

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Teasa K. Weaver
Master-In-Equity

Case No. 2020-CP-46-3434

John Patton and Tara Patton (*Plaintiffs*),

Appellants,

v.

Palmetto Contracting Services of York County, LLC and
Lester Van Epps (*Defendants*),

Respondents.

MOTION FOR REINSTATEMENT

Appellate Case No.: 2023-000740

Pursuant to Rule 260 of the South Carolina Appellate Court Rules the Appellants, by their counsel herein, moves this Court for an Order granting the reinstatement of this appeal on the grounds stated below:

BACKGROUND

1. The Appellants' Record on Appeal was filed and served on November 22, 2023. Pursuant to the Supreme Court of South Carolina's May 6, 2022 amended Order (Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court

Rules (As Amended May 6, 2022)), Appellants' Record on Appeal was filed and served electronically by emailing pdf copies of Appellants' Record on Appeal and Proof of Service to ctappfilings@sccourts.org, as well as to counsel for the Respondents (Exhibit 1). Appellant also delivered hard copies by US mail to the Court of Appeals at P.O. Box 11629, Columbia, SC 29211, counsel for Respondents, and the lower Court (Exhibit 2). Mailed copies were bound via a binding clip placed above the upper left-hand margin.

2. The Appellants' Final Brief was filed and served on December 18, 2023. Appellants' Final Brief was filed and served electronically by emailing pdf copies of Appellant's Final Brief, Certificate of Counsel and Proof of Service to ctappfilings@sccourts.org, as well as to counsel for the Respondents (Exhibit 3). Appellant also delivered hard copies by US mail to the Court of Appeals at P.O. Box 11629, Columbia, SC 29211, counsel for Respondents, and the lower Court (Exhibit 4). Mailed copies were bound via a binding clip placed above the upper left-hand margin.
3. On January 2, 2024, Appellants received correspondence from the Court, notifying them that the following deficiencies existed within the filings:
 - a. The caption/title does not comply with Rule 267(a), SCACR. Specifically, the brief has been titled as the "Initial Brief of Appellants".
 - b. The document has not been timely filed. A motion to allow the late filing will have to be made. (Exhibit 5)
4. Appellants cured the deficiencies as identified by the Court's correspondence and filed and served by email pdf copies of Appellants' Motion for Extension of Time, Appellants' Final Brief (with deficiencies corrected), Certificate of Counsel, and Proofs of Service on January 3, 2024. The \$50 filing fee, as well as a hard copy of each document, were

delivered by US mail to the Court of Appeals at P.O. Box 11629, Columbia, SC 29211 (Exhibit 6). Mailed copies were bound via a binding clip placed above the upper left-hand margin.

5. On January 17, 2024, Appellants were served an Order by the Court stating:

“Appellants have filed a motion for extension of time to serve and file the corrections for the appellants' final brief. No return was received. This motion is Granted. The appellants' final brief has been received and is accepted as filed.”

(Exhibit 7).

6. On January 19, 2024, Appellants received correspondence from the Court, referring to its November 3, 2023 letter and stating that it had not received a bound copy of the Record on Appeal and Appellants' Final Brief. The correspondence stated that Appellants must provide one bound copy of the record on appeal and Appellants' Final Brief within ten days (Exhibit 8).
7. Interpreting this letter as a request to provide a hard copy of both documents bound together, Appellants delivered by US mail a hard copy of the Record on Appeal and Appellants' Final Brief to the Court of Appeals at P.O. Box 11629, Columbia, SC 29211 (Exhibit 9). The two documents were bound via a binding clip placed above the upper left-hand margin.
8. On February 6, 2024, Appellants were served an Order by the Court dismissing the appeal for failure to provide one bound copy of the record on appeal and appellants' final brief under Rule 211.

ARGUMENT

Under Rule 267 of the South Carolina Appellate Court Rules (SCACR), an appeal may be reinstated “for good cause shown.” Appellants’ grounds for good cause are that they had a good faith belief that they had cured the deficiencies noted by the Court within their filings and a good faith belief that both the electronic filings and the bound hard copies of the filings had been received and accepted by the Court.

