington County.

2. Plaintiff alleges that Defendants owned, operated, managed and/or served as the licensee for Opus Post-Acute.

3. Plaintiff represented to the Court that Southern Charm Healthcare, Inc., Hopewell Healthcare, Inc., and **[*2]** The Ensign Group, Inc. are related companies.

4. Plaintiff represented to the Court that Southern Charm Healthcare is the local company licensed to operate Opus-Post Acute and that Hopewell Healthcare is the president company of Southern Charm Healthcare and was hired to manage the facility.

5. Plaintiff represented to the Court that The Ensign Group is the president company of Hopewell Healthcare and exchanges money with Southern Charm Healthcare and Hopewell Healthcare for the operations of Opus Post-Acute.

6. Plaintiff alleges that Grace Miller was admitted to Opus Post-Acute on November 23, 2016, for skilled nursing care and short-term rehabilitation after a fall that resulted in hospitalization at Lexington Medical Center.

7. Plaintiff alleges that during her time at Opus Post-Acute, Ms. Miller was noted to develop and suffer from dehydration, sacral injury with cellulitis infection and abscess, sepsis, worsening protein calorie malnutrition, and decompensation of adrenal

insufficiency. Plaintiff further alleges Ms. Miller's medical condition deteriorated to the point where she developed a Stage IV sacral pressure injury, infection, dehydration, and septic shock.

8. Plaintiff alleges **[*3]** that after being at Opus Post-Acute for only 24 days, Ms. Miller was urgently transferred to Lexington Medical Center on December 16, 2016, with diagnoses of sepsis with septic shock, pressure ulcer Stage IV, acute pulmonary edema, severe protein caloric malnutrition, dehydration, urinary tract infection, and exacerbation of Addison's Disease.

8. Plaintiff alleges that Grace Miller died on January 3, 2017, due to infection, decompensated adrenal insufficiency, and malnutrition.

9. Plaintiff served Defendants with Interrogatories and Requests for Production on August 12, 2019. After not receiving responses despite affording an extension to counsel for Defendants, Plaintiff filed a motion to compel on November 12, 2019.

10. Defendants responded to the discovery requests on July 28, 2020.

11. Defendants supplemented their discovery responses on September 18, 2020, and produced additional documents to Plaintiff in the months thereafter.

12. Plaintiff contends that deficiencies remain with Defendants' responses to Plaintiff's First Set of Interrogatories Nos. 3, 9, 14, 17, 18, 22, 23, and Plaintiff's Requests for Production Nos. 2, 4, 6, 11, 12, 14, 16, 18, 31, 32, and 48.

CONCLUSIONS & LAW

I **[*4]** reach the following conclusions:

1. This was a hearing to decide Plaintiff's Motion to Compel responses to Plaintiff's First Set of Interrogatories Nos. 3, 9, 14, 17, 18, 22, and 23, and Plaintiff's Requests for Production Nos. 2, 4, 6, 11, 12, 14, 16, 18, 31, 32, and 48.

2. South Carolina allows a broad scope of discovery. *Samples v. Mitchell, 329 S.C. 105, 108, 495 S.E.2d 213, 215 (Ct. App. 1997)*. The scope and conduct of discovery are within the sound discretion of the trial court, and decisions regarding that scope will only be reversed where that discretion has been abused. *Palmetto All. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 434, 319 S.E.2d 695, 698 (1984)*. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. *Rule 26(b)(1), SCRCP*.

"*Rule 26, SCRCP*, allows broad pre-trial discovery. 'The Rules do not differentiate between information that is private or intimate and that to which no privacy interests attach. . . . Thus, the Rules often allow extensive intrusion into the affairs of both litigants and third parties.'" *Hamm v. S.C. Pub. Serv. Comm'r, 312 S.C. 238, 241, 439 S.E.2d 852, 853-854 (1994)* (citing *Seattle Times Co. v. Rhinehart, 467 U.S. 20, 30, 104 S. Ct. 2199, 2206, 81 L. Ed. 2d 17, 25 (1984)*).

3. Plaintiff's Interrogatory No. 3 requests, in part, that Defendants identify the employer and period of employment of the members of their staff working at the facility who were responsible for Grace Miller for each day and shift during her stay at the facility. **[*5]** This information is relevant and properly produced. Defendants are ordered to supplement their responses to provide the name of the employer and period of employment for each individual identified in response to Interrogatory No. 3.

4. Plaintiff's Interrogatory No. 9 requests that Defendants provide the full name of all persons who were primarily responsible for marketing Opus Post-Acute and recruiting new patients to the facility for the time that Grace Miller was a resident. Plaintiff represented to the Court that there were multiple promotional videos disseminated for Opus Post-Acute as well as a Facebook site with a significant number of posts, photographs, and videos pertaining to the facility. Defendants responded to this Interrogatory by providing that "[t]here is currently no Marketing Director at this time for Opus and there was no Marketing Director at the time of this incident."

Information as to how Defendants represented the services offered at Opus Post-Acute for the benefit of residents and their families is relevant when compared to the allegations made in this matter. Defendants' response to the interrogatory is not fully responsive. Defendants are ordered to supplement **[*6]** their responses to provide the name of all persons primarily responsible for marketing the services and facilities of Opus Post-

Acute during the time period of Decedent's residency.

5. Plaintiff's Interrogatory No. 14 requests that Defendants provide the style, case number, state, county, location of lawsuits brought against Defendants since January 1, 2014, involving any allegation of neglect or abuse against residents by any facility owned or operated by Defendants and/or managed by Defendants. Plaintiff agreed to limit the scope of this request to facilities owned or operated by Defendants in South Carolina, which appears to be less than 5 facilities.

Plaintiff contends that Defendants are related companies and share common ownership and resources. Plaintiff represented that Defendant Southern Charm, the local company licensed to operate the facility, has reported nominal assets and income, cannot survive financially on its own, and must rely on resources from The Ensign Group and/or Hopewell Healthcare.

