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IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2010-CP-42-2075  
Appellate Case No. 2013-000648

Digital Ally, Inc.,

Respondent,

v.

Light-N-Up, LLC and Steven  
Shepherd

Appellants.

RECEIVED  
JUL 22 2013  
SC COURT OF APPEALS

RECORD ON APPEAL

June 25, 2013

Scott F. Talley  
TALLEY LAW FIRM, P.A.  
2500 Winchester Place, Suite 100  
Spartanburg, South Carolina 29301  
(864) 595-2966  
Attorney for Appellants

David Walsh  
GAINES & WALSH  
P. O. Box 5156  
150 Archer Street [29306]  
Spartanburg, SC 29304  
(864) 583-6363  
Attorney for Respondent

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IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

R. Ferrell Cöthran, Jr., Circuit Court Judge

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Digital Ally, Inc.,

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v.

Light-N-Up, LLC and Steven  
Shepherd

Appellants.

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**RECORD ON APPEAL**

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**RECEIVED**

JUN 26 2013

**SC Court of Appeals**

June 25, 2013

Scott F. Talley  
TALLEY LAW FIRM, P.A.  
2500 Winchester Place, Suite 100  
Spartanburg, South Carolina 29301  
(864) 595-2966  
Attorney for Appellants

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Digital Ally, Inc.,

Plaintiff,

ORDER CONFIRMING  
FOREIGN JUDGEMENT

vs.

2010-CP-42-2075

Light-N-Up, LLC and  
Steven Shepherd,

Defendants.

This matter came before me for hearing on July 16, 2012. Based upon the documents on file and the arguments of counsel I find and conclude that Defendants' motion for relief from foreign judgment should be denied and Plaintiff's foreign judgment should be confirmed.

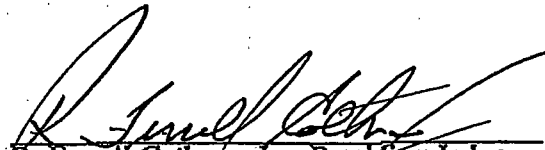
A foreign judgment is presumed valid under the Full Faith and Credit Clause of the U.S. Constitution. A debtor who challenges a foreign judgment has the burden of overcoming the presumption of validity. See, Law Firm Of Paul L. Erickson, PA v Boykin, 383 S.C. 497, 681 S.E.2d 575 (2009). In this case, Defendants failed to present any evidence regarding the lack of jurisdiction of the Missouri Courts. The facts as presented indicate that Defendants transacted business, contracted with Plaintiff and allegedly committed torts, all within Missouri. The Missouri Long Arm Statute [§506.500] confers proper personal and subject matter jurisdiction over Defendants to the Missouri Courts under these facts. Based on the foregoing:

IT IS ORDERED that the foreign judgement enrolled with the Spartanburg County Clerk of Court against the Defendants, Light-N-Up, LLC and Steven Shepherd in Judgement Roll 2010-CP-42-2075 is hereby confirmed as a valid judgement. It is effective as of the date of filing on April 19, 2010, and is entitled to full faith and credit under Laws of the State of South Carolina.

IT IS FURTHER ORDERED that Plaintiff may enforce this judgement in the same manner as a judgement of this State.

IT IS SO ORDERED.

September \_\_\_\_\_, 2012  
\_\_\_\_\_, SC

  
R. Perrell Cochran, Jr., Presiding Judge  
Seventh Judicial Circuit

Feb. 4, 2013  
Manning JC

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SPARTANBURG COUNTY  
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M. HOPE BLOCKLEY

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Digital Ally, Inc.,

Plaintiff,

AMENDED ORDER CONFIRMING  
FOREIGN JUDGEMENT

vs.

2010-CP-42-2075

Light-N-Up, LLC and  
Steven Shepherd,

Defendants.

This matter came before me for hearing on July 16, 2012. Based upon the documents on file and the arguments of counsel, I find and conclude that Defendants' motion for relief from foreign judgment should be denied and Plaintiff's foreign judgment should be confirmed.

A foreign judgment is presumed valid under the Full Faith and Credit Clause of the U.S. Constitution. A debtor who challenges a foreign judgment has the burden of overcoming the presumption of validity. See, Law Firm Of Paul L. Erickson, PA v Boykin, 383 S.C. 497, 681 S.E.2d 575 (2009). In this case, Defendants presented evidence that the contract entered into between the parties included a forum selection clause listing Kansas law as the governing law for the contract. The Defendants also presented an affidavit from Steve Shepherd of Light-N-Up, LLC, stating that Light-N-Up has "never operated or done business in the State of Missouri." Shepherd Aff.. The facts as presented indicate that Defendants contracted with Plaintiff in Kansas and the goods were shipped from the Plaintiff's factory in Missouri. The Missouri Long Arm Statute [§506.500] confers proper personal and subject matter jurisdiction over Defendants to the Missouri Courts under these facts. Based on the foregoing:

**IT IS ORDERED** that the foreign judgment enrolled with the Spartanburg County Clerk of Court against the Defendants, Light-N-Up, LLC and Steven Shepherd in Judgment Roll 2010-CP-42-2075 is hereby confirmed as a valid judgment. It is effective as of the date of filing on April 19, 2010, and is entitled to full faith and credit under the

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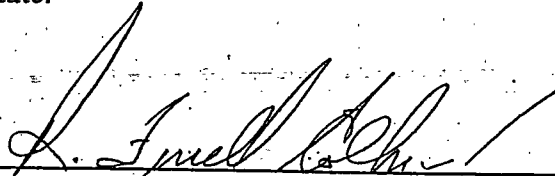
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Laws of the State of South Carolina.

**IT IS FURTHER ORDERED** that Plaintiff may enforce this judgment in the same manner as a judgment of this State.

**IT IS SO ORDERED.**

February 24, 2013  
Manning, SC

  
R. Ferrell Cothran, Jr., Presiding Judge  
Seventh Judicial Circuit

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SPARTANBURG COUNTY  
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### GENERAL ALLEGATIONS

5. Beginning on or about May 21, 2008, defendant Light-N-Up, LLC and defendant Steven Shepherd (collectively "Defendants") entered into a series of contracts ("Contracts") with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver products to Defendants to be installed by Defendants on behalf of third party government agencies. These products consist of audio/video units to be installed in police and government vehicles ("Products").

6. Pursuant to the Contracts, the government agencies, such as sheriff's departments, police departments, etc. ("Government"), were to pay Plaintiff directly for the Products and pay Defendants directly for the installation thereof on their vehicles.

7. Plaintiff delivered the Products to Defendants pursuant to the Contracts and Defendants installed them into the vehicles owned by the Government. Invoices documenting the Products sold and proof of delivery of such Products are attached hereto as Exhibit A and incorporated herein by reference.

8. Rather than the Government paying Plaintiff directly for the Products ordered, Defendants invoiced and collected the money from the Government for both the Products and the installation thereof. Defendants then failed to pay the money collected for the Products to Plaintiff. This was done because of the financial position of Defendants. At present, and continuing, Defendants owe to Plaintiff for Products sold the sum of \$60,932.00, plus interest of \$6,591.72, for a total debt balance of \$67,523.72.

9. The obligation of Defendants to perform the terms of the Contracts in allowing the Government to pay Plaintiff directly, and/or making payment on the outstanding invoices to Plaintiff was relied upon by Plaintiff. Defendants intentionally

collected the payments from the Government and deliberately forewent rendering the payments for Products sold and delivered to Plaintiff. Defendants retained monies paid to them by the Government. Because of these intentional and fraudulent acts committed by Defendants, Plaintiff has suffered damages.

FIRST CAUSE OF ACTION  
(Breach of Contract)

10. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 9 above, as though set forth in full.

11. On or about May 21, 2008 through December 5, 2008, Defendants entered into the Contracts with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver Products to Defendants to be installed by Defendants for the Government agencies. Pursuant to the Contracts, the Government agencies were to pay Plaintiff directly for the Products and pay Defendants for the installation of the Products on their vehicles.

12. Plaintiff has performed all conditions, covenants and promises required to be performed in accordance with the terms and conditions of the Contracts when Defendants, summarily, and without just cause, breached, the terms of the Contracts.

13. On or about June 20, 2008 and continuing, Defendants breached the Contracts by invoicing and collecting the payments from the Government for Products sold and installed by Defendants. Further, Defendants breached the Contracts by failing to render the payments to Plaintiff. Thus, Defendants failed to perform under the terms and conditions of the Contracts.

14. On or about June 20, 2008 and continuing to date, Defendants continue in the breach of the Contracts by continuing to not render payment to Plaintiff, despite a demand for payment made on behalf of Plaintiff.

15. As a result of the breach by Defendants of the Contracts, Plaintiff has suffered damages.

WHEREOFRE, Plaintiff prays that this Court enter judgment as follows: (1) For Plaintiff and against Defendants, jointly and severally, in the amount of \$60,932.00 for the outstanding amounts due on the Contracts; (2) For Plaintiff's reasonable attorney's fees; (3) For Plaintiff's costs herein incurred; (4) For interest on any and all unpaid amounts at the statutory rate of nine percent (9%) for pre-judgment interest in the amount of \$6,591.72 and for post-judgment interest; and (5) For such other and further relief as the Court deems just and equitable in the circumstances.

SECOND CAUSE OF ACTION  
(Fraud and Intentional Deceit)

16. Plaintiff re-alleges and incorporates herein by the reference the allegations of paragraphs 1 through 15 above as though set forth in full.

17. On or about May 21, 2008 through December 5, 2008, Defendants entered into the Contracts with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver Products to Defendants to be installed by Defendants for the Government agencies. Pursuant to the Contracts, the Government agencies were to pay Plaintiff directly for the Products and pay Defendants for the installation of the Products on their vehicles.

18. Plaintiff had performed all conditions, covenants and promises required to be performed in accordance with the terms and conditions of the Contracts and/or was prepared to perform in accordance with the terms and conditions of the Contracts when Defendants, summarily, and without just cause, breached the terms of the Contracts.

19. Defendants intentionally made false representations of material facts when inducing Plaintiff into the Contracts. Further, Defendants intentionally made false representations of material facts when invoicing the Government agencies for the Products and collecting the money from the Government agencies for the Products. The false misrepresentations included representations that Defendants would not collect the monies pursuant to the Contracts and the monies would be paid directly to Plaintiff by the Government agencies when in fact each of them intended to collect such monies directly from the Government.

20. The misrepresentations were made by each Defendant knowing that they would receive and retain the monies paid by the Government for the Products without paying Plaintiff for the Products.

21. Plaintiff would not have acted as it did if not for Defendants' misrepresentations because it would have delivered the Products to the Government agencies directly. Plaintiff relied on Defendants' misrepresentations in delivering the Products to Defendants.

22. Defendants made such representations with knowledge of the falsity and the effect that such misrepresentations would have upon Plaintiff.

23. Defendants fully intended to induce Plaintiff and the Government agencies to rely upon Defendants' misrepresentations.

24. As a result of the fraudulent actions of each Defendant, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays that this Court enter judgment as follows: (1) For Plaintiff and against Defendants, jointly and severally, in the amount of \$60,932.00 for the outstanding amounts due on the Contracts; (2) For Plaintiff's reasonable attorney's fees; (3) For Plaintiff's costs herein incurred; (4) For interest on any and all unpaid amounts at the statutory rate of nine percent (9%) for pre-judgment interest in the amount of \$6,591.72 and for post-judgment interest; (5) For punitive damages in an amount sufficient to punish Defendants; and (6) For such other and further relief as the Court deems just and equitable in the circumstances.

THIRD CAUSE OF ACTION  
(Negligent Misrepresentation)

25. Plaintiff re-alleges and incorporates herein by this reference the allegations of paragraphs 1 thorough 24 above as though set forth in full.

26. On or about May 21, 2008 through December 5, 2008, Defendants entered into the Contracts with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver Products to Defendants to be installed by Defendants for the Government agencies. Pursuant to the Contracts, the Government agencies were to pay Plaintiff directly for the Products and pay Defendants for the installation of the Products on their vehicles.

27. Plaintiff has performed all conditions, covenants and promises required to be performed in accordance with the terms and conditions of the Contracts and/or was

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prepared to perform in accordance with the terms and conditions of the Contracts when Defendants, summarily, and without just cause, breached the terms of the Contracts.

28. Defendants made untrue/unwarranted assertions, whose intent was to induce Plaintiff into the Contracts and which assertions Defendants knew to be untrue and unwarranted. The untrue/unwarranted assertions included representations that pursuant to the Contracts, Defendants would not collect the monies directly from the Government agencies for the Products and such monies would be paid directly to Plaintiff by the Government when in fact each of them intended to collect such monies directly from the Government.

29. The misrepresentations were made by each Defendant knowing that they would receive and retain the monies paid by the Government for the Products without paying Plaintiff for the Products.

30. Plaintiff would not have acted as it did if not for Defendants' misrepresentations because it would have delivered the Products to the Government agencies directly. Plaintiff relied on Defendants' misrepresentations in delivering the Products to Defendants.

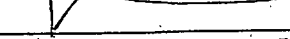
31. Defendants made untrue/unwarranted assertions to Plaintiff with knowledge of the untruthfulness of said assertions and with the knowledge of the effect that such misrepresentation would have upon Plaintiff because of their justified reliance thereupon.