This is the first appeal ever brought by counsel for Appellants. It is Appellants’ belief that this appeal was dismissed either due to an issue with the binding requirements or the Court not receiving its mailed copies. In its February 6, 2024 Order of Dismissal, the Court states that its grounds for dismissal are that “the Appellants has failed to provide one bound copy of the record on appeal and appellants’ final brief.” It was Appellants’ understanding that these copies had been provided. Admittedly, however, upon an additional subsequent review of the applicable Rules and correspondences, as well as subsequent communications with the Court, Appellants have identified two potential issues that may explain why the Court did not accept these documents:

1. Binding requirements

Although Appellants did concurrently mail copies of their Final Brief and Record on Appeal along with each respective filing, Appellants do concede that the binding requirements were not fully complied with in accordance with SCACR Rule 267(d). Each of these documents were bound using a binder clip that was placed above the upper left-hand margin. However, Rule 267(d) does specify that “Records on Appeal, Appendices in post-conviction relief matters and briefs must be bound in volumes not exceeding 250 sheets each. If staples or clasps are used to

bind the volumes, the spines of the volumes shall be bound with heavy tape.” By this definition, Appellants did not provide a “bound” copy of the requested documents. Appellants also admit that the Court’s November 3, 2023 letter did refer to this rule for the binding requirements and that this detail was overlooked. Appellants plead inexperience and pray for the Court’s mercy to correct the binding deficiencies.

2. Mailing address

The other issue appears to be that the requested documents were mailed to the Court’s P.O. Box mailing address and not the Court’s street address. As identified in their correspondences, cover letters, and Proof of Service, Appellants mailed copies of all appellate filings to the Court of Appeals at the mailing address listed: P.O. Box 11629 Columbia, SC 29211. After reviewing the Court’s November 3, 2023 and January 19, 2024 letters, however, Appellants concede that the Court did request in these letters that large parcels such as bound paper copies of final briefs and the record on appeal be sent directly to the Court via the street address: 1220 Senate Street, Columbia, S.C. 29201. This may explain why all other documents were apparently received by mail except for the Record on Appeal and Final Brief. Appellants offer no excuse for overlooking the request to mail the large documents to the requested street address and admit that this oversight was the fault of the Appellants. After mailing the Initial Brief, Record on Appeal, Final Brief, corrected Final Brief, and Motion for Extension of Time, and \$50.00 motion fee, each of which were apparently received without any mailing issues, Appellants failed to recognize that the Court had not accepted their larger documents. When the Court sent its January 2, 2024 letter a letter identifying deficiencies that needed to be cured within the Final Brief, Appellants did not recognize that the mailing address was a potential issue. When the Court stated in its January 17 Order that the deficiencies were corrected, the

motion for late filing was granted, and the Final Brief was accepted and filed, Appellants did not recognize that the mailing address was an issue (the Final Brief was mailed along with the motion and \$50 filing fee). By the time Appellants received the January 19 letter stating a bound copy of the Final Brief and Record on Appeal had not been received, they mailed two additional copies, bound together, to the same P.O. Box address they had mailed every document previously. Again, the letter did specify the street address was to be used and the Appellants are at fault for overlooking that detail. Appellants understand the Court's position that the documents were not provided. But Appellants did mail these documents with a good faith belief that the deficiencies for the filings had been cured and, at the mercy of the Court, pray for an opportunity to provide them, properly bound, at the correct street address at 1220 Senate Street, Columbia, S.C. 29201.

With these concessions, Appellants plead that they have submitted the appropriate filings, corrected the deficiencies noted by the Court, and substantially complied with the Rules. With the Court's mercy, Appellants believe that correcting the bounding and mailing address issues will resolve the remaining issues with the filings. Upon information and belief, no unfair prejudice will occur to the Respondents by allowing these deficiencies to be corrected. To this end, counsel for Appellants requests a reinstatement of this appeal and to be allowed to mail the requested bound copies of the Record on Appeal and the Final Brief.

The basis of this Motion is the within-cited Rules and the records of this appeal, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellants herein move this Court to be allowed for a reinstatement of this appeal and the mailing of the bound copies of the Record on Appeal and the Final Brief,

as set out above, until this date.

s/Charles B. Burnette IV
Charles B. Burnette IV
Bar No.: 103747
BurnetteLaw, LLC
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Appellants
John Patton and Tara Patton

February 15, 2024

Rock Hill, South Carolina

RE: Patton v. Van Epps Appellate Case No.: 2023-000740 Record on Appeal (updated filing)

Court Of Appeals Filings <ctappfilings@sccourts.org>

Mon 11/27/2023 8:28 AM

To: Bax Burnette <bburnette@burnettelaw.net>; Court Of Appeals Filings <ctappfilings@sccourts.org>

Cc: Dan D'Agostino <Dan@ddlplaw.com>

📎 1 attachments (557 KB)

Patton v. Palmetto - POS.pdf;

Exhibit

1

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records. We also received the record with no issue.