"Evidence of similar acts is admissible in South Carolina where there is some special relation between them which would tend to prove or disprove some fact in dispute. . . . This rule, **[*7]** which governs the admissibility of prior accidents, transactions, or happenings, is based on relevancy, logic, and common sense." *Johnson v. Sam English Grading, Inc., 412 S.C. 433, 451, 772 S.E.2d 544, 553 (Ct. App. 2015)* (testimony of prior "near-misses" admissible to prove negligence in personal injury action); *see also* *Branham v. Ford Motor Co., 390 S.C. 203, 230, 701 S.E.2d 5, 19 (2010)* (rollover data relevant and admissible in design defect case alleging vehicle had an unreasonably dangerous tendency to roll over even though precise cause of rollover was unknown); *Reed v. Clark, 277 S.C. 310, 314-15, 286 S.E.2d 384, 387 (1982)* (evidence of prior horse escapes relevant and admissible in action against horse owner whose horse entered roadway and caused an accident); *Oconee Roller Mills, Inc. v. Spitzer, 300 S.C. 358, 360, 387 S.E.2d 718, 719 (Ct. App. 1990)* (where parties presented conflicting evidence of cattle guard's condition, evidence of cow escaping nine or more months prior was relevant and admissible evidence in negligence action alleging deteriorated cattle guard resulted in cow entering roadway); *Pittman v. Galloway, 281 S.C. 70, 75, 313 S.E.2d 632, 635 (Ct. App. 1984)* (evidence of subsequent transactions was relevant and admissible in negligence action alleging misrepresentation by seller in land sale). This applies to prior *or subsequent* occurrences related in nature and in time. *Pittman, 281 S.C. at 75, 313 S.E.2d at 635*.

Defendants have refused to provide the requested information. The request is straight forward and is information within the control and possession of Defendants. The request **[*8]** is limited to a reasonable time period, and the information is relevant given the allegations that Defendants failed to properly train staff and refused to allocate the necessary financial resources for the operation of Defendants' facilities.

Based on the allegations in this case, and representations made to the Court in filings and at the hearing about relationship between Defendants, including common ownership, resource allocation, and the intertwined operation and management of the facility, the Court finds that this information is relevant and properly produced. Defendants are ordered to respond with the requested information.

6. Plaintiff's Interrogatory No. 17 requests that Defendants provide the number of licensed nurses on staff during Grace Miller's residency at Opus Post-Acute. Plaintiff's Interrogatory No. 18 requests that Defendants provide the number of unlicensed nursing staff during Grace Miller's residency at Opus Post-Acute.

Defendants are regulated and required by law to have a certain number of licensed and non-licensed nursing staff at the facility by law.[1] Instead of responding with the information, Defendants refer to an "Employee Roster" and "Termination Reports." **[*9]** Plaintiff represented that he did not receive a document titled "Employee Roster," and that the materials provided are subject to interpretation. Plaintiff further represented that there is evidence the facility was understaffed.

Based on the allegations in this case and representations by Plaintiff in court filings and at the hearing, this information is relevant and properly produced. Defendants are ordered to supplement their response to Plaintiff's Interrogatory No. 17 to state the number of licensed nurses on staff at Opus Post-Acute during Grace Miller's residency. Defendants are ordered to supplement their response to Plaintiff's Interrogatory No. 18 to state the number of non-licensed nursing staff on staff at Opus Post-Acute during Grace Miller's residency.

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[1] See S.C. Code Ann. Regs. 61-17.601-605 (2011 and Supp. 2016).

7. Plaintiff's Interrogatory No. 22 is a standard interrogatory asking Defendants to
give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Defendants provided the generic response of "Nurses and/or CNAs of Southern Charm **[*10]** Healthcare, Inc. and/or Opus Post-Acute Rehabilitation Center." Defendants represented that they would supplement the response at a later date with a more detailed list of nurses and/or CNAs expected to be called at trial. It has been over 18 months since Defendants received this request. Defendants are ordered to supplement their response to Plaintiff's Interrogatory No. 22 to provide the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses.

8. Plaintiff's Interrogatory No. 23 asks Defendants to identify consultants or personnel used to evaluate adequacy of care at Opus Post-Acute during Grace Miller's residency.[2] Instead of providing the names of entities or personnel that filled these roles, Defendants referenced certain patient records and documents. Plaintiff seeks simply for Defendants to provide the name(s) of each individual or entity that fulfilled the roles for each subpart of the interrogatory.

Defendants' response is insufficient. This information is relevant given the allegations in this case, specifically because of the services **[*11]** that were to be provided to Decedent and the allegations that Decedent became dehydrated, malnourished, suffered a Stage IV pressure ulcer, and experienced septic shock because of Defendants' acts and/or omissions during her residency. Defendants are ordered to supplement their response to Interrogatory No. 23 to state the name of each individual or entity that filled the roles identified within this Interrogatory.

9. Plaintiff's Request for Production No. 2 asks Defendants to produce the personnel files of the members of staff who were actually assigned to care for, or did actually care for Grace Miller for each day and shift during her residency. Defendants objected, but responded that they would provide the personnel file of any employee Plaintiff identified and wished to depose in relation to Plaintiff's claim.

Defendants identified 22 employees that were assigned to care for Decedent each day, nearly all of whom have been terminated. Plaintiff indicated that he intended to schedule the depositions of these individuals, yet Defendants have not produced the personnel files. Plaintiff indicated that sensitive financial or medical information in the personnel files could be redacted **[*12]** prior to production.

Based on the allegations in this case, and representations by Defendants that personnel files would be produced, this material is relevant and properly produced. Defendants are ordered to produce the personnel files for the 22 staff members identified in discovery that provided care for Decedent in 2016.

10. Plaintiff's Request No. 4 asks Defendants to produce any record of incident involving residents, staff members, or volunteers of Defendants in the five years preceding Decedent's residency and up until the present for the facilities owned and/or operated by Defendants, including: incidents of falls or trauma resulting in fractures; resident suicides; medication errors; resident death or injury in restraints; criminal events or assaults against residents; medical equipment errors; or resident neglect or exploitation, suspected or confirmed resident abuse.

Defendants initially lodged objections, but later supplemented with the response that they are not in possession of any incident or grievant reports. Plaintiff represented that he has reason to believe there are records of the incidents described in Request to Produce No. 4 during the period of Defendants' ownership **[*13]** and/or operation of Opus Post-Acute. Plaintiff indicated that the scope of this request should be limited to the facilities in South Carolina that are owned and operated by Defendants, and to the years 2014 to present. Plaintiff represented that Defendant Hopewell Healthcare contracts with the licensee of nursing home facilities, including Opus Post-Acute, to manage and assist in the operation of the facilities.

[2] RN nurse consultant; Pharmaceutical consultant; Registered dietician consultant; Registered nutritional consultant; Quality assurance members; Occupational therapy consultant; Physical therapy consultant; Speech therapy consultant; etc.

Plaintiff represented that this request would likely capture 3-4 other facilities that are owned and/or operated by Defendants in South Carolina.