32. As a result of the negligent misrepresentations, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays that this Court enter judgment as follows: (1) For Plaintiff and against Defendants, jointly and severally, in the amount of \$60,932.00 for the outstanding amounts due on the Contracts; (2) For Plaintiff's reasonable attorney's fees; (3) For Plaintiff's costs herein incurred; (4) For interest on any and all unpaid amounts at the statutory rate of nine percent (9%) for pre-judgment interest in the amount of \$6,591.72 and for post-judgment interest; and (5) for such other relief as the Court deems just and equitable in the circumstances.

Dated: December 2, 2009

RCW LAW FIRM

By:   
Troy Renkemeyer, MO Bar No. 47371  
Wendy Green, MO Bar No. 51736  
7500 College Blvd., Suite 900  
Overland Park, KS 66210  
Telephone: 913-906-9800  
Fax: 913-906-9840  
trenkemeyer@rcwlawfirm.com  
wgreen@rcwlawfirm.com  
*Attorneys for Plaintiff*  
*Digital Ally, Inc.*

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A-P

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Digital Ally, Inc.,

Plaintiff,

vs.

Light-N-Up, LLC and  
Steven Shepherd,

Defendants.

**NOTICE OF FILING**  
Jackson County, Missouri  
Circuit Court - Civil Division  
Case No. 0916-CV37648

Spartanburg County, South Carolina  
Case No. 2010-CP-42-2075

**TO: THE ABOVE NAMED DEFENDANTS, Judgment Debtors:**

**PLEASE TAKE NOTICE** that the Judgment from the Jackson County, Missouri Circuit Court - Civil Division, (Case No. 0916-CV37648) attached hereto has been filed in the Office of the Clerk of Court for Spartanburg County, South Carolina.

Name and Address  
of Judgment Creditor:

Digital Ally, Inc.  
7311 W. 130th Street  
Suite 170  
Overland Park, Kansas 66213

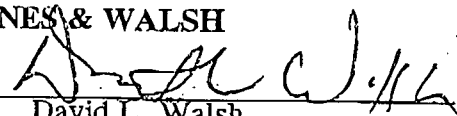
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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

Under the provisions of §15-35-930, you have thirty (30) days [35 days if service was by certified mail] from the date of service of this Notice on you, exclusive of the day of such service, to seek relief from the enforcement of the Judgment. If the Judgment is not satisfied and no relief is sought within that thirty (30) days [35 days if service was by certified mail], the Judgment will be enforced in this State in the same manner as a judgment of this State.

August 16, 2011

**GAINES & WALSH**

By:

  
David L. Walsh  
S.C. Bar # 062989  
Attorneys for Judgment Creditor  
P. O. Box 5156  
Spartanburg, SC 29304  
(864) 583-6363

000013

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Digital Ally, Inc.,

Plaintiff,

vs.

Light-N-Up, LLC and  
Steven Shepherd,

Defendants.

**AFFIDAVIT**

Jackson County, Missouri  
Circuit Court - Civil Division  
Case No. 0916-CV37648

Spartanburg County, South Carolina  
Case No. 2010-CP-42-2075

Personally appeared before me David L. Walsh, local attorney for the above named plaintiff (Judgment Creditor) who, being duly sworn, states:

1. The Judgment attached hereto from Jackson County, Missouri Circuit Court - Civil Division, (Case No. 0916-CV37648) is a final judgment;
2. The Judgment is wholly unsatisfied in the amount of \$67,523.72;
3. The Judgment is not further contested nor is it further contestable; and
4. There is due and owing on the Judgment as of March 17, 2010, the principal sum of \$67,523.72 together with interest accruing thereon as provided by law and all costs of this action;

SWORN to before me this 13<sup>th</sup> day of August, 2011.

*Teressa J. McCoxville* (SEAL)  
Notary Public for South Carolina  
My commission expires: 2-3-16

**GAINES & WALSH**

By: *David L. Walsh*  
David L. Walsh  
S.C. Bar # 062989  
Attorneys for  
Judgment Creditor  
P. O. Box 5156  
Spartanburg, SC 29304  
(864) 583-6363

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SPARTANBURG COUNTY  
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HOPE BLACKLEY

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 DIGITAL ALLY, INC., )  
 )  
 Plaintiff, )  
 )  
 Vs. )  
 )  
 LIGHT-N-UP, LLC )  
 And )  
 STEVEN SHEPHERD, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Case No. ~~2011 AUG 16~~

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AFFIDAVIT FOR REGISTRATION OF FOREIGN JUDGMENT

I, the undersigned, Thomas Heckman, an officer for the judgment creditor Digital Ally, Inc. declare the following:

1. Pursuant to South Carolina Code §15-35-920 (A), I submit this affidavit to the Clerk of the Spartanburg County Court as the judgment creditor and Plaintiff in an action in the Circuit Court of Jackson County, Missouri, Case No. 0916-CV37648.
2. Also pursuant to South Carolina Code §15-35-920, I am seeking to enforce a foreign judgment in the Spartanburg County Court of Common Pleas, located at 180 Magnolia Street, Spartanburg, SC 29306. Attached is a certified and exemplified copy of the judgment to be filed with the Clerk of the aforementioned court; and, I have included a check payable to the Clerk of the Court in the amount of \$150.00, to cover the costs of filing.
3. A monetary judgment was obtained against Light-N-Up, LLC and Steven Shepherd, Defendants and judgment debtors, in the amount of Sixty-Seven Thousand Five Hundred Twenty-Three and 72/100 Dollars (\$67,523.72), on March 17, 2010, which is payable in full to the above-named judgment creditor.
4. The name and last known address of the judgment debtors are: Light-N-Up, LLC at 101 Sunset Drive, Roebuck, SC 29376 and Steven Shepherd, at 101 Sunset Drive, Roebuck, SC 29376.
5. The name and last known address of the judgment creditor is: Digital Ally, Inc. 7311 W 130<sup>th</sup> Street, Suite 170, Overland Park, KS 66213.
6. As required by South Carolina Code §15-35-930, I will send a notice of the filing of the foreign judgment to Defendants, Light-N-Up, LLC and Steven Shepherd, by certified mail, return receipt requested, upon the filing of the foreign judgment with this Court.
7. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Overland Park, County of Johnson, Kansas.

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 SPARTANBURG COUNTY  
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Signed: *Thomas J. Kelly*

Dated: 4-13-2010

Subscribed and sworn to before me this 13<sup>th</sup> day of April, 2010 in Overland Park, Johnson County, Kansas.

**CHRISTA R. MORROW**  
Notary Public - State of Kansas  
My Appt. Expires 2/29/13

*Christa R. Morrow*  
Notary Public

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M. HOPE BLACKLEY

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2013-10-20 2015

AUTHENTICATION

**JUDICIAL RECORDS AND PROCEEDINGS**  
(Under Act of Congress)

STATE OF MISSOURI )  
COUNTY OF JACKSON )

SS:

I, Teresa York, Court Administrator of the Circuit Court of Jackson County, certify that the attached documents are full, true and complete copies of the original records or entries identified as follows:

ORDER FOR DEFAULT JUDGMENT DATED 03/17/10

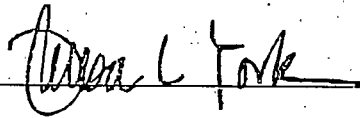
On file and of record in my office in Case No. 0916-CV37648 ENTITLED:

DIGITAL ALLY, INC. V. LIGHT-N-UP, LLC, and STEVEN SHEPHERD

I further certify that the facsimile signatures hereon, if any, have been adopted and approved as the official signature of the Presiding Judge and Court Administrator pursuant to Administrative Order No. 2009-001 of the Circuit Court of Jackson County, Missouri.

Witness my hand and the seal of the Circuit Court on March 31, 2010.

TERESA YORK  
COURT ADMINISTRATOR  
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI



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SPARTANBURG COUNTY  
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M. HOPKINS  
BLACKLEY

STATE OF MISSOURI )  
COUNTY OF JACKSON )

SS:

I, the undersigned, Presiding Judge of the Circuit Court of Jackson County, Missouri, certify that Teresa York is duly appointed Court Administrator of said Circuit Court, and, as such, is the custodian of the records and papers thereof, and that the foregoing attestation is in proper form.

Witness my hand and the seal of said Circuit Court on March 31, 2010.

W. STEPHEN NIXON  
PRESIDING JUDGE  
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI



JUDGE

CIRCUIT PC 2551

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
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Digital Ally Inc., )  
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 )  
Plaintiffs, )  
Vs. )  
 )  
Light-N-Up, LLC and Steven Sheperd, )  
 )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-42-2075

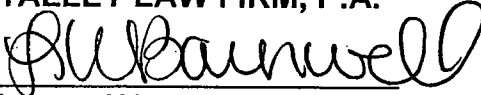
**MOTION FOR RELIEF FROM  
FOREIGN JUDGMENT**

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CLERK OF COURT  
SPARTANBURG COUNTY  
2011 SEP 26 PM 3:05  
M. HOPE BLACKBERRY

**TO THE PLAINTIFF ABOVE NAMED, by and through its counsel of record David Walsh, Esquire:**

**YOU WILL PLEASE TAKE NOTICE** that Defendants, by and through their undersigned counsel, will move the Court after 10 days, or as soon thereafter as this matter can be heard, pursuant to S.C. Code Ann. 15-35-940, for an Order dismissing the filing of Plaintiff based on Rules 12(b)(1) and 12(b)(2) of the South Carolina Rules of Civil Procedure.

This Motion is based on the fact that Plaintiff's judgment against Defendants is invalid as the issuing Court did not have jurisdiction over the Defendants to this matter.

**TALLEY LAW FIRM, P.A.**  
  
Lauren W. Barnwell  
Scott F. Talley  
959 John B. White, Sr. Blvd.  
Spartanburg, SC 29306  
864-595-2966  
Attorneys for Defendant

September 6, 2011  
Spartanburg, SC

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Digital Ally, Inc.,

Plaintiff,

vs.

Light-N-Up, LLC and  
Steven Shepherd,

Defendants.

IN THE COURT OF COMMON PLEAS

RETURN TO MOTION FOR  
RELIEF FROM FOREIGN JUDGMENT

2010-CP-42-2075

Personally appeared before me David L. Walsh, local attorney for the above named plaintiff (Judgment Creditor) who, being duly sworn, states:

1. The Petition For Recovery of Monies attached hereto was filed in Jackson County, Missouri Circuit Court - Civil Division, (Case No. 0916-CV-3764) on December 2, 2009;

2. Plaintiff prepared a Motion For Default Judgment with Certificate Of Service [attached hereto] on defendants on February 9, 2010 which was filed with the Clerk of the Jackson County, Missouri Circuit Court on February 11, 2010. Attached to said motion was a proof of personal service on each of the defendants on January 7, 2010.

3. Plaintiff prepared a Notice of Hearing with Certificate Of Service [attached hereto] on defendants on February 22, 2010 which was filed with the Clerk of the Jackson County, Missouri Circuit Court on February 24, 2010. The hearing was scheduled for March 17, 2010 at 10:30 a.m.

4. An Order for Default Judgment was entered against defendants after the hearing on March 17, 2010 and a copy of same was mailed to defendants by Kristen Stuva, Judicial Administrative Assistant on March 18, 2010.

5. Practice and procedure in Missouri is a little different from that in South Carolina. In South Carolina, the plaintiff's attorney files a Summons and Complaint with the clerk and then has it served on the defendants. In Missouri, the plaintiff's attorney files a complaint or petition with the clerk. The clerk then issues a Summons and the clerk has a copy of the Summons, together with the petition, served on the defendants. Attached is a print-out of the docket entries by the Clerk of the Jackson County, Missouri Circuit Court which indicates that after plaintiff filed its petition on December 2, 2009, the Clerk

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M. HOE BLANKENHORN

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issued a Summons on December 18, 2009. On January 16, 2010, a Return of Service was filed with the Clerk indicating that an officer with the Sheriff's Department personally served each of the defendants on January 7, 2010 at 19:00:00 hours. The Affidavit of Service was signed by Master Deputy J. D. Hughey of the Spartanburg County Sheriff's Department.

6. The Missouri Circuit Court properly exercised jurisdiction [personal and subject matter] over the defendants based on the following facts and circumstances:

A. As alleged in paragraph 4 of the petition, the delivery of the products by plaintiff to defendants occurred in Jackson County, Missouri. See paragraph 5 of Terms of Sale, attached hereto; all shipments F.O.B. [free on board] plaintiff's manufacturing facility in Grain Valley, Missouri.

B. The petition alleged causes of action for breach of contract, fraud and intentional deceit, and/or negligent misrepresentation. The Missouri long-arm statute, §506.500, RSMo., as amended [see attached] authorizes Missouri Courts to exercise jurisdiction over any non-resident person or corporation who transacts business; makes contracts, or commits tortious acts within the State of Missouri.

C. Defendants contracted with plaintiff for delivery of products on credit [Net 30 days], payable to plaintiff's address in Missouri.

D. Delivery of the products to defendants was complete in Missouri by delivery to UPS F.O.B.

7. Defendants' actions in contacting plaintiff to purchase products from its Missouri manufacturing facility, arranging credit payable in Missouri, taking delivery in Missouri, and failing to pay plaintiff, produced actionable consequences in Missouri for which exercise of jurisdiction over defendants by the Missouri Courts was proper under the Missouri long-arm statute, §506.500, RSMo., as amended and under the due process clause of the US Constitution.