Thank you.

From: Bax Burnette <bburnette@burnettelaw.net>**Sent:** Wednesday, November 22, 2023 6:20 PM**To:** Court Of Appeals Filings <ctappfilings@sccourts.org>**Cc:** Dan D'Agostino <Dan@ddlplaw.com>**Subject:** Patton v. Van Epps Appellate Case No.: 2023-000740 Record on Appeal (updated filing)

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

Ms. Kitchings,

Attached for filing please find Appellant's Record on Appeal and Proof of Service. Apparently, the RoA file is too large to attach to this email as a pdf file. I've attached it as a one-drive link (see below) that should allow you to access the file as a pdf. The PoS is attached as a normal pdf. Let me know if there are any issues with the files. Hard copies have been placed in the mail as well. Hope everyone has a wonderful Thanksgiving.

All the best,

[Patton RoA Final 2.pdf](#)

C. Baxter Burnette, IV

BurnetteLaw, LLC

414 E. Main St.

RECEIVED

Nov 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Teasa K. Weaver
Master-In-Equity

Case No. 2020-CP-46-3434

Exhibit

2

John Patton and Tara Patton (*Plaintiffs*),

Appellants,

v.

Palmetto Contracting Services of York County, LLC and
Lester Van Epps (*Defendants*),

Respondents.

PROOF OF SERVICE

I, C. Baxter Burnette, the undersigned employee of BurnetteLaw, LLC, hereby certify that pursuant to Rules 203 and 262(b), SCACR, I have served the Notice of Appeal of John Patton and Tara Patton in this matter on counsel of record, the Clerk of the Court of Appeals, and the Clerk of Court for York County by delivering a copy or mailing a copy, United States Mail, postage prepaid, on November 22, 2023, to the following addresses:

Clerk of the Court of Appeals:

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

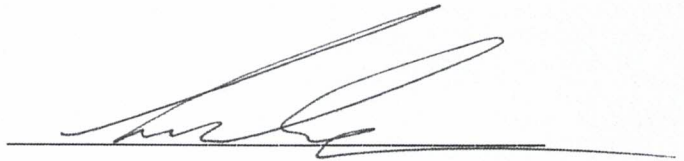
Clerk of Court for York County:

The Honorable David Hamilton

Clerk of Court of York County
P.O. Box 649
York, SC 29745

***Attorneys for the Respondents Palmetto Contracting Services of York County, LLC and
Lester Van Epps:***

Dan D'Agostino
D'Agostino Law Firm
1171 Market Street #102
Fort Mill, SC 29708

A handwritten signature in black ink, appearing to read "Dan D'Agostino", is written over a horizontal line. The signature is stylized and cursive.

November 22, 2023
Rock Hill, South Carolina

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

From: Bax Burnette <bburnette@burnettelaw.net>
Sent: Monday, December 18, 2023 4:02 PM
To: Court Of Appeals Filings <ctappfilings@sccourts.org>
Cc: Dan D'Agostino <Dan@ddlplaw.com>; Beth Gault <bgault@burnettelaw.net>
Subject: John Patton vs Palmetto Contracting Services of York County (2023-000740) Final Brief

Exhibit

3

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

Ms. Kitchings,

Please find attached for filing Appellant's Final Brief, Certificate of Counsel (located at end of brief), and Proof of Service. Hard copies are being put in the mail today.