Regulation 61-84.601 requires that Defendants create and maintain this information, and defines "incident" as an unusual unexpected adverse event resulting in harm, injury, or death of staff or residents, accidents, e.g., medication errors, adverse medication reactions, elopement of a resident." S.C. Code Ann. Regs. 61-84.601 (2011 & Supp. 2016). R. 61-84.601 also requires that Defendants submit a written report of the investigation of such incidents to DHEC and to retain such documentation for at least 6 years after Grace Miller's residency. *Id.*

The sensitive and identifying information for any particular resident can be redacted. Considering the claims and allegations against Defendants related **[*14]** to training and their treatment of Grace Miller and the corporate failures in the operating the facility, these materials are relevant and properly produced at this stage in the litigation. Defendants are ordered to produce all records of incidents described in Request for Production No. 4 for all facilities in South Carolina that are owned, managed, and/or operated by Defendants for the period of 2014 to present.

11. Plaintiff's Request for Production No. 6 asks Defendants to produce materials regarding federal ratings of Opus Post-Acute Rehabilitation from 2013 to present. Plaintiff represented that the Center for Medicare & Medicaid Services maintains a Five-Star Quality Rating System for nursing homes, which would apply to Opus-Post Acute. Defendants indicated that they would supplement responses and are in possession of ratings for 2017 & 2019. Defendants have not supplemented their responses to provide the responsive materials.

Considering the claims and allegations against Defendants related to training, their treatment of Grace Miller, and corporate failures in the operating the facility, these materials are relevant and properly produced at this stage in the litigation. Defendants **[*15]** are ordered to produce materials regarding federal ratings for Opus Post-Acute for 2013 to present.

12. Plaintiff's Request for Production No. 11 asks Defendants to produce state and federal income tax returns, with all supporting schedules, and financial statements (including balance sheets, income statements, and statements of retained earnings) as of year's end 2014 to present. Plaintiff agreed to limit the scope of these financial documents to the years 2016 to 2021.

Plaintiff is seeking punitive damages in this claim and Defendants' ability to pay is a factor for the jury to consider. Further, Plaintiff claim that Defendants failed to dedicate the financial resources necessary to properly staff, train, and equip Opus Post-Acute and that a review of Defendants' financial records will provide relevant information on this issue. Additionally, Plaintiff represented that there are questions as to the corporate ownership, overlap, and relationship between the respective Defendants. Plaintiff indicated that a review of Defendants' financial records will provide relevant information to help the Court and jury better understand the relationships between the Defendants, which is relevant **[*16]** to the use of corporate resources and operational decision making. Plaintiff represented that he is consulting with an expert to review these materials and provide testimony as to the financing, staffing and operation of Opus Post-Acute.

A defendant's ability to pay punitive damages is an appropriate factor for the jury to consider. See, *Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991)*; *Bryant v. Waste Management, Inc., 342 S.C. 159, 536 S.E.2d 380 (Ct. App. 2000)*. "The wealth of a defendant is a relevant factor in assessing punitive damages." *Branham v. Ford Motor Co., 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010)* (citing *Welch v. Epstein, 342 S.C. 279, 307, 536 S.E.2d 408, 423 (Ct. App. 2000)*). Considering the allegations of recklessness, willfulness, improper financial motive, and the issues surrounding the ownership and resources for the facility, these materials are relevant and should be produced.

13. Plaintiff's Request for Production No. 12 asks Defendants to produce all handbooks, directives, training materials, brochures, diagrams, guidelines, manuals, protocols, procedures, catalog or internal standards used by Defendants at the time of Decedent's residency at the facility. Plaintiff's Request for Production No. 16 asks Defendants to produce copies of training manuals for personnel employed by Defendants since 2014. Plaintiff's Request for Production No. 31 asks Defendants to produce all training videos, brochures, pamphlets,

and recordings **[*17]** provided to employees, contractors, agents and/or servants since January 1, 2014.

Following the hearing and at the Court's direction, Plaintiff contacted counsel for Defendants by email on April 2, 2021 concerning Requests for Production Nos. 12, 16, and 31, which relate to training materials provided to staff working at Opus Post-Acute in 2016. In the email to counsel for Defendants, Plaintiff requested training materials for the courses identified by Defendants in discovery responses that were administered to staff working at the facility. Defendants have not produced materials in response to this request.

Plaintiff alleges that staff of Defendants are required by law to receive inservice training. S.C. Code Ann. Regs. 61-84.606 (2011 & Supp. 2016). Instead of producing the requested items, Defendants provided an Excel spreadsheet that presented certain information about courses completed by staff members. The spreadsheet provides only the title of the course, date of completion, score on the course, and the staff member taking the course. Plaintiff seeks production of the actual training materials.

Plaintiff has represented that the scope of the request will be limited to the courses identified by Defendants that **[*18]** were administered to staff working at Opus Post-Acute in 2016. Considering the claims and allegations against Defendants related to the training of staff and corporate failures in the resources provided to the facility, these materials are relevant and Defendants are ordered to supplement their responses to these discovery requests and produce materials for the training courses that have been identified in discovery responses.

14. Request for Production No. 14 asks Defendants to produce all sales, marketing, and/or promotional documents used by Defendants regarding its services or products since 2014. Defendants objected and have produced only a six-page black and white brochure about the facility.[3] The request extends beyond this facility to promotional material for Defendants Ensign and Hopewell Healthcare, who own, manage and/or operate dozens of facilities. Plaintiff is willing to limit the scope of this request to the years 2016 through the present.

Plaintiff represented at the hearing that there are professionally produced videos posted on the internet about Opus Post-Acute, as well as extensive updates and posts on a Facebook site for the facility. The allegations in this case **[*19]** are that Defendants failed to provide the proper staff, resources, and equipment needed to care for Grace Miller, thus causing her wrongful death.

Information as to how Defendants marketed their facility to the public is relevant and may be obtained from materials responsive to this request. Defendants are ordered to supplement their response to Request for Production No. 14 to produce all sales, marketing, and/or promotional materials used by Defendants regarding their services or products from 2016 to present.

15. Plaintiff's Request for Production No. 18 asks Defendants to produce a certified copy of any liability insurance policies, including any excess or umbrella policies, covering the Defendants for the claims asserted by Plaintiff. Plaintiff's request mirrors the standard interrogatory in *Rule 33(b)(4), SCRCP*, related to disclosure of liability insurance coverage. Plaintiff seeks production of all policies in place for occurrences during the year 2016 as well as any policies that would afford coverage for the claims asserted in this matter. Plaintiff represented to the Court that Defendant Southern Charm had limited assets and recognized little to no income each year.

As this request mirrors information **[*20]** that is discoverable pursuant to *Rule 33(b)(4), SCRCP*, Defendants are ordered to supplement their response to Request for Production No. 18 to produce a certified copy of any liability insurance policies, including any excess or umbrella policies, covering the Defendants for the claims asserted in this case.

16. Plaintiff's Request for Production No. 32 seeks production of all annual reports prepared and/or disseminated for Defendants since 2014. Defendants objected to this Request but indicated their counsel was in the process of obtaining responsive materials. Defendants have failed to supplement their responses to produce the annual reports. Plaintiff has agreed to limit the scope of the production of annual reports to the years 2016-present.