Based on the foregoing, plaintiff requests that defendants' Motion For Relief From Foreign Judgment be denied and that this Court issue its Order Confirming Foreign Judgment in this matter.

The undersigned attorney affirms that the documents attached hereto are true and accurate copies as represented to the best of his knowledge after diligent inquiry and

research.

SWORN to before me this 16<sup>th</sup> day  
of July, 2012.

Cressie McConville (SEAL)  
Notary Public for South Carolina  
My commission expires: 2-3-16

**GAINES & WALSH**

By: David L. Walsh  
David L. Walsh  
S.C. Bar # 062989  
Attorneys for  
Judgment Creditor  
P. O. Box 5156  
Spartanburg, SC 29304  
(864) 583-6363

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Return To Motion For Relief of Foreign Judgment with attachments was, or will be, hand delivered to Defendants' counsel prior to the hearing on Defendants motion on July 16, 2012 at 3:30 p.m.

July 16, 2012

David L. Walsh  
David L. Walsh  
Attorney For Plaintiff

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## GENERAL ALLEGATIONS

5. Beginning on or about May 21, 2008, defendant Light-N-Up, LLC and defendant Steven Shepherd (collectively "Defendants") entered into a series of contracts ("Contracts") with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver products to Defendants to be installed by Defendants on behalf of third party government agencies. These products consist of audio/video units to be installed in police and government vehicles ("Products").

6. Pursuant to the Contracts, the government agencies, such as sheriff's departments, police departments, etc. ("Government"), were to pay Plaintiff directly for the Products and pay Defendants directly for the installation thereof on their vehicles.

7. Plaintiff delivered the Products to Defendants pursuant to the Contracts and Defendants installed them into the vehicles owned by the Government. Invoices documenting the Products sold and proof of delivery of such Products are attached hereto as Exhibit A and incorporated herein by reference.

8. Rather than the Government paying Plaintiff directly for the Products ordered, Defendants invoiced and collected the money from the Government for both the Products and the installation thereof. Defendants then failed to pay the money collected for the Products to Plaintiff. This was done because of the financial position of Defendants. At present, and continuing, Defendants owe to Plaintiff for Products sold the sum of \$60,932.00, plus interest of \$6,591.72, for a total debt balance of \$67,523.72.

9. The obligation of Defendants to perform the terms of the Contracts in allowing the Government to pay Plaintiff directly, and/or making payment on the outstanding invoices to Plaintiff was relied upon by Plaintiff. Defendants intentionally

collected the payments from the Government and deliberately forewent rendering the payments for Products sold and delivered to Plaintiff. Defendants retained monies paid to them by the Government. Because of these intentional and fraudulent acts committed by Defendants, Plaintiff has suffered damages.

FIRST CAUSE OF ACTION  
(Breach of Contract)

10. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 9 above, as though set forth in full.

11. On or about May 21, 2008 through December 5, 2008, Defendants entered into the Contracts with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver Products to Defendants to be installed by Defendants for the Government agencies. Pursuant to the Contracts, the Government agencies were to pay Plaintiff directly for the Products and pay Defendants for the installation of the Products on their vehicles.

12. Plaintiff has performed all conditions, covenants and promises required to be performed in accordance with the terms and conditions of the Contracts when Defendants, summarily, and without just cause, breached, the terms of the Contracts.

13. On or about June 20, 2008 and continuing, Defendants breached the Contracts by invoicing and collecting the payments from the Government for Products sold and installed by Defendants. Further, Defendants breached the Contracts by failing to render the payments to Plaintiff. Thus, Defendants failed to perform under the terms and conditions of the Contracts.

14. On or about June 20, 2008 and continuing to date, Defendants continue in the breach of the Contracts by continuing to not render payment to Plaintiff, despite a demand for payment made on behalf of Plaintiff.

15. As a result of the breach by Defendants of the Contracts, Plaintiff has suffered damages.

WHEREOFRE, Plaintiff prays that this Court enter judgment as follows: (1) For Plaintiff and against Defendants, jointly and severally, in the amount of \$60,932.00 for the outstanding amounts due on the Contracts; (2) For Plaintiff's reasonable attorney's fees; (3) For Plaintiff's costs herein incurred; (4) For interest on any and all unpaid amounts at the statutory rate of nine percent (9%) for pre-judgment interest in the amount of \$6,591.72 and for post-judgment interest; and (5) For such other and further relief as the Court deems just and equitable in the circumstances.

SECOND CAUSE OF ACTION  
(Fraud and Intentional Deceit)

16. Plaintiff re-alleges and incorporates herein by the reference the allegations of paragraphs 1 through 15 above as though set forth in full.

17. On or about May 21, 2008 through December 5, 2008, Defendants entered into the Contracts with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver Products to Defendants to be installed by Defendants for the Government agencies. Pursuant to the Contracts, the Government agencies were to pay Plaintiff directly for the Products and pay Defendants for the installation of the Products on their vehicles.

18. Plaintiff had performed all conditions, covenants and promises required to be performed in accordance with the terms and conditions of the Contracts and/or was prepared to perform in accordance with the terms and conditions of the Contracts when Defendants, summarily, and without just cause, breached the terms of the Contracts.

19. Defendants intentionally made false representations of material facts when inducing Plaintiff into the Contracts. Further, Defendants intentionally made false representations of material facts when invoicing the Government agencies for the Products and collecting the money from the Government agencies for the Products. The false misrepresentations included representations that Defendants would not collect the monies pursuant to the Contracts and the monies would be paid directly to Plaintiff by the Government agencies when in fact each of them intended to collect such monies directly from the Government.

20. The misrepresentations were made by each Defendant knowing that they would receive and retain the monies paid by the Government for the Products without paying Plaintiff for the Products.

21. Plaintiff would not have acted as it did if not for Defendants' misrepresentations because it would have delivered the Products to the Government agencies directly. Plaintiff relied on Defendants' misrepresentations in delivering the Products to Defendants.

22. Defendants made such representations with knowledge of the falsity and the effect that such misrepresentations would have upon Plaintiff.

23. Defendants fully intended to induce Plaintiff and the Government agencies to rely upon Defendants' misrepresentations.

24. As a result of the fraudulent actions of each Defendant, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays that this Court enter judgment as follows: (1) For Plaintiff and against Defendants, jointly and severally, in the amount of \$60,932.00 for the outstanding amounts due on the Contracts; (2) For Plaintiff's reasonable attorney's fees; (3) For Plaintiff's costs herein incurred; (4) For interest on any and all unpaid amounts at the statutory rate of nine percent (9%) for pre-judgment interest in the amount of \$6,591.72 and for post-judgment interest; (5) For punitive damages in an amount sufficient to punish Defendants; and (6) For such other and further relief as the Court deems just and equitable in the circumstances.

THIRD CAUSE OF ACTION  
(Negligent Misrepresentation)

25. Plaintiff re-alleges and incorporates herein by this reference the allegations of paragraphs 1 thorough 24 above as though set forth in full.

26. On or about May 21, 2008 through December 5, 2008, Defendants entered into the Contracts with Plaintiff whereby Plaintiff and Defendants had an agreement that Plaintiff would deliver Products to Defendants to be installed by Defendants for the Government agencies. Pursuant to the Contracts, the Government agencies were to pay Plaintiff directly for the Products and pay Defendants for the installation of the Products on their vehicles.

27. Plaintiff has performed all conditions, covenants and promises required to be performed in accordance with the terms and conditions of the Contracts and/or was

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prepared to perform in accordance with the terms and conditions of the Contracts when Defendants, summarily, and without just cause, breached the terms of the Contracts.

28. Defendants made untrue/unwarranted assertions, whose intent was to induce Plaintiff into the Contracts and which assertions Defendants knew to be untrue and unwarranted. The untrue/unwarranted assertions included representations that pursuant to the Contracts, Defendants would not collect the monies directly from the Government agencies for the Products and such monies would be paid directly to Plaintiff by the Government when in fact each of them intended to collect such monies directly from the Government.

29. The misrepresentations were made by each Defendant knowing that they would receive and retain the monies paid by the Government for the Products without paying Plaintiff for the Products.

30. Plaintiff would not have acted as it did if not for Defendants' misrepresentations because it would have delivered the Products to the Government agencies directly. Plaintiff relied on Defendants' misrepresentations in delivering the Products to Defendants.


31. Defendants made untrue/unwarranted assertions to Plaintiff with knowledge of the untruthfulness of said assertions and with the knowledge of the effect that such misrepresentation would have upon Plaintiff because of their justified reliance thereupon.

32. As a result of the negligent misrepresentations, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays that this Court enter judgment as follows: (1) For Plaintiff and against Defendants, jointly and severally, in the amount of \$60,932.00 for the outstanding amounts due on the Contracts; (2) For Plaintiff's reasonable attorney's fees; (3) For Plaintiff's costs herein incurred; (4) For interest on any and all unpaid amounts at the statutory rate of nine percent (9%) for pre-judgment interest in the amount of \$6,591.72 and for post-judgment interest; and (5) for such other relief as the Court deems just and equitable in the circumstances.

Dated: December 2, 2009

RCW LAW FIRM

By:   
Troy Renkemeyer, MO Bar No. 47371  
Wendy Green, MO Bar No. 51736  
7500 College Blvd., Suite 900  
Overland Park, KS 66210  
Telephone: 913-906-9800  
Fax: 913-906-9840  
trenkemeyer@rcwlawfirm.com  
wgreen@rcwlawfirm.com  
*Attorneys for Plaintiff*  
*Digital Ally, Inc.*

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**Exhibit A**

(Following this page.)

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Invoice	1004678
Date	5/21/2008
Page	1

7311 W 130th Street  
 Suite 170  
 Overland Park KS 66213

*Marion, NC*

**Bill To:**

Light-n-Up  
 101 Sunset Drive  
 Roebuck SC 29378

**Ship To:**

Light-n-Up  
 101 Sunset Dr  
 Roebuck SC 29376

Purchase Order No.	Customer	Dist	Salesperson	Tracking No.	Shipping Method	Terms	Req Ship Date	Master No.
3717	MARNC		STS		UPS GROUND	Net 30	9/24/2007	1,078
Order	Shipped	B/O	Item Number	Description	Discount	Unit Price	Ext Price	
3.00000	3.00000	0.00000	010-0005	Wireless Software, Client	\$0.00	\$500.00	\$1,500.00	
1.00000	1.00000	0.00000	010-0007	Wireless Software, Server	\$0.00	\$1,495.00	\$1,495.00	

Please contact Sheryl Shapiro @ 913-814-7774 with any questions.  
 Permit payment to:  
 P.O. Box 411099  
 Kansas City, MO 64141-1099  
 Thank you for your business!

Subtotal	\$2,995.00
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Total	\$2,995.00

000031

A-50

**Amy Dusselier**

**From:** UPS Quantum View [auto-notify@ups.com]  
**Sent:** Friday, January 30, 2009 4:31 PM  
**To:** Orders Mailbox  
**Subject:** UPS Ship Notification, Tracking Number 1ZAY74550161209774



This message was sent to you at the request of DIGITAL ALLY, INC. to notify you that the electronic shipment information below has been transmitted to UPS. The physical package(s) may or may not have actually been tendered to UPS for shipment. To verify the actual transit status of your shipment, click on the tracking link below or contact DIGITAL ALLY, INC. directly.

**Important Delivery Information**

**Scheduled Delivery:** 02-February-2009

**Shipment Detail**

**Ship To:**  
Light-n-Up LLC  
101 Sunset Drive  
ROEBUCK  
SC  
29376  
US  
**Number of Packages:** 4  
**UPS Service:** NEXT DAY AIR  
**Weight:** 36.0 LBS  
**Tracking Number:** 1ZAY74550161209774  
**Reference Number 1:** ORD00006637  
**Reference Number 2:** NEW

Click here to track if UPS has received your shipment or visit [http://www.ups.com/WebTracking/track?loc=en\\_US](http://www.ups.com/WebTracking/track?loc=en_US) on the Internet.