All the best,

C. Baxter Burnette, IV
BurnetteLaw, LLC
414 E. Main St.
Rock Hill, SC 29730
803-328-1800

This e-mail message is confidential and is intended only for the named recipients. It may contain information that is subject to the attorney-client privilege of confidentiality. If you have received this e-mail message in error or you are not the named person to whom it was sent, please notify the sender immediately, delete this message from your computer, and destroy all copies. Thank you.

~~~ 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.

**Re: John Patton vs Palmetto Contracting Services of York County (2023-000740) Final Brief**

Bax Burnette &lt;bburnette@burnettelaw.net&gt;

Mon 12/18/2023 4:27 PM

To: Beth Gault &lt;bgault@burnettelaw.net&gt;

Nope only one copy of the final brief needs to be mailed to each party.

C. Baxter Burnette, IV  
BurnetteLaw, LLC  
414 E. Main St.  
Rock Hill, SC 29730  
803-328-1800

Exhibit

4

**This e-mail message is confidential and is intended only for the named recipients. It may contain information that is subject to the attorney-client privilege of confidentiality. If you have received this e-mail message in error or you are not the named person to whom it was sent, please notify the sender immediately, delete this message from your computer, and destroy all copies. Thank you.**

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**From:** Beth Gault <bgault@burnettelaw.net>**Sent:** Monday, December 18, 2023 4:23 PM**To:** Bax Burnette <bburnette@burnettelaw.net>**Subject:** RE: John Patton vs Palmetto Contracting Services of York County (2023-000740) Final Brief

I already have the hard copies in the mail, so I hope I didn't need to send stamped copies.

**Beth Gault**

Legal Assistant to Charles B. Burnette III  
BurnetteLaw, LLC  
414 E. Main Street  
Rock Hill, SC 29730  
(803) 328-1800 ext. 29  
(803) 328-9494 (fax)

This e-mail message is confidential and is intended only for the named recipients. It may contain information that is subject to the attorney-client privilege of confidentiality. If you have received this e-mail message in error or you are not the named person to whom it was sent, please notify the sender immediately, delete this message from your computer, and destroy all copies. Thank you.

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**From:** Court Of Appeals Filings <ctappfilings@sccourts.org>**Sent:** Monday, December 18, 2023 4:22 PM**To:** Bax Burnette <bburnette@burnettelaw.net>; Court Of Appeals Filings <ctappfilings@sccourts.org>**Cc:** Dan D'Agostino <Dan@ddlplaw.com>; Beth Gault <bgault@burnettelaw.net>**Subject:** RE: John Patton vs Palmetto Contracting Services of York County (2023-000740) Final Brief

Dear Counsel:



# The South Carolina Court of Appeals

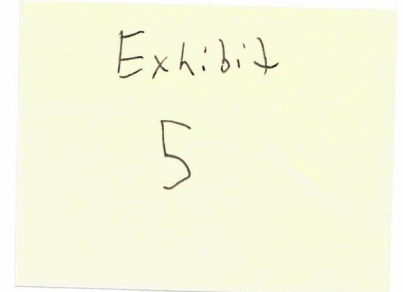
JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

January 02, 2024

Mr. Charles Baxter Burnette, IV, Esquire  
414 E. Main St.  
Rock Hill SC 29730



Re: John Patton v. Palmetto Contracting Services of York County, LLC  
Appellate Case No. 2023-000740

Dear Counsel:

Upon reviewing your appellants' final brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the brief has been titled as the "Initial Brief of Appellants".
- The document has not been timely filed. A motion to allow the late filing will have to be made.

Very truly yours,

A handwritten signature in black ink that reads "Catherine Harrison, deputy".

CLERK

cc: Daniel Dominic D'Agostino, Esquire

**RE: John Patton v. Palmetto Contracting Services of York County, LLC (2023-000740)**

Court Of Appeals Filings &lt;ctappfilings@sccourts.org&gt;

Wed 1/3/2024 11:59 AM

To: Bax Burnette &lt;bburnette@burnettelaw.net&gt;; Court Of Appeals Filings &lt;ctappfilings@sccourts.org&gt;

Cc: Dan D'Agostino &lt;Dan@ddlplaw.com&gt;

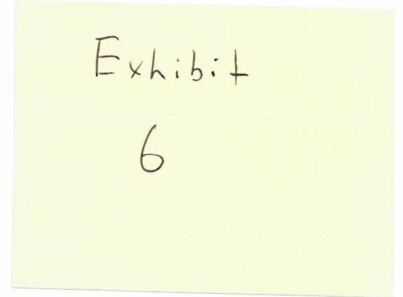
📎 3 attachments (758 KB)

Patton v. Palmetto - AFB.pdf; Patton v. Palmetto - POS.pdf; Patton v. Palmetto - Ext.pdf;

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.



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**From:** Bax Burnette <bburnette@burnettelaw.net>**Sent:** Wednesday, January 3, 2024 11:53 AM**To:** Court Of Appeals Filings <ctappfilings@sccourts.org>**Cc:** Dan D'Agostino <Dan@ddlplaw.com>**Subject:** John Patton v. Palmetto Contracting Services of York County, LLC (2023-000740)