---

[3] The six-page "brochure" contains imagery in the bottom right reflecting that there are 38 pages of available content. Defendants produced only pages 28, 29, 30 and 31.

Plaintiff agreed at the hearing that the annual reports sought consist of documents provided by the Defendant companies to shareholders that describe their operations and financial conditions. The annual reports should provide information as to Defendants' operations, the resources being used for Defendants' assisted living facilities, management and direction of Defendants, the relationship between the Defendants, and Defendants' operation of Opus Post-Acute. Information **[*21]** within Defendants' annual reports is relevant to their operations and state of corporate affairs for entities that are in the business of owning, managing, and operating nursing home facilities. Defendants are ordered to produce all annual reports disseminated since the year 2016 in response to Request for Production No. 32.

17. Plaintiff's Request for Production No. 48 asks Defendants to produce a true, correct, and complete copy of every Policy and Procedure Manual and/or Quality Improvement Manual, which was in effect at the facility during Grace Miller's residency. Plaintiff represented that Defendants have produced only portions of policies that appear to have been in place for the facility, and that such production contains references to numerous other applicable policies and procedures which Defendants have not produced.

Considering the allegations in this case, the policies and procedures applicable to the operations of Opus Post-Acute are relevant. "In negligence cases, internal policies or self-imposed rules are often admissible as relevant on the issue of failure to exercise due case. *Caldwell v. KMart Corp., 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991)*. Considering the claims and allegations in this case, Defendants are ordered to produce **[*22]** all policies and procedures applicable to Opus Post-Acute for the year 2016.

Plaintiff's Motion to Compel, therefore, is GRANTED. Defendants shall supplement their discovery responses to provide the requested information and materials as ordered above to Plaintiff's counsel within thirty (30) days of the date of the filing of this Order.

AND IT IS SO ORDERED.

—

The Honorable Daniel D. Hall

Presiding Judge, Thirteenth Judicial Circuit

__ , 2021

End of Document

EXHIBIT 4

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
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July 18, 2023

Mr. D. Lawrence Kristinik, III, Esquire
PO Box 11070
Columbia SC 29211

Mr. Allen Mattison Bogan, Esquire
Post Office Box 11070
Columbia SC 29201

Mr. Matthew A. Abee, Esquire
1320 Main Street
17Th Floor
Columbia SC 29201

Mr. Samuel W. Outten, Esquire
Greenville One, Suite 400
2 W. Washington Street
Greenville SC 29601

Re: Cindy Coxie v. Academy, Ltd.
Appellate Case No. 2023-001094

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Cindy Coxie, as the Special Administrator for the Estate of Johnny Coxie, Respondent,

v.

Academy, Ltd., a/d/a Academy Sports + Outdoors; and Dustan Lawson, Defendants.

and

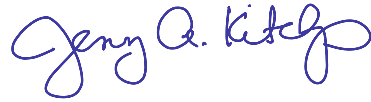
Academy, Ltd. d/b/a Academy Sports + Outdoors, Appellant.

v.

Dustan Lawson and Todd Christopher Kohlhepp, Cross-Defendants.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,



CLERK

cc: Robert Mills Ariail, Jr., Esquire
Mary Schiavo, Esquire
J. David Standeffer, Esquire

EXHIBIT 5

RECEIVED
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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA	)	CR NO. 7:17CR938
	)	18 U.S.C. § 922(a)(6)
	)	18 U.S.C. § 922(d)
	)	18 U.S.C. § 924(a)(2)
vs.	)	26 U.S.C. § 5812
	)	26 U.S.C. § 5848(b)
	)	26 U.S.C. § 5861(e)
	)	26 U.S.C. § 5861(1)
	)	21 U.S.C. § 5871
	)	18 U.S.C. § 924(d)(1)
	)	26 U.S.C. § 5872
	)	49 U.S.C. § 80303
DUSTAN LAWSON	)	28 U.S.C. § 2461(c)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES:

That on or about November 4, 2012, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a FII .40 caliber handgun, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

That on or about November 4, 2012, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a FII .40 caliber handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

That on or about November 4, 2012, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Sig Sauer 7.62 caliber rifle, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

That on or about November 4, 2012, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Sig Sauer 7.62 rifle, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT FIVE

THE GRAND JURY FURTHER CHARGES:

That on or about November 15, 2012, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly made a false entry on an application required by Chapter 53 of Title 26, that being: the defendant represented that he had a reasonable necessity to possess the firearm described on the application, that being an Advanced Armament Corp. 762SDN6 firearm muffler or silencer, for quiet target practice, knowing such entry to be false;

In violation of Title 26, United States Code, Sections 5848(b), 5861(l) and 5871.

COUNT SIX

THE GRAND JURY FURTHER CHARGES:

That on or about September 22, 2013, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly and unlawfully transferred a firearm, that is: an Advanced Armament Corp. 762SDN6 firearm muffler or silencer, to T.K., that was in violation of Title 26, United States Code, Section 5861(b), T.K not being authorized to receive the transferred firearm;

In violation of Title 26, United States Code, Sections 5812, 5861(e) and 5871.

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES:

That on or about December 7, 2012, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Barrett 82A1 .50 caliber rifle, from Allen Arms, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Allen Arms, which statement was intended and likely to deceive Allen Arms, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES:

That on or about December 7, 2012, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Barrett 82A1 .50 caliber rifle, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT NINE

THE GRAND JURY FURTHER CHARGES:

That on or about June 23, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Glock .45 caliber handgun, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TEN

THE GRAND JURY FURTHER CHARGES:

That on or about June 23, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Glock .45 caliber handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT ELEVEN

THE GRAND JURY FURTHER CHARGES:

That on or about July 1, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Glock .40 caliber handgun, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWELVE

THE GRAND JURY FURTHER CHARGES:

That on or about July 1, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Glock .40 caliber handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT THIRTEEN

THE GRAND JURY FURTHER CHARGES:

That on or about October 12, 2012, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly made a false entry on an application required by Chapter 53 of Title 26, that being: the defendant represented that he had a reasonable necessity to possess the firearm described on the application, that being an Advanced Armament Corp. M4-2000 firearm muffler or silencer, for quiet target practice, knowing such entry to be false;

In violation of Title 26, United States Code, Sections 5848(b), 5861(l) and 5871.

COUNT FOURTEEN

THE GRAND JURY FURTHER CHARGES:

That on or about August 7, 2013, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly and unlawfully transferred a firearm, that is: an Advanced Armament Corp. M4-2000 firearm muffler or silencer, to T.K., that was in violation of Title 26, United States Code, Section 5861(b), T.K not being authorized to receive the transferred firearm;

In violation of Title 26, United States Code, Sections 5812, 5861(e) and 5871.