[Close Window](#)

## Track Shipments

### Tracking Summary

#### Packages in Shipment: 4

**Tracking Number:** 1Z AY7 455 01 6120 977 4  
**Type:** Package  
**Status:** Delivered  
**Delivered On:** 02/02/2009  
9:29 A.M.  
**Delivered To:** ROEBUCK, SC, US  
**Signed By:** WILSON

**Tracking Number:** 1Z AY7 455 01 6283 938 7  
**Type:** Package  
**Status:** Delivered  
**Delivered On:** 02/02/2009  
9:29 A.M.  
**Delivered To:** ROEBUCK, SC, US  
**Signed By:** WILSON

**Tracking Number:** 1Z AY7 455 01 6356 479 8  
**Type:** Package  
**Status:** Delivered  
**Delivered On:** 02/02/2009  
9:29 A.M.  
**Delivered To:** ROEBUCK, SC, US  
**Signed By:** WILSON

**Tracking Number:** 1Z AY7 455 01 6311 000 9  
**Type:** Package  
**Status:** Delivered  
**Delivered On:** 02/02/2009  
9:29 A.M.  
**Delivered To:** ROEBUCK, SC, US  
**Signed By:** WILSON

Tracking results provided by UPS: 03/11/2009 11:55 A.M. ET

**NOTICE:** UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

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Invoice	1006369
Date	8/30/2008
Page	1

7311 W 130th Street  
 Suite 170  
 Overland Park KS 66213

*Ernie V*

*0203856*

**Bill To:**

Light-n-Up LLC  
 101 Sunset Drive  
 Spartanburg SC 29376

**Ship To:**

Light-n-Up LLC  
 101 Sunset Drive  
 Spartanburg SC 29376

Purchase Order No.	Customer ID	Salesperson	Tracking No.	Shipping Method	Terms	Req. Ship Date	Master No.
4258	GRES1	STS	1ZAY74550353720222, 1Z	DO NOT SHIP	Net 30	4/29/2008	4,768
Ordered	Shipped	Qty	Item Number	Description	Discount	Unit Price	Ext. Price
5.00000	5.00000	0.00000	001-0500	DVM500 Digital Video Mirror Kit  S/N: 01F4-3AEA, 01F4-3B27, 01F4-3B47 01F4-3B35, 01F4-3B16		\$3,795.00	\$18,975.00
5.00000	5.00000	0.00000	006-0051	G-Force Sensor Interface Option	\$0.00	\$190.00	\$950.00

Please contact Sheryl Shapiro @ 913-814-7774 with any questions.  
 Remit payment to:  
 P.O. Box 411099  
 Kansas City, MO 64141-1099  
 Thank you for your business!

Subtotal	\$19,925.00
Misc	\$0.00
Tax	\$0.00
Freight	\$150.00
Trade Discount	\$0.00
Total	\$20,075.00

000034

*A#3*

**Amy Dusseller**

---

**From:** UPS Quantum View [auto-notify@ups.com]  
**Sent:** Monday, June 30, 2008 4:45 PM  
**To:** Orders Mailbox  
**Subject:** UPS Ship Notification, Tracking Number 1ZAY74550354526002



This message was sent to you at the request of Digital Ally, Inc. to notify you that the package information below has been transmitted to UPS. The package(s) may not have actually been placed with UPS for shipment. To verify when and if the shipment is tendered to UPS and its actual transit status, click on the tracking link below or contact Digital Ally, Inc. directly.

**Important Delivery Information**

---

**Scheduled Delivery:** 02-July-2008

**Shipment Detail**

---

**Ship To:**  
Light-N-Up  
101 Sunset Dr.  
ROEBUCK  
SC  
29376  
US

**Number of Packages:** 5  
**UPS Service:** GROUND  
**Weight:** 45.0 LBS  
**Tracking Number:** 1ZAY74550354526002  
**Reference Number 1:** ORD00003806  
**Reference Number 2:** NEW

[Click here](http://www.ups.com/WebTracking/track?loc=en_US) to track if UPS has received your shipment or visit [http://www.ups.com/WebTracking/track?loc=en\\_US](http://www.ups.com/WebTracking/track?loc=en_US) on the Internet.

[Close Window](#)



## Tracking Summary

### Tracking Numbers

**Tracking Number:** 1Z AY7 455 03 5452 600 2  
**Type:** Package  
**Status:** Delivered  
**Delivered On:** 07/02/2008  
11:47 A.M.  
**Delivered To:** ROEBUCK, SC, US  
**Signed By:** WILSON  
**Service:** GROUND

Tracking results provided by UPS: 03/11/2009 11:38 A.M. ET

**NOTICE:** UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

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**Digital Ally**

7311 W 130th Street  
Suite 170  
Overland Park KS 66213

Invoice	1005403
Date	7/1/2008
Page	1

020 4208

**Bill To:**

Light-N-Up  
Eugene Poteat  
101 Sunset Drive  
Spartanburg SC 29376

**Ship To:**

Light-N-Up  
Eugene Poteat  
101 Sunset Drive  
Spartanburg SC 29376

Reference Order No.	Customer ID	Salesperson	Packing No.	Shipping Method	Terms	Req Ship Date	Master No.
4393	LANSC	STS	1ZAY74550353063326, 1Z	UPS GROUND	Net 30	6/6/2008	5,531
Order No.	Shipped	D/O	Item Number	Description	U/Quan	Unit Price	Ext Price
2.00000	2.00000	0.00000	001-0500	DVM500 Digital Video Mirror Kit		\$0.00	\$3,795.00
				S/N: 01F4-3AE7, 01F4-3B2F			
2.00000	2.00000	0.00000	006-0051	G-Force Sensor Interface Option		\$0.00	\$190.00
				End User: Lancaster City Police			

Subtotal	\$7,970.00
Misc	\$0.00
Tax	\$0.00
Freight	\$60.00
Tracking	\$0.00
Total	\$8,030.00

Please contact Sheryl Shapiro @ 913-814-7774 with any questions.

Remit payment to:

P.O. Box 411099

Kansas City, MO 64141-1099

Thank you for your business!

000037

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**Amy Dusseller**

**From:**  
**Sent:**  
**To:**  
**Subject:**

UPS Quantum View [auto-notify@ups.com]  
Tuesday, July 01, 2008 4:34 PM  
Orders Mailbox  
UPS Ship Notification, Tracking Number 1ZAY74550353063326



This message was sent to you at the request of Digital Ally, Inc. to notify you that the package information below has been transmitted to UPS. The package(s) may not have actually been placed with UPS for shipment. To verify when and if the shipment is tendered to UPS and its actual transit status, click on the tracking link below or contact Digital Ally, Inc. directly.

**Important Delivery Information**

**Scheduled Delivery:** 03-July-2008

**Shipment Detail**

**Ship To:**  
Eugene Poteat  
Light-N-Up  
101 Sunset Dr.  
ROEBUCK  
SC  
29376  
US

**Number of Packages** 2

**UPS Service:** GROUND

**Weight:** 18.0 LBS

**Tracking Number:** 1ZAY74550353063326

**Reference Number 1:** ORD00004208

**Reference Number 2:** NEW

[Click here](http://www.ups.com/WebTracking/track?loc=en) to track if UPS has received your shipment or visit <http://www.ups.com/WebTracking/track?loc=en> US on the Internet.

Close Window



## Tracking Summary

### Tracking Numbers

**Tracking Number:** 1Z AY7 455 03 5306 332 6  
**Type:** Package  
**Status:** **Delivered**  
**Delivered On:** 07/03/2008  
11:24 A.M.  
**Delivered To:** ROEBUCK, SC, US  
**Signed By:** WILSON  
**Service:** GROUND

Tracking results provided by UPS: 03/11/2009 11:35 A.M. ET

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Invoice:	1006400
Date:	8/21/2008
Page:	1

02174054

7311 W 130th Street  
Suite 170  
Overland Park KS 66213

**Bill To:**

Abbeville Police Department  
Chief Neil Henderson  
102 South Main Street  
Abbeville SC 29620

**Ship To:**

Light-N-Up  
Eugene  
101 Sunset Drive  
Spartanburg SC 29376

Purchase Order No.	Customer ID	Salesperson	Tracking No.	Shipping Method	Terms	Req. Ship Date	Invoice No.
4614	ABBSC	STS	1ZAY74560353676754, 1Z	UPS GROUND	Net 30	9/3/2008	7,029
Ordered	Shipped	B/O	Item Number	Description	Discount	Unit Price	Ext. Price
2.00000	2.00000	0.00000	001-0500	DVM500 Digital Video Mirror Kit	\$0.00	\$3,995.00	\$7,990.00
				S/N: 01F4-45A7, 01F4-45BB			
2.00000	2.00000	0.00000	008-0051	G-Force Sensor Interface Option	\$0.00	\$200.00	\$400.00
2.00000	2.00000	0.00000	004-0007	Case, Wireless Mic, Leather, Hi-Gloss	\$0.00	\$35.00	\$70.00

Please contact Sheryl Shapiro @ 913-814-7774 with any questions.

Remit payment to:

P.O. Box 411099

Kansas City, MO 64141-1099

Thank you for your business!

Subtotal	\$8,460.00
Misc	\$0.00
Tax	\$0.00
Freight	\$60.00
Trade Discount	\$0.00
<b>Total</b>	<b>\$8,520.00</b>

000040

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[Close Window](#)

## Tracking Detail

Your package has been delivered.

Tracking Number: 1Z AY7 455 03 5367 675 4  
Type: Package  
Status: Delivered  
Delivered On: 08/25/2008 9:28 A.M.  
Signed By: POTEAT  
Location: RECEIVER  
Delivered To: ROEBUCK, SC, US  
Service: GROUND

### Package Progress

Location	Date	Local Time	Description
SPARTANBURG, SC, US	08/25/2008	9:28 A.M.	DELIVERY

Tracking results provided by UPS: 03/11/2009 11:26 A.M. ET

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1000121
9/8/2008
1

7311 W 130th Street  
 Suite 170  
 Overland Park KS 66213

0215125

**Bill To:**

Abbeville Police Department  
 Chief Neil Henderson  
 102 South Main Street  
 Abbeville SC 29620

**Ship To:**

Light-N-Up  
 Eugene  
 101 Sunset Drive  
 Spartanburg SC 29376

Purchase Order No.	Customer ID	Salesperson	Tracking No.	Shipping Method	Terms	Req. Ship Date	Master No.
4659	ABBSC	STS	1ZAY74550354964815, 1Z	UPS GROUND	Net 30	9/22/2008	7,377
Ordered	Shipped	QTY	Part Number	Description	Disc	Unit Price	Ext. Price
2.00000	2.00000	0.00000	001-0500	DVM500 Digital Video Mirror Kit	\$0.00	\$3,995.00	\$7,990.00
				S/N: 01F4-45A2, 01F4-4718			
2.00000	2.00000	0.00000	006-0051	G-Force Sensor Interface Option	\$0.00	\$200.00	\$400.00
2.00000	2.00000	0.00000	004-0007	Case, Wireless Mic, Leather, Hi-Gloss	\$0.00	\$35.00	\$70.00

Please contact Sheryl Shapiro @ 913-814-7774 with any questions.  
 Remit payment to:  
 P.O. Box 411099  
 Kansas City, MO 64141-1099  
 Thank you for your business!

Subtotal	\$8,460.00
Disc	\$0.00
Tax	\$0.00
Shipping	\$60.00
Freight	\$0.00
Total	\$8,520.00

000042

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**Amy Dusseller**

**From:** UPS Quantum View [auto-notify@ups.com]  
**Sent:** Monday, September 08, 2008 4:34 PM  
**To:** Orders Mailbox  
**Subject:** UPS Ship Notification, Tracking Number 1ZAY74550354964815



This message was sent to you at the request of Digital Ally, Inc. to notify you that the package information below has been transmitted to UPS. The package(s) may not have actually been placed with UPS for shipment. To verify when and if the shipment is tendered to UPS and its actual transit status, click on the tracking link below or contact Digital Ally, Inc. directly.

### **Important Delivery Information**

**Scheduled Delivery:** 10-September-2008

### **Shipment Detail**

**Ship To:**  
Eugene Poteet  
Light-N-Up  
101 Sunset Dr.  
Spartanburg  
SC  
29376  
US

**Number of Packages:** 2

**UPS Service:** GROUND

**Weight:** 18.0 LBS

**Tracking Number:** 1ZAY74550354964815

**Reference Number 1:** ORD00005125

**Reference Number 2:** New

Click here to track if UPS has received your shipment or visit [http://www.ups.com/WebTracking/track?loc=en\\_US](http://www.ups.com/WebTracking/track?loc=en_US) on the Internet.

Close Window



## Tracking Detail

Your package has been delivered.

Tracking Number: 1Z AY7 455 03 5496 481 5  
Type: Package  
Status: Delivered  
Delivered On: 09/10/2008 11:21 A.M.  
Signed By: WILSO  
Location: RECEIVER  
Delivered To: ROEBUCK, SC, US  
Service: GROUND

### Package Progress

Location	Date	Local Time	Description
SPARTANBURG, SC, US	09/10/2008	11:21 A.M.	DELIVERY

Tracking results provided by UPS: 03/11/2009 11:24 A.M: ET

**NOTICE:** UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

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7311 W 130th Street  
 Suite 170  
 Overland Park KS 66213

Invoice	1008595
Date	12/5/2008
Page	1

025 6021

**Bill To:**

Town of Lincolnton Police Department  
 Chief Dean Abernathy  
 627 E. Main Street  
 Lincolnton NC 28092

**Ship To:**

Light-n-Up LLC  
 101 Sunset Drive  
 Spartanburg SC 29376

Purchase Order No.	Customer ID	Salesperson	Tracking No.	Shipping Method	Terms	Req Ship Date	Master No.
STS 756	LINNC	STS	1ZAY74550363628780, 1Z	UPS GROUND	Net 30	12/18/2008	9,399
Order #	Shipped	B/O	Item Number	Description	Discount	Unit Price	Ext Price
3.00000	3.00000	0.00000	001-0500	DVM500 Digital Video Mirror Kit S/N: 01F4-4763, 01F4-47D2, 01F4-4872	\$0.00	\$3,985.00	\$11,985.00
3.00000	3.00000	0.00000	006-0051	G-Force Sensor Interface Option	\$0.00	\$200.00	\$600.00
3.00000	3.00000	0.00000	004-0061	Radar Interface Cable, Kustom	\$0.00	\$125.00	\$375.00

Please contact Sheryl Shapiro @ 913-814-7774 with any questions.