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

Ms. Kitchings,

Please find attached for filing Appellants' Motion for Extension of Time, Appellants' Final Brief (with deficiencies corrected), Certificate of Counsel, and Proofs of Service. The \$50 filing fee has been mailed to the Court, along with hard copies.

All the best,

C. Baxter Burnette, IV

BurnetteLaw, LLC

414 E. Main St.

Rock Hill, SC 29730

803-328-1800

# The South Carolina Court of Appeals

John Patton and Tara Patton, Appellants,

v.

Palmetto Contracting Services of York County, LLC and  
Lester Van Epps, Respondents.

Appellate Case No. 2023-000740

The Honorable Teasa Kay Weaver  
York County  
Trial Court Case No. 2020CP4603434

Exhibit

7

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## ORDER

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Appellants have filed a motion for extension of time to serve and file the corrections for the appellants' final brief. No return was received. This motion is Granted. The appellants' final brief has been received and is accepted as filed.

FOR THE COURT  
BY Catherine Harrison, deputy  
CLERK

Columbia, South Carolina

cc:  
Charles Baxter Burnette, IV, Esquire  
Daniel Dominic D'Agostino, Esquire

**FILED**  
**Jan 17 2024**



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

January 19, 2024

Mr. Charles Baxter Burnette, IV, Esquire  
414 E. Main St.  
Rock Hill SC 29730

Exhibit  
8

Re: John Patton v. Palmetto Contracting Services of York County, LLC  
Appellate Case No. 2023-000740

Dear Counsel:

We sent a letter requesting one (1) bound copy of the record on appeal and appellants' final brief dated November 3, 2023. See *Re: Reduced Number of Copies Required in Appellate Matters* (S.C. Sup. Ct. Order dated August 25, 2021). As of today's date, we have not received one (1) bound copy of the record on appeal and appellants' final brief.

Within ten (10) days from the date of this letter, the appellants must provide one (1) bound copy of the record on appeal and appellants' final brief. Failure to provide one (1) bound copy of the record on appeal and appellants' final brief within ten (10) days from the date of this letter will result in the dismissal of this appeal.

We request large parcels such as bound paper copies of final briefs and the record on appeal be sent directly to the Court via the street address: 1220 Senate Street, Columbia, S.C. 29201.

Thank you for your attention. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

*Catherine Hannisa, deputy*

CLERK

cc: Daniel Dominic D'Agostino, Esquire

# BurnetteLaw, LLC

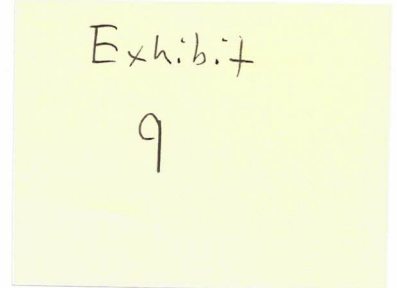
Attorneys at Law

Charles B. Burnette III  
Charles B. Burnette IV

414 E. Main Street  
Rock Hill, SC 29730

Telephone (803) 328-1800  
Fax (803) 328-9494  
[bburnette@burnettelaw.net](mailto:bburnette@burnettelaw.net)

January 24, 2024



**Via US Mail**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: John Patton v. Palmetto Contracting Services of York County, LLC (2023-000740)

Dear Ms. Kitchings:

Enclosed please find a hard copy of Appellants' Final Brief.

Sincerely,

A handwritten signature in black ink, which appears to be "Charles B. Burnette IV", is written over a horizontal line.

Charles B. Burnette IV

RECEIVED

Feb 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable Teasa K. Weaver  
Master-In-Equity

---

Case No. 2020-CP-46-3434

---

John Patton and Tara Patton (*Plaintiffs*),

*Appellants,*

v.

Palmetto Contracting Services of York County, LLC  
and Lester Van Epps (*Defendants*),

*Respondents.*

---

**PROOF OF SERVICE**

---

I certify that I have served this Motion for Reinstatement of Appellants to the Court of Appeals by US Mail and to Attorney for Respondent by Electronic Mail on the following as addressed below on this 15th day of February, 2024:

**The Court of Appeals:**  
South Carolina Court of Appeals  
Shelby Spencer  
Appeals Specialist  
1220 Senate Street  
Columbia, SC 29201

**Dan D. D'Agostino** at [dan@ddllplaw.com](mailto:dan@ddllplaw.com)  
Attorney for Respondents

*s/Charles B. Burnette IV*

Charles B. Burnette IV

Bar No.: 103747

BurnetteLaw, LLC

414 E. Main Street

Rock Hill, SC 29730

Ph.: (803) 328-1800

Fax: (803) 328-9494

[bburnette@burnettelaw.net](mailto:bburnette@burnettelaw.net)

Attorney for Appellants