COUNT FIFTEEN

THE GRAND JURY FURTHER CHARGES:

That on or about September 2, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Glock 9mm handgun, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material

to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT SIXTEEN

THE GRAND JURY FURTHER CHARGES:

That on or about September 2, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Glock 9mm handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT SEVENTEEN

THE GRAND JURY FURTHER CHARGES:

That on or about January 21, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Glock 9mm handgun, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT EIGHTEEN

THE GRAND JURY FURTHER CHARGES:

That on or about January 21, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Glock 9mm handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT NINETEEN

THE GRAND JURY FURTHER CHARGES:

That on or about January 21, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Sig Sauer 5.56 rifle, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWENTY

THE GRAND JURY FURTHER CHARGES:

That on or about January 21, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Sig Sauer 5.56 rifle, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT TWENTY-ONE

THE GRAND JURY FURTHER CHARGES:

That on or about February 2, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Sig Sauer .45 caliber handgun, from Academy Sports, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWENTY-TWO

THE GRAND JURY FURTHER CHARGES:

That on or about February 2, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Sig Sauer .45 caliber handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT TWENTY-THREE

THE GRAND JURY FURTHER CHARGES:

That on or about September 5, 2013, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Advanced Armament Tirant 9mm firearm muffler or suppressor and a Advanced Armament Prodigy .22 caliber firearm muffler or silencer, from Allen Arms, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Allen Arms, which statement was intended and likely to deceive Allen Arms, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWENTY-FOUR

THE GRAND JURY FURTHER CHARGES:

That on or about September 5, 2013, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly made a false entry on an application required by Chapter 53 of Title 26, that being: the defendant represented that he had a reasonable necessity to possess the firearm described on the application, that being an Advanced Armament Tirant 9mm firearm muffler or suppressor, for quiet target practice, knowing such entry to be false;

In violation of Title 26, United States Code, Sections 5848(b), 5861(l) and 5871.

COUNT TWENTY-FIVE

THE GRAND JURY FURTHER CHARGES:

That on or about August 5, 2014, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly and unlawfully transferred a firearm, that is: an Advanced Armament Tirant 9mm firearm muffler or silencer, to T.K., that was in violation of Title 26, United States Code, Section 5861(b), T.K not being authorized to receive the transferred firearm;

In violation of Title 26, United States Code, Sections 5812, 5861(e) and 5871.

COUNT TWENTY-SIX

THE GRAND JURY FURTHER CHARGES:

That on or about September 5, 2013, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly made a false entry on an application required by Chapter 53 of Title 26, that being: the defendant represented that he had a reasonable necessity to possess the firearm described on the application, that being an Advanced Armament Prodigy .22 caliber firearm muffler or suppressor, for quiet target practice, knowing such entry to be false;

In violation of Title 26, United States Code, Sections 5848(b), 5861(l) and 5871.

COUNT TWENTY-SEVEN

THE GRAND JURY FURTHER CHARGES:

That on or about August 5, 2014, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly and unlawfully transferred a firearm, that is: an Advanced Armament Prodigy .22 caliber firearm muffler or silencer, to T.K., that was in violation of Title 26, United States Code, Section 5861(b), T.K not being authorized to receive the transferred firearm;

In violation of Title 26, United States Code, Sections 5812, 5861(e) and 5871.

COUNT TWENTY-EIGHT

THE GRAND JURY FURTHER CHARGES:

That on or about October 3, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a PTR Industries .308 rifle, from Cabela's, a licensed dealer of firearms within the meaning of Chapter 44, Title 18,

United States Code, knowingly made a false and fictitious written statement to Cabela's, which statement was intended and likely to deceive Cabela's, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWENTY-NINE

THE GRAND JURY FURTHER CHARGES:

That on or about October 3, 2014, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a PTR Industries .308 rifle, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT THIRTY

THE GRAND JURY FURTHER CHARGES:

That on or about June 10, 2015, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly made a false entry on an application required by Chapter 53 of Title 26, that being: the defendant represented that he had a reasonable necessity to possess the firearm described on the application, that being an Advanced Armament M4-2000 firearm muffler or silencer for all lawful purposes, knowing such entry to be false;

In violation of Title 26, United States Code, Sections 5848(b), 5861(l) and 5871.

COUNT THIRTY- ONE

THE GRAND JURY FURTHER CHARGES:

That on or about June 16, 2015, in the District of South Carolina, the Defendant, DUSTAN LAWSON, knowingly and unlawfully transferred a firearm, that is: an Advanced Armament M4-2000 firearm muffler or silencer, to T.K., that was in violation of Title 26, United States Code, Section 5861(b), T.K not being authorized to receive the transferred firearm;

In violation of Title 26, United States Code, Sections 5812, 5861(e) and 5871.

COUNT THIRTY-TWO

THE GRAND JURY FURTHER CHARGES:

That on or about June 6, 2015, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Advanced Armament M4-2000 firearm muffler or silencer, from James Firearm Sales, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to James Firearm Sales, which statement was intended and likely to deceive James Firearm Sales, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT THIRTY-THREE

THE GRAND JURY FURTHER CHARGES:

That on or about June 6, 2016, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Sig Sauer 9mm handgun, from T & K Outdoors, Inc., a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to T & K Outdoors, Inc., which statement was intended and likely to deceive T & K Outdoors, Inc., as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT THIRTY-FOUR

THE GRAND JURY FURTHER CHARGES:

That on or about June 6, 2016, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Sig Sauer 9mm handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

COUNT THIRTY-FIVE

THE GRAND JURY FURTHER CHARGES:

That on or about July 7, 2016, in the District of South Carolina, the defendant, DUSTAN LAWSON, in connection with the acquisition of a firearm, that being a Ruger 308 handgun, from Academy Sports., a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to Academy Sports, which statement was intended and likely to deceive Academy Sports, as to a fact material to the lawfulness of such sale of the said firearm to the defendant under Chapter 44 of Title 18, in that the defendant represented that he was the actual transfee/buyer of the firearm listed on the form and was not acquiring the firearm on behalf of another person;

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT THIRTY-SIX

THE GRAND JURY FURTHER CHARGES:

That on or about July 7, 2016, in the District of South Carolina, the defendant, DUSTAN LAWSON, knowingly transferred a firearm, that is: a Ruger 308 handgun, to T.K., knowing and having reasonable cause to believe that T.K. had been convicted of a crime punishable by imprisonment for a term exceeding one year;

In violation of Title 18, United States Code, Sections 922(d) and 924(a)(2).