Remit payment to:

P.O. Box 411099

Kansas City, MO 64141-1099

Thank you for your business!

Subtotal	\$12,960.00
Inc	\$0.00
Tax	\$0.00
Freight	\$90.00
Trade Discount	\$0.00
Total	\$13,050.00

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A-24

[Close Window](#)



## Track Shipments

### Tracking Summary

**Packages in Shipment: 3**

**Tracking Number:** 1Z AY7 455 03 5352 878 0

**Type:** Package

**Status:** Delivered

**Delivered On:** 12/09/2008  
10:36 A.M.

**Delivered To:** ROEBUCK, SC, US

**Signed By:** WILSO

**Tracking Number:** 1Z AY7 455 03 5372 139 2

**Type:** Package

**Status:** Delivered

**Delivered On:** 12/09/2008  
10:36 A.M.

**Delivered To:** ROEBUCK, SC, US

**Signed By:** WILSO

**Tracking Number:** 1Z AY7 455 03 5407 420 5

**Type:** Package

**Status:** Delivered

**Delivered On:** 12/09/2008  
10:36 A.M.

**Delivered To:** ROEBUCK, SC, US

**Signed By:** WILSO

Tracking results provided by UPS: 03/11/2009 11:28 A.M. ET

**NOTICE:** UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

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IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
CIVIL DIVISION

DIGITAL ALLY, INC., )

Plaintiff, )

v. )

LIGHT-N-UP, LLC, and )  
STEVEN SHEPHERD, )

Defendants. )

Case No. 0916-CV37648

Div. No. 7

FILED  
JACKSON  
10 FEB 11 AM 11:12

MOTION FOR DEFAULT JUDGMENT

COMES NOW, Plaintiff, Digital Ally, Inc., by and through undersigned counsel, pursuant to Supreme Court Rule 74.05 and hereby moves for a default Judgment on all Counts against Defendants. In support of its motion, Plaintiff states as follows:

1. Plaintiff filed its Petition against Defendants on December 2, 2008.
2. Defendants were each personally served with process on January 7, 2010 as seen on the service information from Case.net attached hereto as Exhibit A and incorporated herein by reference.
3. Pursuant to R.S.Mo 509.260, Defendants had thirty days after the service of the summons and petition on them in which to file an answer, which was due to be filed by February 8, 2010.
4. Defendants have failed to file an answer within the time prescribed by Missouri statutes.

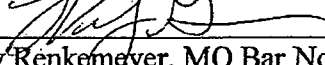
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A-26

WHEREFORE, Plaintiff respectfully requests the Court to enter a default judgment against Defendants in this matter and to set the determination of damages to a hearing to be heard by the Court.

Dated: February 9, 2010

RCW LAW FIRM

By:   
Troy Renkemeyer, MO Bar No. 47371  
Wendy Green, MO Bar No. 51736  
7500 College Blvd., Suite 900  
Overland Park, KS 66210  
Telephone: 913-906-9800  
Fax: 913-906-9840  
trenkemeyer@rcwlawfirm.com  
wgreen@rcwlawfirm.com  
*Attorneys for Plaintiff*  
*Digital Ally, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was placed in the U.S. mail, postage prepaid this 9<sup>th</sup> day of February, 2010, and addressed to:

Steven Shepherd  
Light-N-Up, LLC  
101 Sunset Drive  
Roebuck, SC 29376

  
Wendy Green  
Attorney for Plaintiff

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A-27



# Your Missouri Courts



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## 16th Judicial Circuit (Jackson County)

- Case Header
- Parties & Attorneys
- Docket Entries
- Charges, Judgments & Sentences
- Service Information
- Filings Due
- Scheduled Hearings & Trials
- Civil Judgments
- Garnishments/Execution

### 0916-CV37648 - DIGITAL ALLY INC V LIGHT-N-UP LLC ET AL

This information is provided as a service and is not considered an official court record. Further information may be available in the docket entries portion of Case.net. Because service of process may establish legal obligations, you may want to examine the original case file in the clerk's office.

Displaying 1 thru 2 of 2 service records returned for case 0916-CV37648.

#### Issuance

**Issued To:** LIGHT-N-UP LLC  
**Document:** Summons Outside St(To Issued: Dft/Res)  
**Document ID:** 09-SMOS-1217

**Date Issued:** 12/18/2009  
**Due Date:** 01/17/2010

#### Return

**Type Of Service:** Summons Personally Served  
**Served To:** LIGHT-N-UP LLC  
 101 SUNSET DRIVE  
 ROEBUCK, SC 29376

**Service/Attempt Date:** 01/07/2010

#### Issuance

**Issued To:** SHEPHERD, STEVEN  
**Document:** Summons Outside St(To Issued: Dft/Res)  
**Document ID:** 09-SMOS-1218

**Date Issued:** 12/18/2009  
**Due Date:** 01/17/2010

#### Return

**Type Of Service:** Summons Personally Served  
**Served To:** SHEPHERD, STEVEN  
 101 SUNSET DRIVE  
 ROEBUCK, SC 29376

**Service/Attempt Date:** 01/07/2010

Displaying 1 thru 2 of 2 service records returned for case 0916-CV37648.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
CIVIL DIVISION

FILED - CIRCUIT COURT  
JACKSON CO. MO - KC  
2010 FEB 24 AM 11:30

DIGITAL ALLY, INC.,

Plaintiff,

v.

LIGHT-N-UP, LLC, and  
STEVEN SHEPHERD,

Defendants.

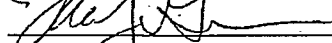
Case No. 0916-CV37648

Div. No. 7

NOTICE OF HEARING

The above case has been scheduled for a hearing on the Motion for Default Judgment filed by Plaintiff on March 17, 2010, at 10:30 AM in DIVISION 7.

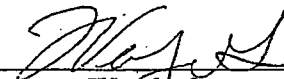
RCW LAW FIRM

By:   
Troy Renkemeyer, MO Bar No. 47371  
Wendy Green, MO Bar No: 51736  
7500 College Blvd., Suite 900  
Overland Park, KS 66210  
Telephone: 913-906-9800  
Fax: 913-906-9840  
trenkemeyer@rcwlawfirm.com  
wgreen@rcwlawfirm.com  
Attorneys for Plaintiff  
Digital Ally, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was placed in the U.S. mail, postage prepaid this 22<sup>nd</sup> day of February, 2010, and addressed to:

Steven Shepherd  
Light-N-Up, LLC  
101 Sunset Drive  
Roebuck, SC 29376

  
Wendy Green

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A-29



# Your Missouri Courts



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**0916-CV37648 - DIGITAL ALLY INC V LIGHT-N-UP LLC ET AL**

<b>Case Header</b>	<b>Parties &amp; Attorneys</b>	<b>Docket Entries</b>	<b>Charges, Judgments &amp; Sentences</b>	<b>Service Information</b>	<b>Filings Due</b>	<b>Scheduled Hearings &amp; Trials</b>	<b>Civil Judgments</b>	<b>Garnishments/ Execution</b>
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This information is provided as a service and is not considered an official court record.

Sort Date Entries:  Descending  Ascending

Display Options: All Entries

- 03/17/2010**      **Motion Granted/Sustained**  
                   **Associated Entries: 02/11/2010 - Motion for Default Judgment**  
                   Judgment Entered  
                   (Default Judgmt) Plt shall be awarded damages in the amount of \$60,932.00 for actual damages, \$6,591.72 for pre-judgmt interest, post-judgmt interest, & costs.  
                   **Default Judgment**  
                   **Hearing/Trial Cancelled**  
                   **Scheduled For:** 03/24/2010; 10:00 AM ; ANN MESLE; Jackson - Kansas City  
                   **Hearing Held**  
                   **Scheduled For:** 03/17/2010; 10:30 AM ; ANN MESLE; Jackson - Kansas City
  
- 02/24/2010**      **Notice of Hearing Filed**  
                   **Filed By:** DIGITAL ALLY INC
  
- 02/22/2010**      **Hearing Scheduled**  
                   **Associated Entries: 03/17/2010 - Hearing Held**  
                   **Scheduled For:** 03/17/2010; 10:30 AM ; ANN MESLE; Jackson - Kansas City
  
- 02/11/2010**      **Motion for Default Judgment**  
                   **Filed By:** DIGITAL ALLY INC  
                   **Associated Entries: 03/17/2010 - Motion Granted/Sustained**
  
- 01/16/2010**      **Summons Personally Served**  
                   Document ID - 09-SMOS-1217; Served To - LIGHT-N-UP LLC; Server - ; Served Date - 07-JAN-10;  
                   Served Time - 19:00:00; Service Type - Sheriff Department; Reason Description - Served  
                   **Summons Personally Served**  
                   Document ID - 09-SMOS-1218; Served To - SHEPHERD, STEVEN; Server - ; Served Date - 07-JAN-10;  
                   Served Time - 19:00:00; Service Type - Sheriff Department; Reason Description - Served
  
- 12/18/2009**      **Summons Issued-Circuit**  
                   Document ID: 09-SMOS-1218, for SHEPHERD, STEVEN.  
                   **Summons Issued-Circuit**  
                   Document ID: 09-SMOS-1217, for LIGHT-N-UP LLC.  
                   **Case Mgmt Conf Scheduled**  
                   **Associated Entries: 03/17/2010 - Hearing/Trial Cancelled**  
                   **Scheduled For:** 03/24/2010; 10:00 AM ; ANN MESLE; Jackson - Kansas City
  
- 12/02/2009**      **Judge Assigned**  
                   **Filing:**  
                   Form 4 Filing Information Sheet  
                   **Pet Filed in Circuit Ct**

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A-30  
7/16/2012

25947 PH

IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI



Judge or Division: <b>ANN MESLE</b>	Case Number: <b>0916-CV37648</b>	ORIGINAL MAKE YOUR RETURNS ON THE WRIT AND FORWARD TO DEPT. OF CIVIL RECORDS AT KANSAS CITY, MO.  FILED DEPT. OF CIVIL RECORDS AND ADMINISTRATIVE SERVICES (Date File Stamp) JUL 16 2010
Plaintiff/Petitioner: <b>DIGITAL ALLY INC</b>	Plaintiff's/Petitioner's Attorney/Address: <b>TROY DOUGLAS RENKEMEYER 7500 COLLEGE BLVD - STE 900 OVERLAND PARK, KS 66210</b>	
Defendant/Respondent: <b>LIGHT-N-UP LLC</b>	Court Address: <b>415 E 12th KANSAS CITY, MO 64106</b>	
Nature of Suit: <b>CC Breach of Contract</b>		

Summons for Personal Service Outside the State of Missouri  
(Except Attachment Action)

The State of Missouri to: **LIGHT-N-UP LLC**  
Alias: **LIGHT-N-UP LLC**  
10 **ROBERTSON AVE**  
ROBERTSON AVE 64106

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

**DECEMBER 18, 2009** Date Clerk **[Signature]**



Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is **Master Deputy** of **Spartanburg** County, **SC** (state).
- I have served the above summons by: (check one)
  - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
  - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
  - (for service on a corporation) delivering a copy of the summons and a copy of the petition to \_\_\_\_\_ (name) \_\_\_\_\_ (title).
  - other (describe) \_\_\_\_\_

Served at **6207 Hwy 221** **ROBERTSON SC 29376** (address)  
in **Spartanburg** County, **SC** (state), on **1-7-10** (date) at **1900 hrs** (time).

Printed Name of Sheriff or Server: **JO HUEY** Signature of Sheriff or Server: **[Signature]**

Subscribed and Sworn To me before this **7** (day) **Jan** (month) **2010** (year)

I am: (check one)
 

- the clerk of the court of which affiant is an officer.
- the judge of the court of which affiant is an officer.
- authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- authorized to administer oaths. (use for court-appointed server)

 Signature and Title: **[Signature]**

Service Fees, if applicable	
Summons	\$ _____
Non Est	\$ _____
Mileage	\$ _____ ( _____ miles @ \$ _____ per mile)
Total	\$ _____

See the following page for directions to clerk and to officer making return on service of summons.

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A-31

## TERMS OF SALE

Your purchase of goods from Digital Ally, Inc., a Nevada corporation ("Digital Ally") will be governed by the following terms of sale ("Terms"). You will be referred to throughout these Terms as "you".

1. **Exclusion of Other Terms; Entire Agreement.** Additional or different terms or conditions proposed by you (including any additional or different terms provided in a purchase order) will be void and of no effect unless specifically accepted in writing by Digital Ally. Digital Ally's sales invoice, these Terms, the warranty and any special conditions executed by you and Digital Ally (collectively, the "Order") supersedes and cancels all prior communications between us, whether verbal or written, and constitutes the entire agreement between us unless modified in writing and signed by each of us.
2. **Payment.** Payment terms are cash on delivery, except where credit has been established and maintained to Digital Ally's satisfaction. If you have established credit, payment terms are net 30 days from date of shipment. Any invoice that you fail to pay when due will bear interest at the rate of 1-1/2% per month or the highest rate then permitted by law, whichever is less. You must also reimburse Digital Ally for its costs incurred (including internal administrative expenses and reasonable attorneys' fees) in the collection of your past due invoices.
3. **Security Interest.** Digital Ally retains a security interest in all goods delivered to you and all proceeds until paid in full. You agree, without further consideration, at any time to do or cause to be done, all acts, and to execute and deliver, all such documents as may reasonably be requested in order to protect Digital Ally's security interest in the goods, including the filing of financing statements may deem necessary to perfect its security interest.
4. **Taxes.** In addition to the purchase price, you must pay any sales, excise or similar taxes applicable to the transaction, unless you provide Digital Ally with a valid tax exemption certificate. You must pay use taxes, if applicable to the transaction, directly to the appropriate taxing authority.
5. **Shipment.** Digital Ally will use commercially reasonable efforts to comply with your shipping instructions. You must prepay all transportation and insurance charges prior to shipment. Unless otherwise stated by Digital Ally, all shipments will be F.O.B. (free on board) Digital Ally's manufacturing facility in Grain Valley, Missouri.
6. **Force Majeure.** Digital Ally will not be liable to you for any loss, damage, delay, or failure of delivery resulting from causes that are beyond Digital Ally's reasonable control. **DIGITAL ALLY WILL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES FROM ANY DELAY WHATSOEVER.**
7. **Limitation of Liability.** You assume all risk from your purchase and use of the goods. Neither you nor Digital Ally will be liable to the other for any consequential damages, punitive damages, special, incidental or exemplary damages suffered by the other in connection with its performance of its obligations under this Order. **DIGITAL ALLY'S AGGREGATE LIABILITY UNDER THIS ORDER WILL NOT EXCEED AMOUNTS PAID BY YOU TO DIGITAL ALLY UNDER THIS ORDER.**
8. **Warranty; Limitations on Remedies.** Digital Ally's warranty on the goods provided under the Order is set out in a separate statement, which sets forth the only warranty applicable to the goods sold under this Order. **THAT WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO WARRANTIES THAT EXTEND BEYOND DIGITAL ALLY'S WARRANTY STATEMENT. ALL IMPLIED WARRANTIES ARE DISCLAIMED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES IMPLIED FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. YOUR SOLE AND EXCLUSIVE REMEDY FOR A WARRANTY CLAIM WILL BE THE REPAIR OR REPLACEMENT OF THE GOODS.**
9. **Indemnity.** You will defend Digital Ally, its managers, agents, employees, successors and assigns, and will pay all damages, losses, costs and expenses, including reasonable attorney's fees, incurred by the indemnified party arising out of, or incidental to, your selection, purchase and use of the goods under this Order. This indemnification will survive the expiration or termination of this Order.
10. **Risk of Loss.** Risk of loss to goods purchased will pass to you at the earlier of the time the goods are (a) duly delivered to the carrier, or (b) duly tendered to you for delivery.
11. **Acceptance; Claims for Shortage or Error.** Delivered goods will be deemed accepted upon the earlier of your formal acceptance of the goods or the expiration of 30 days from receipt. If you discover upon initial inspection that (a) some or all of the goods are defective or (b) do not conform to Digital Ally's warranty, may be returned to Digital Ally for replacement or a refund of the purchase price. Digital Ally is not responsible for goods lost or damaged in transit. You are solely responsible for filing claims against the carrier for any loss or damage. Digital Ally will furnish all available information and give any other reasonable assistance requested to assist you in filing a claim. Claims for shortages in shipment not chargeable against the carrier will not be considered unless notice is given within 10 days from date of receipt.
12. **Governing Law; Jurisdiction and Venue.** This Order and all disputes arising under this Order are exclusively subject to, governed by, and construed in accordance with the law of the State of Kansas, without regard to rules of conflicts of law. Any action relating to this Order must be brought in state or federal courts located in Johnson County, Kansas, and the parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in such courts.
13. **Prevailing Party's Attorneys' Fees.** In the event of any litigation or arbitration related to this Order, the prevailing party will be entitled to recover from the non-prevailing party, the costs and expenses (including attorneys' fees) reasonably incurred by the prevailing party in connection therewith.

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Justia > US Law > US Codes and Statutes > Missouri Revised Statutes > 2005 Missouri Revised Statutes > 1 LIMITATIONS > Chapter 506 — Commencement of Actions and General Provisions > § 506.500. — Actions in jurisdiction of Missouri courts applicable, when.

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## 2005 Missouri Revised Statutes - § 506.500. — Actions in which outstate service is authorized--jurisdiction of Missouri courts applicable, when.

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506.500. 1. Any person or firm, whether or not a citizen or resident of this state; or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state;
- (4) The ownership, use, or possession of any real estate situated in this state;
- (5) The contracting to insure any person, property or risk located within this state at the time of contracting;
- (6) Engaging in an act of sexual intercourse within this state with the mother of a child on or near the probable period of conception of that child.

2. Any person, whether or not a citizen or resident of this state, who has lived in lawful marriage within this state, submits himself to the jurisdiction of the courts of this state as to all civil actions for dissolution of marriage or for legal separation and all obligations arising for maintenance of a spouse, support of any child of the marriage,

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attorney's fees, suit money, or disposition of marital property, if the other party to the lawful marriage lives in this state or if a third party has provided support to the spouse or to the children of the marriage and is a resident of this state.

3. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(L. 1967 p. 660 □ 1, A.L. 1984 H.B. 1275, A.L. 1993 S.B. 253)

(1969) This section is procedural and remedial and applies retrospectively to causes of action which accrued before its passage. *State ex rel. Nichols v. Fuller (A.)*, 449 S.W.2d 11.

(1970) The Missouri "Long-Arm Statute" is constitutional. *State ex rel. Deere & Co. v. Pinnell (Mo.)*, 454 S.W.2d 889; *State ex rel. Birdsboro Corp. v. Kimberlin (Mo.)*, 461 S.W.2d 292; *Fulton v. Southern Pacific Co. (W.D.Mo.)*, 320 F.Supp. 45.

(1970) This section does not deny due process. *State ex rel. Deere and Co. v. Pinnell (Mo.)*, 454 S.W.2d 889.

(1973) The phrase "commission of a tortious act within this state" includes extraterritorial acts producing actionable consequence in Missouri, also it is not necessary that cause of action pleaded sound in tort in order to confer jurisdiction under this section. *Fulton v. Chicago, Rock Island and Pacific Railroad Co. (C.A. Mo.)*, 481 F.2d 326.

(1973) A foreign corporation which manufactures a product for use in Missouri is subject to extraterritorial jurisdiction on the ground that a tortious act is committed within this state when the dealer seeks indemnification from the manufacturer by way of impleader, and mandamus is the appropriate remedy to compel the impleader of such manufacturer. *State ex rel. Apco Oil Corp. v. Turpin (A.)*, 490 S.W.2d 400.

(1976) Held that evidence sustained finding of sufficient contact to give forum state jurisdiction. *State ex rel. Peoples Bank, etc. v. Stussie (A.)*, 536 S.W.2d 934.

(1976) Retention of unpaid draft for an unreasonable time by a Nebraska Bank which resulted in damages to Missouri bank was not sufficient to justify in personam jurisdiction by Missouri court. *State ex rel. Bank of Gering v. Schoenlaub (Mo.)*, 540 S.W.2d 31.

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(1976) Service of process by sheriff of another state does not come under verity rule and may be collaterally attacked. *Germanese v. Champlin (A.)*, 540 S.W.2d 109.

(1984) In a declaratory judgment action relating to defendant's patent, the existence of a business relationship between the nonresident defendant corporation and a Missouri distributor of the product in question was held sufficient to confer personal jurisdiction over the defendant corporation under subdivision (1) of subsection 1. *Aluminum Housewares Co., Inc. v. Chip Clip Corp. (E.D. Mo.)* 609 F.Supp. 358.

(1984) Telephone conversations and written correspondence were insufficient contacts under the due process clause to justify the exercise of personal jurisdiction over a nonresident defendant on a contract claim, and were therefore also insufficient to satisfy the Missouri "long arm" statute. *Inst. Food Marketing v. Golden State Strawberries (8th Cir.)*, 747 F.2d 448.

(1985) Assertion of personal jurisdiction over a nonresident defendant did not violate the due process clause where the defendant "transacted business within the state" by selling and shipping conveyor belts to a Missouri buyer for installation in Illinois. *Precision Const. Co. v. J.A. Slattery Co., Inc. (8th Cir.)*, 765 F.2d 114.

(1986) Where Colorado savings and loan association solicited participation of Missouri savings and loan association in construction loans, negotiated agreement in Missouri, and where contract became binding through acceptance in Missouri, the exercise of personal jurisdiction over Colorado savings and loan did not violate due process. *St. Louis Fed. Sav. and Loan v. Silverado Banking*. 626 F.Supp. 379 (E.D. Mo.).

(1986) A foreign corporation which does no more than manufacture a product which eventually is used in this state does not have sufficient contact with the state for a circuit court to exercise jurisdiction over such corporation. *State v. Adolf*, 718 S.W.2d 550 (Mo.App.).

(1987) Communication through the mails and by telephone to seller before contract was made and visit to seller in this state to perfect product design after contract was made by buyer are contacts sufficient to constitute the transaction of business in this state, thus subjecting nonresident buyer to jurisdiction of court of this state pursuant to this section without violating

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due process principles. *Watlow Elec. Mfg. v. Sam Dick Industries*, 734 S.W.2d 295 (Mo.App.).

(1991) Where parties executed stock purchase agreement, promissory note to effectuate the agreement, and guaranty agreement on the indebtedness in Missouri and negotiations leading up to contract were conducted in Missouri, there was sufficient minimum contacts to satisfy federal due process and was sufficient to confer jurisdiction under Missouri Long-Arm Act, regardless of whether defendant also engaged in the transaction of business within the state. *Portnoy v. Defiance, Inc.*, 951 F.2d 169 (8th Cir.)

(2000) Nonresident trademark infringement defendant's web site, which had not been accessed by any Missouri resident, did not give rise to sufficient contacts with state to allow court to exercise personal jurisdiction. *Uncle Sam's Outfitters, Inc. v. Uncle Sam's Army Navy Outfitters-Manhattan, Inc.*, 96 F.Supp.2d 919 (E.D.Mo.).

(2000) Foreign microbrewery, which advertised and sold beer club memberships to state residents using the Internet and telephones and delivered beer to residents, was subject to personal jurisdiction; state interest in regulation of the sale and delivery of alcoholic beverages outweighed burden on defendant. *State ex rel. Nixon v. Beer Nuts, Ltd.*, 29 S.W.3d 828 (Mo.App.E.D.).

(2002) Maintenance of an Internet website allowing visitors to site to make hotel room reservations is not sufficient contact with Missouri to subject defendant to personal jurisdiction for alleged tort that occurred in another state. *Bell v. Imperial Palace Hotel/Casino*, 200 F.Supp.2d 1082 (E.D.Mo.).

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS

DIGITAL ALLY, INC., )  
 )  
Plaintiff, )

**MOTION FOR RECONSIDERATION/  
ALTER/AMEND JUDGMENT**

v. )

C.A. No.: 2010-CP-42-2075

LIGHT-N-UP, LLC and STEVEN )  
SHEPHERD, )  
 )  
Defendants. )

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, will move the Court pursuant to Rule 59(e), South Carolina Rules of Civil Procedure for an Order Altering/Amending the Judgment entered against the Defendants Light-N-Up, LLC and Steven Shepherd filed February 6, 2013.

A hearing was held on Defendant's Motion for Relief from a Foreign Judgment on July 16, 2012. At the hearing, the Defendants presented an Affidavit of Steve Shepherd, Individually and as a Member of the Defendant LLC. Arguments/case law were presented regarding the Defendant's assertion that the courts of Missouri did not have jurisdiction over the Defendants to render judgment against them in the first place. The Defendants further presented evidence in the form of Plaintiff's agreement upon which it relied in seeking a judgment in the State of Missouri. Paragraph 12 of the Terms of Sale, presented by the Plaintiff at the hearing as A-32, clearly states that any action must be brought in Jackson County, Kansas; the terms further state that this jurisdiction is exclusive. Plaintiff admits the

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the action was not filed in the State of Kansas yet is asking the South Carolina courts to enforce its judgment from Missouri.

The Court's Order granting the Plaintiff's relief sought states "Defendants failed to present any evidence regarding the lack of jurisdiction of the Missouri Courts. The facts as presented indicate that Defendants transacted business, contracted with Plaintiff and allegedly committed torts, all within Missouri." This is simply not supported by the record in this matter. The Affidavit of the Defendants speaks to this issue and there is no evidence that the Defendants transacted business or committed any torts in Missouri. The contract complained of and the basis of the Plaintiff's underlying action sets jurisdiction in Kansas.

This Motion is based upon the information contained herein, the record from the July 16, 2012 hearing and such other documentation as may be submitted before a hearing is held on this Motion.

  
TALLEY LAW FIRM, P.A.