FORFEITURE

1. FIREARM OFFENSES:

Upon conviction for violations of Title 18 and Title 26, as charged in this Indictment, the defendant, DUSTAN LAWSON, shall forfeit to the United States all of the defendant's right, title and interest in and to any property, real and personal, in:

(a) any firearms and ammunition (as defined in 18 U.S.C. § 921)-

(1) involved in or used in any knowing violation of 18 U.S.C. § 922, 26 U.S.C. §§ 5812, 5848 and 5861 or violation of any other criminal law of the United States;

Pursuant to Titles 18 U.S.C. § 924(d)(1), 26 U.S.C. § 5872, 49 U.S.C. § 80303, and 28 U.S.C. 2461(c).

A true Bill

REDACTED
FOREPERSON

BETH DRAKE (JEW/twd)
UNITED STATES ATTORNEY

EXHIBIT 6

ELECTRONICALLY FILED - 2022 Jun 08 4:01 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4204297

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Cindy Coxie, as Special Administrator for the Estate of Johnny Coxie,

Plaintiff,

vs.

Academy, Ltd., d/b/a Academy Sports and Outdoors and Dustan Lawson,

Defendants.

Consolidated Civil Action
No. 2018-CP-42-04297

AMENDED CONFIDENTIALITY ORDER

Before the Court is the Joint Motion by the Plaintiffs, and the Defendant, Academy, Ltd., d/b/a Academy Sports and Outdoors ("Academy") [1] for Entry of an Amended Confidentiality Order in this consolidated order. Defendant/Cross-Defendant Dustan Lawson ("Lawson"), is incarcerated in a federal penitentiary and is proceeding *pro se* in this consolidated action, and that Cross-Defendant Todd Kohlhepp ("Kohlhepp") is incarcerated in a state prison and has not yet made an appearance, either through counsel or *pro se*. The Court is further informed by counsel for the Plaintiffs and Academy that Lawson and Kohlhepp were each served with a copy of the Joint Motion and proposed Amended Confidentiality Order. A certificate of service of the motion and proposed Amended Confidentiality Order has been filed in the record.

NOW, THEREFORE, the Court finds that it is appropriate to enter the requested Amended Confidentiality Order. Therefore, it is

ORDERED:

[1] The correct trade name for Academy is "Academy Sports + Outdoors."

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1. **Scope.** All documents produced in the course of discovery by the parties or non-parties, all responses to discovery requests or subpoenas, and all deposition testimony and deposition exhibits, and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated confidential prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential when, in good faith, the party has determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information, or other information that should not be shared with non-parties or the public or used for purposes unrelated to the resolution of the claims asserted in these actions. Information or documents which are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within thirty (30) days after receipt of the transcript by all parties that order one (and the deponent, if a non-party). Such designation shall

be specific as to the portions to be protected. Unless otherwise agreed to by the parties (and the deponent, if a non-party), the deposition transcript and/or videotape record of the deposition shall be deemed to be CONFIDENTIAL and entitled to the protections under this Order during the thirty (30) day period following the receipt of the transcript by all parties that order one (and the deponent, if a non-party).

5. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or any non-party who receives documents designated CONFIDENTIAL under this Order or their respective counsel or any other persons identified in paragraph 5.b. below for any purposes whatsoever except for the prosecution of the consolidated actions (including any appeal of the consolidated actions) and for no other purpose, and shall not be published or disclosed, directly or indirectly, and shall not be delivered, or their existence made known or exhibited to any persons, except in accordance with the provisions of this Order. Nothing in this Order shall preclude any party from using the party's own records and documents in the course of the party's business.

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents or deposition testimony designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(6) below, and, for persons subject to subparagraphs (5) and (6), only after the person to whom disclosure is to be made has executed an acknowledgment (in the form attached to this Amended Confidentiality Order as Attachment A), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories

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of persons may be allowed to review documents, which have been designated CONFIDENTIAL pursuant to this Order:

(1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

(2) parties and employees of a party to this Order, and any insurance carriers of such parties and the attorneys, employees, and representatives for such insurance carriers, subject to paragraph 7 below;

(3) court reporters engaged for depositions;

(4) Judges, law clerks, clerks of court, court reporters, and other court employees and personnel who must necessarily review CONFIDENTIAL documents to perform the duties of their employment;

(5) consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and

(6) other persons only upon written consent of the producing party or non-party or upon order of the Court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as CONFIDENTIAL pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order. These same obligations apply to *pro se* litigants.

d. **Copies.** All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies"), of documents designated as CONFIDENTIAL under this Order or any portion of such a document, shall be immediately affixed with the

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designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Heightened Confidentiality Designation.** In the event documents to be produced by a party or non-party contain highly sensitive trade secret, commercial, or proprietary information for which greater confidentiality protection is needed, the party who wishes to obtain heightened confidentiality protection for the document may designate the documents as "CONFIDENTIAL – ATTORNEYS' EYES ONLY." The following provisions govern documents so designated

a. Documents bearing this special designation can be viewed only by persons in categories identified in Paragraphs 5(b)(1), 5(b)(3), 5(b)(4), and 5(b)(6).

b. All protections and procedures set forth in this Order applicable to CONFIDENTIAL documents not modified in Paragraph 6 shall also apply to documents designated as CONFIDENTIAL – ATTORNEYS' EYES ONLY.

c. A party wishing to designate one or more documents as CONFIDENTIAL – ATTORNEYS' EYES ONLY may use the procedure set forth in Paragraph 10.

7. **Lawson and Kohlhepp**. Recognizing that Lawson and Kohlhepp are parties but are *pro se*, Lawson and Kohlhepp shall be given access to review, but not allowed to retain possession of, documents designated as either CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY. Documents designated as either CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY shall not be served or otherwise provided to Lawson or Kohlhepp at any time of production to other parties, but Lawson and Kohlhepp shall be provided by the producing party or non-party notice that such documents have been produced in the consolidated actions. Upon receipt of a written request by Lawson or Kohlhepp to review

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the documents, the producing party or non-party shall make reasonable efforts in light of their incarceration to provide them with an opportunity to review the documents for a reasonable period of time. Exception is made for any and all documents or material designated as either CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY exchanged between the parties or non-parties that contain information identifying the address, date of birth, telephone number, social security number, schools, and place of employment (hereinafter "Personal Identifying Information") of any witnesses and/or victims of the criminal activity alleged in the consolidated actions. In the event Lawson and/or Kohlhepp request a review of documents or material under this Paragraph, the Personal Identifying Information subject to this Paragraph shall be redacted from any documents or materials presented to them. Lawson and/or Kohlhepp may petition the Court for relief from this Paragraph, but they must demonstrate an exceptional need to review the Personal Identifying Information before the Court will consider lifting this restriction.

8. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including:

a. filing a redacted document with the consent of the party who designated the document as CONFIDENTIAL;

b. where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or

c. where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to 41.1, SCRCP.

Under no circumstances shall a party file CONFIDENTIAL documents with the Court without first taking steps to prevent the public disclosure of the CONFIDENTIAL documents and

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ensuring compliance with this Order. The party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as CONFIDENTIAL to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document to be filed under seal. The parties understand that documents may be filed under seal only with the permission of the Court after proper motion under Rule 41.1,

SCRCP.

9. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

10. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation must be established by the party seeking confidential treatment and is subject to challenge. The following procedures shall apply to any designation of confidentiality and any such challenge.

a. The burden of proving the necessity of a CONFIDENTIAL designation remains with the party or non-party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party or non-party who affixed the designation of the specific basis for the challenge. The party or non-party who designated the documents confidential, or any other party, shall have ten (10) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

c. Notwithstanding any challenge to the designation of documents as

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confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) The party who claims that the document is confidential withdraws such designation in writing;

(2) None of the parties (or any non-party who claims that the documents are confidential) move timely for an Order designating the documents as confidential as set forth in paragraph 9.b. above; or

(3) the Court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

11. **Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding for 90 days after the conclusion of the litigation including any appeal, unless otherwise agreed or ordered.

b. Return of CONFIDENTIAL Documents. All documents and copies defined above (¶ 5.d.), subject to this order shall within 90 days of the conclusion of the litigation, including conclusion of any appeal, shall be returned to the producing party unless:

(1) the document has been entered as evidence or filed (unless introduced or filed under seal);

(2) the parties stipulate to destruction in lieu of return; or

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(3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction.

Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of CONFIDENTIAL documents. This documents and designation will continue to be CONFIDENTIAL under the terms of this Order.

12. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

13. **No Judicial Determination.** This Order is entered based on the representations and agreements of the Plaintiffs and Academy and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c), SCRCP or otherwise until such time as a document-specific ruling shall have been made.

14. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all parties, counsel for represented parties, and any non-parties that elect to benefit from the protections of this Order.

IT IS SO ORDERED.

Electronic Signature of Presiding Judge on Last Page

Consent of the Plaintiffs and Academy Provided on Next Page

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WE CONSENT:

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By: *s/D. Larry Kristinik*

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Attorneys for Academy Ltd., d/b/a Academy Sports + Outdoors

June 6, 2022

WE CONSENT:

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By: *s/J. David Standeffer*

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Attorneys for Cindy Coxie, as Special Administrator for the Estate of Johnny Coxie

June 6, 2022

LAW OFFICE OF R. MILLS ARIAIL, JR.

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Attorneys for Mary McCraw, as Special Administrator for the Estate of Megan Leigh Coxie and Carl Muller, solely as the Personal Representative for the Estate of Charles David Carver and not individually

June 6, 2022

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Attorneys for Cindy Coxie, as Special Administrator for the Estate of Johnny Coxie, Mary McCraw, as Special Administrator for the Estate of Megan Leigh Coxie and Carl Muller, solely as the Personal Representative for the Estate of Charles David Carver and not individually

June 6, 2022

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June 6, 2022

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Spartanburg Common Pleas

Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al

Case Number: 2018CP4204297

Type: Order/Amend

It is so Ordered.

s/ R. Keith Kelly - 2165

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EXHIBIT 7

From: **Hayes, J. Mark** mhayesj@sccourts.org
Subject: RE: [Proposed Order(s) on Production Schedule] Carver Coxie Litigation
Date: July 10, 2023 at 11:01 AM
To: Robert Cross rcross@bradyunited.org, Hayes, J. Mark Law Clerk (Joseph Hanna, III) mhayeslc@sccourts.org, mhayesc@sccourts.org
Cc: Matt Abee matt.abee@nelsonmullins.com, mschiavo@motleyrice.com, dave@standefferlaw.com, edavis@bradyunited.org, mills@rmalawoffice.com, Sam Outten sam.outten@nelsonmullins.com, jrenzulli@renzullilaw.com, sallan@renzullilaw.com, dmiller@motleyrice.com, jklein@bradyunited.org, Larry Kristinik larry.kristinik@nelsonmullins.com, Eileen Hindman eileen.hindman@nelsonmullins.com

---

Everyone
Thank you for the proposed Form 4s. After reviewing both form 4s, I will be signing the form 4 proposed by the plaintiff as it most closely reflects my intended ruling.

The language that this Court has "rejected" all of the defendant Academy's arguments misrepresents this Court's ruling. A more correct statement is that, but for the quality of Academy's arguments, the present discovery ruling would be substantially different.

Also, last Friday I signed the Consent Order Extending Deadlines. I greatly appreciate the parties working together and agreeing on any issue in this case. However, please remember that the trial will begin November 27th

As you all may recall, Court Administration has rearranged my schedule so that I am available to conduct a three (3) trial in Spartanburg County.

Accomplishing this trial as agreed is a high priority. I will be as flexible with and available to the attorneys as much as I can. Please note that I have another three (3) week trial set to start in mid-September. So, at times, my availability may not be as open as the attorneys may desire. I will do my best.

Also, please note this trial will most likely occur in the new Spartanburg County Courthouse. The new courthouse is on the same geographic campus as the present building. With the building being new, no one is familiar with the technology in the courtrooms. From the information shared with me, I anticipate that the circuit court area will be operational well in advance of our starting the trial. As time nears for the trial, please reach out to my office or the Spartanburg Clerk's office for an update on the building and its technology.

I have not had the pleasure and privilege of working with many of you. So, please do not shy away from reaching out to me or my staff if any of us can be of assistance.

In advance thank you all for your continued attention and cooperation

Mark Hayes

From: Robert Cross <rcross@bradyunited.org.
Sent: Friday, July 7, 2023 11:59 AM
To: Hayes, J. Mark <mhayesj@sccourts.org>; Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayeslc@sccourts.org>; mhayesc@sccourts.org
Cc: Matt Abee <matt.abee@nelsonmullins.com>; mschiavo@motleyrice.com; dave@standefferlaw.com; edavis@bradyunited.org; mills@rmalawoffice.com; Sam

Outten <sam.outten@nelsonmullins.com>; jrenzulli@renzullilaw.com; sallan@renzullilaw.com; dmiller@motleyrice.com; jklein@bradyunited.org; Larry Kristinik <larry.kristinik@nelsonmullins.com>; Eileen Hindman <eileen.hindman@nelsonmullins.com>
Subject: [Proposed Order(s) on Production Schedule] Carver Coxie Litigation

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear J. Hayes,

During our July 6, 2023 hearing, you directed Plaintiffs' counsel in the Carver-Coxie litigation to assist in preparing a Form 4 order outlining your rulings on a production schedule for the information discussed in Plaintiffs' recent Motion to Compel. Please find, attached, the requested proposed order, which reflects our best efforts to accurately capture the Court's wishes.