Scott F. Talley, Attorney for Defendants  
2500 Winchester Place, Suite 100  
Spartanburg, South Carolina 29301  
864-595-2966

February 8, 2013

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M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) COURT OF COMMON PLEAS NONJURY

3  
4 DIGITAL ALLY, INC., ) TRANSCRIPT  
5 ) OF  
6 PLAINTIFF, )  
7 VS. ) RECORD  
8 LIGHT-N-UP, LLC AND STEVEN )  
SHEPHERD, ) 2010-CP-42-2075  
9 DEFENDANT. )

10  
11 July 16<sup>th</sup>, 2012  
12 Spartanburg, South Carolina

13  
14 B E F O R E:

15 THE HONORABLE R. FERRELL COTHRAN, JUNIOR, Judge.

16 A P P E A R A N C E S:

17 DAVID WALSH  
18 ESQ.  
19 Attorney for the Plaintiff

20 SCOTT TALLEY  
21 ESQ.  
22 Attorney for the Defendant

23  
24 PAMELA E. GREEN  
25 Circuit Court Reporter  
Seventh Judicial Circuit

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I N D E X

(There were no exhibits marked or testimony taken during this hearing.)

1 P R O C E E D I N G S

2  
3 THE COURT: Okay. Y'all ready?

4 MR. TALLEY: Yes, sir.

5 THE COURT: Whose motion is it?

6 MR. TALLEY: It's my motion.

7 THE COURT: Okay.

8 MR. TALLEY: Okay. Thank you.

9 Scott Talley, Your Honor, on behalf of both defendants,  
10 Light-N-Up, LLC, and Steven Shepherd. This is a motion  
11 seeking relief from the filing of a foreign judgment by the  
12 plaintiff.

13 Your Honor, I have two things I'd like to hand up.  
14 If I may approach?

15 THE COURT: Okay.

16 MR. TALLEY: Your Honor, in essence, what this involves  
17 is the plaintiff seeking to register a judgment here in  
18 Spartanburg County that was obtained in the Circuit Court in  
19 Jackson County, Missouri back in 2010. The underlying  
20 action in Missouri is regarding the terms whereby my client,  
21 who's located here in Spartanburg County and operates one  
22 shop, it's the only shop they have here, outfits certain law  
23 enforcement vehicles.

24 You take a, bare bones Ford Crown Victoria, it goes to  
25 this business, they order the light bars and things, and

1 they dress it up, put the decals on it, and they send it  
2 back to the local jurisdiction.

3       The allegations in the complaint are over certain  
4 equipment the plaintiff was sending here to Spartanburg that  
5 my client was installing on behalf of certain of its  
6 customers in various parts of the southeast. As the  
7 affidavit I've handed up states, that's the only place my  
8 client operates is here in Spartanburg County. They don't  
9 have any other, any other offices around the world. All the  
10 installation, everything is done right in Spartanburg  
11 County, and then shipped out to these other jurisdictions.

12       When the action was initially filed in Jackson County,  
13 Missouri, my client did not participate in that action.  
14 When the judgment was brought here for enforcement, we filed  
15 the motion that's before you today.

16       I've handed up a case of Colonial Pacific Lease,  
17 Leasing Corporation v. Taylor. That's a 1997 Court of  
18 Appeals case.

19       Your Honor, it really goes through in that case how  
20 South Carolina has treated the statutory provisions for  
21 seeking relief from a judgment, and while given credence to  
22 the full faith and credit clause. It does state that one is  
23 not prevented, at this stage, from contesting a matter like  
24 the plaintiff is filed due to lack of personal jurisdiction  
25 in the court in which it was originated. So, basically the

1 South Carolina Court is being called on to, to enforce the  
2 Missouri, the Missouri judgment.

3 Like I said, my client did not appear in that foreign  
4 state, which obviously would of made today's argument moot.  
5 There was no appearance made. It was a default judgment  
6 that was entered that they're seeking to enforce here.

7 If you look at the line of cases cited in the Colonial  
8 Pacific case, it basically goes back to where South Carolina  
9 adopted, in the Taylor case back in 1956, that which the  
10 U.S. Supreme Court had said in the case of Durthey v. Duke,  
11 and what that is saying is that from the decisions, the  
12 emergency general rule that a judgment is entitled full  
13 faith and credit, even as a question of jurisdiction, when  
14 the second Court simply disclosed that those questions have  
15 fully and fairly litigated and finally decided in the Court  
16 which has the original judgment.

17 Your Honor, we submit to this Court that that has not  
18 happened, that there was no jurisdiction whereby the Court  
19 in Jackson County, Missouri could enter the judgment against  
20 my client located here Spartanburg, South Carolina, that our  
21 statutes allow for that to be set aside based on the lack of  
22 jurisdiction in the originating Court.

23 If you look at the complaint that was filed in  
24 Missouri, the plaintiff alleges that both defendants are  
25 located in South Carolina. They list the address as an

1 address in Roebuck, South Carolina, which is here in  
2 Spartanburg County, and then they go to say the personal  
3 jurisdiction and venue are appropriate in Jackson County,  
4 Missouri.

5 I don't think the plaintiff is located in Missouri. I  
6 could be wrong on that, but based on what I've seen, they're  
7 in another state as well.

8 So, Your Honor, we do think that there are certain  
9 defenses that could be raised in this case, but they have  
10 not been raised. As my client's affidavit sets out, there's  
11 nothing that would tie any of its activity to Missouri.  
12 Products were shipped here. All the installation work is  
13 done here.

14 And, so, based on that and the statute as we've set out  
15 in our motion, we're asking that the Court not enforce the  
16 judgment as they seek to enter it today.

17 THE COURT: Okay. Thank you.

18 Yes, sir.

19 MR. WALSH: May it please the Court, Your Honor.

20 My name is David Walsh. I'm with the Gaines and Walsh  
21 Law Firm. Earlier today I filed a return to their motion.  
22 I don't know if it's been placed in the Court's file.

23 THE COURT: Yeah.

24 MR. WALSH: Your Honor, what, what I've done in this  
25 return is to attach some of the relevant documents in this

1 case.

2 The first document attached that runs through Pages A-1  
3 through A-25 is a copy of the petition that Digital Ally  
4 filed against Light-N-Up and Steven Shepherd.

5 Okay. And attached -- and they stated three causes of  
6 action. One for breach of contract, one for fraud and  
7 intentional deceit, which is a tort, and the other for  
8 negligent misrepresentation, which is a tort.

9 Okay. This action confused me because it's different  
10 from what we do here in South Carolina. There's no summons  
11 attached to this, and the reason for that is, in Missouri, a  
12 plaintiff files a petition or a complaint with the Court,  
13 and then the Clerk of Court issues a summons and has the  
14 summons, along with the petition, served on the defendants,  
15 and, in this case, a copy of the Court's action is attached  
16 to the plaintiff's motion for default judgment, which is  
17 Pages A-26, 27, and 28, and that's the Court's issuance of  
18 the return, issuance of the summons---

19 THE COURT: So, the Clerk of Court---

20 MR. WALSH: ---and return from the clerk. I don't  
21 think they're arguing that, that the defendants weren't  
22 actually served in this case.

23 THE COURT: Okay. They were served in South Carolina?

24 MR. WALSH: Yes, Your Honor.

25 THE COURT: By mail or personal?

1 MR. WALSH: By the Sheriff. Master Deputy J.D.---

2 THE COURT: And it was sent from the clerk in Missouri?

3 Missouri's Clerk of Court pays for the service?

4 MR. WALSH: I don't know who pays for the service. The  
5 Clerk of Court arranges for the service.

6 THE COURT: Okay.

7 MR. WALSH: I'm sure they charge that to the plaintiff.

8 Master Deputy J.D. Huey signed the affidavit of service,

9 Your Honor.

10 THE COURT: Okay.

11 MR. WALSH: That's attached as Page A-31.

12 THE COURT: Okay.

13 MR. WALSH: On Page A-32 are the terms of sale between  
14 Digital Ally and the defendant, and I'll note that although  
15 the defendant is located here in Spartanburg County, as  
16 stated in his affidavit, he also says that, and I believe  
17 him when says that, he's never been to Missouri. He also  
18 says that, you know, he does business with companies here in  
19 South Carolina along the eastcoast. He does --

20 THE COURT: All right.

21 MR. WALSH: -- business in a number of states.

22 Okay. The terms of shipment in the terms of sale  
23 attach on Page A-32 note that the delivery of the shipment  
24 that they ordered is free on board Digital Ally's  
25 manufacturing facility in Grain Valley, Missouri, and

1 that's, since delivery -- I don't know if you're familiar  
2 with the free on board term. It's a UCC term that covers  
3 risk of loss when shipping terms, and it's either free on  
4 board like here, the Grain Valley Missouri manufacturing  
5 facility, or it's free on board the purchaser's destination.  
6 In this case was in Roebuck, South Carolina.

7 Okay. And that determines where the contract, where  
8 delivery is taken under the contract, which was in Missouri.

9 Okay. I'll also not that---

10 THE COURT: Did, did -- do you have anything where the  
11 plaintiff in this case, the defendant in the other case,  
12 signed that agreement or agreed to those terms?

13 MR. WALSH: Your Honor, attached to the petition,  
14 beginning at Page 89, are the purchase orders and shipping  
15 orders with the net 30 terms to be paid in Kansas City,  
16 Missouri, and it also shows where each of these items was  
17 delivered; and I believe, in almost all cases, the person  
18 who signed for it was somebody named Wilson.

19 At Page A-33, I have attached a copy of the Missouri  
20 Long, Long Arm Statute, which is Missouri revised Statute  
21 Section 506-500, that provides Missouri may exercise  
22 jurisdiction over a person or a corporation or other entity  
23 that is not a resident of the State of South Carolina if  
24 that entity transacts business within the State of South  
25 Carolina, within the State of Missouri. In this case,

1 Light-N-Up and the defendant contacted Digital Ally and  
2 ordered products from Missouri, from Digital Ally in  
3 Missouri. They arranged for financing.

4 I agree if they had ordered the products and paid for  
5 it with a Visa card that minimum contacts wouldn't be  
6 established. Okay. But in this case, they arranged for  
7 financing with Digital Ally with net terms. The payment was  
8 due within 30 days.

9 Okay.

10 THE COURT: But, but---

11 MR. WALSH: And they---

12 THE COURT: Was Digital Ally -- I thought Digital Ally,  
13 Ally was from Kansas.

14 MR. WALSH: Digital Ally is a Nevada Corporation with  
15 principal offices in Kansas City, Missouri, Kansas City,  
16 Kansas, and its manufacturing facility in Kansas City,  
17 Missouri, and under Item 5, Grain Valley, Missouri is in  
18 Jackson County, which is in Kansas City, Missouri.

19 THE COURT: Okay. But did --?

20 MR. WALSH: So, they transacted business by ordering  
21 the products and arranging for financing --

22 THE COURT: In Kansas?

23 MR. WALSH: In Missouri and---

24 THE COURT: Well, I thought -- my understanding is the  
25 office they ordered it from is from Kansas. The

1 manufacturing facility it was shipped from is from Missouri.

2 That's not right?

3 MR. WALSH: Well, the, the orders would go to Missouri,  
4 Your Honor, because that's where the manufacturing and  
5 shipping facility is. Their head offices are in Kansas  
6 City, Kansas, but that's not where the order goes through.  
7 And if you'll refer to there---

8 THE COURT: So, when, when -- if the Digital Ally calls  
9 up and -- well --.

10 MR. WALSH: If you'll refer to remit payment to P.O.  
11 Box 411099, Kansas City, Missouri.

12 THE COURT: Okay. So, they ordered it from Missouri  
13 and submitted payment to Missouri?

14 MR. WALSH: And took delivery in Missouri, Your Honor,  
15 under the free on board.

16 THE COURT: Okay.

17 MR. WALSH: Right.

18 The Missouri Long Arm Statute says they're subject to  
19 long arm jurisdiction if they transact business in the State  
20 of Missouri, which they did, if they make a contract in the  
21 state that's to be performed in whole or in part in  
22 Missouri, which they did, and the commission of the tortuous  
23 act within Missouri, and they did that by not -- they  
24 received payment for the goods from their end users, the  
25 police departments all throughout the State of South

1 Carolina, but then they failed to send it on to Digital Ally  
2 in Missouri.

3 THE COURT: How are you -- okay. And where's the  
4 contract though?

5 You said---

6 MR. WALSH: Your Honor, these are purchase orders  
7 attached to the complaint, the shipping order.

8 THE COURT: Okay. Did they make any payments on any of  
9 this?

10 MR. WALSH: Yes, Your Honor. My understanding is they  
11 did.

12 THE COURT: Okay. And they didn't pay for the rest of  
13 it?

14 MR. WALSH: That's right, Your Honor.

15 THE COURT: Well, they didn't pay for it because they,  
16 they couldn't pay for it or they were in financial trouble  
17 or the products were defective or they just didn't pay for  
18 it?

19 Do y'all know that?

20 MR. WALSH: I believe they were in financial trouble,  
21 Your Honor.

22 THE COURT: Okay.

23 MR. TALLEY: They're actually several things that would  
24 come out in, in -- as counsel stated, these installations  
25 were done for end users. For instance, if you look at Page

1 A-10, this -- I don't know who wrote this on here, but it's  
2 written on here Marion, North Carolina.

3 So, what would happen in some of these instances is the  
4 Sheriff's Department or the city police in Marion, North  
5 Carolina would contract with my client to install things on,  
6 on police cars or whatever may be the case. I can't stand  
7 here and say whether my client was paid on all of these. I  
8 do know that there would be some instances where some of the  
9 equipment may not have been proper or performed the way the  
10 end user intended it to. But we haven't had a chance to  
11 adjudicate that.

12 And if I may, Your Honor, the purchase orders are, are  
13 all that exist when I asked my client where is, where is the  
14 contract. When you look at that, you're exactly right.  
15 Digital Ally is located in Kansas. The bill is being sent  
16 to Roebuck, South Carolina. The shipment, by the document  
17 they generate, is being sent to Roebuck, South Carolina.

18 Now, I will tell you that I had not seen this Page A-32  
19 until counsel gave me a copy of his memorandum earlier. He  
20 read earlier from section 5 dealing with the shipment. If  
21 you look across the page at Item 12 governing law,  
22 jurisdiction, and venue, it seems to me that that is very  
23 clear that while I may be biting myself trying to get the  
24 thing in South Carolina, it should of been brought in Kansas  
25 to begin with.

1 I don't think---

2 THE COURT: What about that?

3 That's what it says, doesn't it?

4 MR. WALSH: That is a great point, Your Honor, and, and  
5 when I read this from my client, I contacted them and I said  
6 hey guys, I mean this is a slam dunk under Paragraph 12 if  
7 you brought this action in Kansas, and I've got cases in  
8 South Carolina that says so.

9 why did you bring it in Missouri?

10 I spoke with the attorney, Troy Rickenbier, who is an  
11 attorney practice, licensed to practice law in Kansas and in  
12 Missouri, and he said because since the contract was  
13 performed in Missouri, delivery was in Missouri, payment was  
14 in Missouri, although we have this forum selection clause,  
15 jurisdiction was actually better in Missouri than it was in  
16 Kansas, and that's why he brought it in Missouri. And, you  
17 know, that's the professional opinion of an attorney who is  
18 practicing in both states---

19 THE COURT: Right.

20 MR. WALSH: ---and my knowledge of the law in Missouri  
21 or Kansas is, I've spent a few hours on it, but it's -- I  
22 mean it is scant, and I, I don't think that, that Scott's  
23 gonna claim that he's an expert in Missouri law either. But  
24 the attorney who brought the case---

25 THE COURT: Right.

1 well, the terms of this sale, this Page A-32, did, did  
2 the South Carolina Corporation ever see this?

3 They never agreed to that, right?

4 I mean they just -- they shipped them a product that --  
5 did anybody else see this thing, agree to this?

6 Understanding if you buy something to me---

7 MR. WALSH: I'd have to do the discovery, Your Honor.  
8 But it's, it's a -- you know, when you do a shipping  
9 invoice, it's the backside, the---

10 THE COURT: Right.

11 MR. WALSH: ---the terms by adhesion. So, it would of  
12 been attached to each shipment.

13 THE COURT: And, so -- and then when you ship it,  
14 whether there's enforceable or whether it's a contract,  
15 there's a lot of issues on that end of it.

16 Just because it's on an invoice doesn't make it an  
17 enforceable contract, do you think?

18 MR. WALSH: Yes, Your Honor, unless there's some  
19 written objection to it it is an enforceable contract under  
20 the UCC. That's my understanding. And, and, you know, it's  
21 the battle of the forms --

22 THE COURT: All right.

23 MR. WALSH: -- that, that I had under Professor Lacey.  
24 They can object to those terms and then call them into  
25 question, but he made repeated orders and repeated

1 deliveries were made to them under these terms.

2 THE COURT: Okay. And that -- and I, and I had a case  
3 a few years ago that was the issues, what were the terms and  
4 how many orders, there's one order, and, you know, it turned  
5 out to be extremely complicated.

6 MR. WALSH: Yes, Your Honor, and the defendant could of  
7 objected to jurisdiction in Missouri, Missouri or litigated  
8 these terms, but he chose not to.

9 THE COURT: Well, how did, how did he even know the  
10 suit was pending?

11 MR. WALSH: Because he was served.

12 THE COURT: He got actual service. Okay.

13 MR. WALSH: He was served with the suit. He was served  
14 with the motion. He was served with the notice of hearing,  
15 and he was served with the order, and those were all sent  
16 out by the Clerk of Court, Your Honor.

17 THE COURT: I got you. Well, if he's in financial  
18 trouble he probably couldn't afford to go litigate it---

19 MR. WALSH: Yes, Your Honor.

20 THE COURT: ---and if he truly owed this debt he would  
21 of paid it I guess.

22 MR. WALSH: Yes, Your Honor.

23 THE COURT: Okay. All right. Anything else?

24 MR. TALLEY: No, Your Honor. I just -- I don't, I  
25 don't -- I'm not naive to think that my client's always give

1 me everything they have, but, as I said, I have not seen  
2 this terms of sale sheet until counsel presented it to me  
3 today. Even worse case scenario, I think it presents an  
4 issue for the Missouri Court to issue a judgment. Depending  
5 on Your Honor's ruling, they've got to go then and file  
6 something in Kansas and my client's got to go there and  
7 defend it, and so be it.

8 But I still don't think there's anything before the  
9 Court that would show jurisdiction in the State of Missouri  
10 to issue this order.

11 THE COURT: All right. And what is your -- counsel,  
12 what's your position that Missouri has jurisdiction over  
13 them?

14 MR. WALSH: That -- the defendant transacted business  
15 in Missouri by seeking out Digital Ally, placing an order  
16 with them, obtaining credit from, for them.

17 THE COURT: Tell me about that credit now.

18 MR. WALSH: The terms of the delivery invoices are net  
19 30. So, he did not pay for it when he ordered it like I do  
20 when I order a part---

21 THE COURT: Right.

22 MR. WALSH: ---for a, a car or a truck from, from which  
23 I recently ordered a starter for, from a company in, in  
24 Tennessee, and they required that I give them my Master, my  
25 visa card number, and once they were sure that I'd pay for

1 it they shipped it to me at my cost.

2 THE COURT: Right.

3 MR. WALSH: In this instance, he arranged for financing  
4 with the company in Missouri. It was payable in Missouri.  
5 The contract was completed in Missouri by delivery, and he  
6 also committed a tort with the affection, a tort of fraud  
7 by failing to pay his materials supplier, which also is a  
8 criminal offense here in South Carolina. He, he received  
9 payment and then didn't forward it on to his materials  
10 supplier, which is Digital Ally, and they've alleged fraud  
11 and deceit for negligent misrepresentation in that he  
12 warranted that he'd send them the money when he got paid and  
13 he didn't.

14 THE COURT: Okay. But how do you know he got paid?

15 MR. WALSH: Your Honor, that is, is something he could  
16 of litigated in Missouri.

17 THE COURT: Okay. I got you. But, but the payment  
18 actually was made -- the order was placed in Missouri and  
19 the payment was Missouri.

20 It wasn't placed in Kansas even though they say Kansas  
21 got jurisdiction.

22 Is that your understanding?

23 MR. WALSH: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. TALLEY: May I respond to that, Your Honor?

1 THE COURT: Yes, sir.

2 MR. TALLEY: I just don't think that last point is  
3 correct because if, if you look at these invoices, the, the  
4 origination of all of this business that's transacted is the  
5 office in Kansas.

6 Now, obviously, at the bottom of these invoices it says  
7 send your payment to Kansas City, Missouri. But my client's  
8 dealing with somebody in Kansas. The, the attorney that he  
9 mentioned, best I can see, is from Kansas.

10 THE COURT: All right.

11 MR. TALLEY: So, all the---

12 THE COURT: That's what I was wondering.

13 How do you place this order?

14 Do you call the company and say send me so and so, and  
15 where do you call them?

16 In my understanding you're calling Kansas, and then  
17 Kansas was sending it out of Missouri.

18 MR. WALSH: Your Honor, I don't think that's relevant.  
19 He might of been calling India, you know, with, with all the  
20 outsourcing that goes on. It's -- and I will not make any  
21 representation to the Court as to where he called. I have  
22 no idea.

23 THE COURT: Okay.

24 MR. WALSH: And I don't know that he called or whether  
25 he placed an order over the Internet or, or how he placed

1 his order.

2 THE COURT: Okay. All right. I'll read this and let  
3 y'all know.

4 MR. WALSH: Thank you, Your Honor.

5 MR. TALLEY: Thank you, Your Honor.

6

7 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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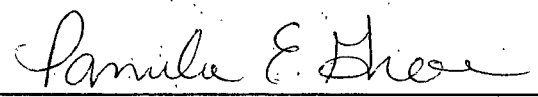
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 16<sup>th</sup> day of July, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 26<sup>th</sup>, 2013

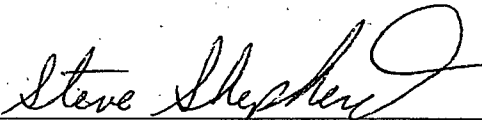


PAMELA E. GREEN, Court Reporter

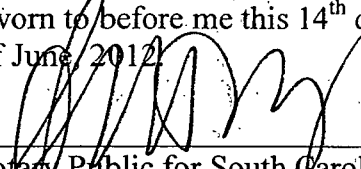
Affidavit of Steve Shepherd

My company, Light-N-Up, LLC is a South Carolina limited liability company operating and existing solely in Spartanburg County, South Carolina. We do not have any other locations in the world. I have never operated or done business in the State of Missouri. We do receive goods from vendors around the country. The goods are shipped to Spartanburg County, South Carolina where we use the goods to produce a final product for our customer. The Digital Ally equipment that was shipped to us was used for our customers; no cars/trucks or other vehicles were ever delivered by Light-N-Up, LLC or me to the State of Missouri. Most of our end users are located in the State of South Carolina, and if not, then along the east coast.

I live in Spartanburg County, South Carolina. I have never even visited the State of Missouri. We did not answer or otherwise appear in the action filed by the Plaintiff in the State of Missouri. I believe there are certain defenses to the underlying action but it needs to be adjudicated, for the first time, in the proper jurisdiction.

  
Steve Shepherd, Individually and as  
Member of Light-N-Up, LLC

Sworn to before me this 14<sup>th</sup> day  
Of June, 2012

  
SEAL  
Notary Public for South Carolina  
My Commission Expires: 7/27/2012

## Scott Talley

---

**From:** Cothran, Ralph F. Jr., Law Clerk (Matthew E. Rupert) [rcothranlc@sccourts.org]  
**Sent:** Thursday, August 30, 2012 4:14 PM  
**To:** Scott Talley; dlwalsh@gainesandwalsh.com  
**Subject:** Digital Ally v Light-N-Up

To All:

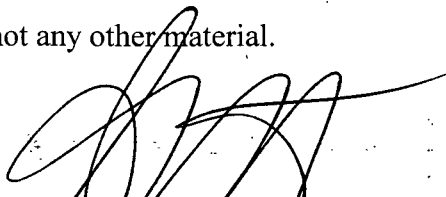
After much deliberation, Judge Cothran has decided to deny the Defendant's Motion for Relief from Foreign Judgment. Pursuant to Law Firm of Paul L. Erickson v. Boykin, Opinion No. 26696 (SC Supreme Court July 27, 2009), the Supreme Court of South Carolina ruled that a judgment debtor has the burden of proof to show lack of personal jurisdiction when the debtor files a motion for relief from a foreign judgment. In this case, the defendant has failed to provide any evidence regarding the lack of jurisdiction of the Missouri Courts. Additionally, the facts as presented in this case satisfy the Missouri Long Arm Statute conferring proper personal and subject matter jurisdiction to the Missouri Courts. Mr. Walsh, please draft an Order in accordance with our recommendation. When drafting the Order, please include the above referenced case and a discussion of the Missouri Long Arm Statute.

If I have left off a party to this case, please forward this email to anyone left off and ensure I am cc'ed on the forwarded email. Additionally, if you should have any questions or comments, please email me. Thanks,

Matthew E. Rupert  
Law Clerk to the Honorable R. Ferrell Cothran, Jr.  
The Third Judicial Circuit of South Carolina 16. N. Brook St.  
Manning, SC 29102  
Office: (803) 435-2450  
Fax: (803) 435-2461  
[rcothranlc@sccourts.org](mailto:rcothranlc@sccourts.org)

**CERTIFICATE OF APPELLATE**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.



---

Scott E. Talley, Esquire  
Attorney for Appellant

June 25, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2010-CP-42-2075  
Appellate Case No. 2013-000648

Digital Ally, Inc.,

Respondent,

v.

Light-N-Up, LLC and Steven  
Shepherd,

Appellants.

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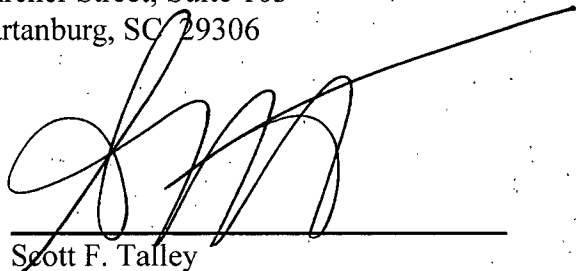
SC Court of Appeals

PROOF OF SERVICE

**IT IS HEREBY CERTIFIED** that a copy of the foregoing **Record on Appeal** in this action was served upon Counsel for Respondent, David L. Walsh, Esquire, by hand-delivering a copy of same at Mr. Walsh's place of business located at the following location:

David L. Walsh, Esquire  
150 Archer Street, Suite 103  
Spartanburg, SC 29306

June 25, 2013



Scott F. Talley  
**TALLEY LAW FIRM, P.A.**  
2500 Winchester Place, Suite 100  
Spartanburg, South Carolina 29301  
(864) 595-2966  
Attorney for Appellants