Plaintiffs provided a copy of our proposed order to Academy. We appreciate that Academy acted expeditiously in returning their suggested comments on the proposed order. We agreed to incorporate some of these comments. However, there is one provision where the parties disagree. This has necessitated us providing both our proposed order (without that provision) and an alternative order from Academy (with that provision). We informed Academy that this was our intended approach and appreciate their engagement on this point. We do, however, wish to flag, for the Court, the provision which has resulted in the disagreement.

Specifically, Academy requested a provision which states "[t]he Court has entertained and addressed all of Academy's arguments raised in its briefing and oral argument, and rejects those arguments." This provision appears as No. 10 in their proposed order. As Plaintiffs explained in an email to Academy, Plaintiffs do not feel comfortable with that provision. This is because we do not think that this is an accurate representation of the Court's rulings. First, as noted in one or more other provisions of the order, the Court clearly has not rejected Academy's burden arguments. Instead, the Court has ordered us to continue meeting and conferring in an effort to alleviate Academy's burden concerns. Second, also as noted in one or more other provisions of the order, the Court has not rejected Academy's privacy/confidentiality arguments outright. Instead, in consideration of Academy's concerns about privacy/confidentiality, the Court has allowed Academy to, if it desires, replace customer names and addresses with unique identifiers. That concession eliminates any remaining concern as to privacy/confidentiality rights that may arguably exist even though Plaintiffs' position is that no such concern remains and that this additional protection is unnecessary given the expansive protections of the Amended Confidentiality Order.

We do flag for the Court a last minute edit to Provision 6 in our order whereby we included a clarifying parenthetical: "If this is done, such unique numeric identifiers need to match the numeric identifiers used by Academy to identify specific customers referenced in the relevant trace-related spreadsheets **(or other trace-related documents, including, but not limited to, trace-related emails)."** (parenthetical bolded). That parenthetical does not appear in Academy's Provision 6 because we did not wish to include any significant change to the text of Academy's proposed order. If the Court chooses to adopt Academy's order, we would respectfully ask the Court to carry over the parenthetical we suggest to help clarify this point.

Ultimately, we defer to the Court's sound discretion as to whether Plaintiffs' proposed order,

Academy's proposed order or some other version of the order would be best.

Thank you, and we hope that both the Court and Academy have a pleasant weekend. We look forward to, consistent with the Court's guidance, quickly reviewing Academy's initial production due Tuesday at 1:30 PM.

Best,

Robert M. Cross
Counsel, Trial & Appellate Litigation
Brady
(D) 914-714-3418
www.bradyunited.org

Every gift helps free America from the grip of gun violence. Be part of the solution today.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.
~~~

EXHIBIT 8

From: **Hayes, J. Mark** mhayesj@sccourts.org
Subject: RE: Coxie -- Clarification Inquiry as to Scope of Stay
Date: July 19, 2023 at 4:37 PM
To: Larry Kristinik larry.kristinik@nelsonmullins.com, Robert Cross rcross@bradyunited.org
Cc: Hayes, J. Mark Law Clerk (Joseph Hanna, III) mhayeslc@sccourts.org, Hayes, J. Mark Secretary (Sharyn M. Walker) mhayessc@sccourts.org, edavis@bradyunited.org, jklein@bradyunited.org, mschiavo@motleyrice.com, dave@standefferlaw.com , mills@rmalawoffice.com, dmiller@motleyrice.com, Sam Outten sam.outten@nelsonmullins.com, jrenzulli@renzullilaw.com, crenzulli@renzullilaw.com, sallan@renzullilaw.com, Matt Abee matt.abee@nelsonmullins.com, Matt Bogan Matt.Bogan@nelsonmullins.com, Kelly Taylor kelly.taylor@nelsonmullins.com, Kevin Werner kevin.werner@nelsonmullins.com

All

Thank you for your questions.

I read the request contained in the Motion For Stay as a request to stop the "production" of documents contained in the pre-trial discovery orders.

As both of you noted, the Stay is in place for the materials that were to have been produced on July 11, 2023, and on July 21, 2023.

After reading your emails, I agree with both attorneys for the need of clarity as to the Acquisition and Disposition (A&D) books that were to be made available to the Plaintiffs by August 8, 2023. I did not read the A&D books being made "available" as requiring production in the same manner as the other two items. My reading was that the A&D books being made available was part of the discovery negotiation process when the parties were required to meet and confer. I did not read the request for Stay as asking that the discovery process to be completely stopped. Also, based on my belief that the parties desired to keep the November trial date, if possible, a narrower reading of the Stay's request seemed appropriate. Also, in preparing the Order, I examined the case law and exhibits that have been provided in the past for my justification of not stopping all discovery.

Notwithstanding my explanation, it appears that Academy believes that making the A&D book "available" was within their original request seeking to stop the "production" so I will extend the Stay to include the requirement of making the A&D documents "available" on August 8, 2023.

Note that I have not been served with the Notice of Appeal and have not considered the subject matter of the Appeal other that what was referenced in the Motion to Stay. Given what is in the Motion, I am sure the subject matter of the Appeal is very broad and maybe the same as is in the Motion.   I respect the Appeal but neither side asked me to consider it other than what was referenced in the Motion to Stay.

I hope the above provides the clarity that is needed.

Since I prepared the Order without input from either side, I am sure other ambiguities may arise. Again, please feel free to reach out if I can be of further assistance in your preparation of the appellate issues or understanding my intent with continuing the discovery process in an effort to keep the trial date.

Thank you all for your continued attention and cooperation

Mark Haves

The State Of South Carolina
In The Supreme Court

RECEIVED

Jul 20 2023

S.C. SUPREME COURT

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297
Court of Appeals Case No. 2023-001094

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie, ...Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson.. Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors,......................... Cross-claimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,.......................Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports + Outdoors,
is the ....Petitioner.

Proof of Service

I, the partner of the law offices of Motley Rice LLP, attorneys for Respondent/Plaintiff Cindy Coxie, as Personal Representative of the Estate of Johnny Coxie, certify that I have served all parties in this action with a copy of the document(s) set forth below by the following methods:

Document(s): **Respondent's Return to Petition for Writ of Certiorari**

Counsel/Parties Served:

Via USPS
Todd Christopher Kohlhepp, 00372454
Lieber Correctional Institute
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Ridgeville, SC 29472

Via USPS
Dustan Lawson
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Pauline, SC 29374

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s/ Mary Schiavo
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Attorneys for Respondents