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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2024-001681
Case No. 2019-CP-43-1021

Kimberly Welch, as Personal Representative of the Estate of Judy Ann Haselden, ... Respondent,

v.

Michael D. Smoak and Murray Sand Co., Inc., ... Appellants.

RECORD ON APPEAL – VOLUME I
(pp. 1-362)

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

JEFFREY T. AMMONS
SARAH RAND-MCDANIEL
S. WALLACE CARNWATH, III
WALKER, ALLEN, GRICE,
AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, South Carolina 29465
(854) 529-0595

Counsel for Appellants

G. MURRELL SMITH, JR.
SMITH ROBINSON HOLLER
DUBOSE & MORGAN, LLC
Post Office Box 580
Sumter, South Carolina 29151
(803) 778-2471

FREDERICK N. HANNA JR.
SMITH ROBINSON HOLLER
DUBOSE & MORGAN, LLC
3200 Devine Street
Columbia, South Carolina 29205
(803) 254-5445

Counsel for Respondent

E. HOOD TEMPLE
ALEXANDER S. HOGSETTE
HATFIELD TEMPLE LAW, LLC
170 Courthouse Square
Post Office Box 1770
Florence, South Carolina 29503
(843) 662-5000

Counsel for Respondent

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Certificate of Counsel

Certificate of Compliance

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **ORDER**

This matter came before the Court upon Defendant Murray Sand Co., Inc.'s (hereinafter, "Murray Sand") Motion for a Protective Order, filed on May 27, 2020, and Plaintiff Judy Haselden's Motion to Amend the Complaint, filed on June 3, 2020. A hearing was held remotely through a web-conferencing service on August 5, 2020. Present at the hearing was counsel for Plaintiff, G. Murrell Smith, E. Hood Temple, and Alexander S. Hogsette, and counsel for Defendant Murray Sand, Sarah Rand-McDaniel. For the reasons set forth at the hearing and the submissions of the parties, the Court **GRANTS** Plaintiff's Motion to Amend and **DENIES** Defendant's Motion for Protective Order.

BACKGROUND

The above-captioned matter arises from a motor vehicle v. 18-wheeler accident that occurred on February 9, 2017, at or around 1:10 pm, near Sumter, South Carolina (hereinafter, the "Accident"). Plaintiff Judy Haselden was stopped in traffic when Defendant Michael D. Smoak (hereinafter, "Smoak"), driving an 18-wheeler owned by Defendant Murray Sand Co., Inc. (hereinafter, "Murray Sand") loaded with riprap collided with the rear of Plaintiff's vehicle. Defendant Murray Sand admits that Defendant Smoak was operating the tractor-trailer in the

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course and scope of his employment. The Complaint, filed on May 21, 2019, asserted claims against Murray Sand and Smoak for injuries she sustained in the Accident.

Murray Sand filed an Answer on July 25, 2019. Smoak filed his Answer on August 26, 2019. Murray Sand and Smoak have at all times been represented by attorneys with the Walker Allen Grice Ammons & Foy, LLP law firm. Plaintiff's Interrogatories and Requests for Production as to both Murray Sand and Smoak were served with the Summons and Complaint on Murry Sand.

STANDARD OF LAW

Rule 15(a) of the South Carolina Rules of Civil Procedure permits a party to "amend his pleading by leave of court or by written consent of the adverse party." A Motion for leave to amend shall be "freely given when justice so requires and does not prejudice any other party." Rule 15, SCRCP. It is well-established that a motion to amend is within the discretion of the trial court, and the non-moving party bears the burden of establishing prejudice. *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 558, 521 S.E.2d 153, 156 (1999).

In general, the discovery rules in South Carolina allow

> "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other parties, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter."

Rule 26(b)(1). However, Rule 26(c) of the South Carolina Rules of Civil Procedure permits a party to seek a protective order from discovery when good cause is shown. When justice requires, a protective order may be issued to protect a party from annoyance, embarrassment, oppression, or undue burden by expense. *Id.*

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FINDINGS OF FACT

Plaintiff Haselden filed her lawsuit within the applicable statute of limitations period. Plaintiff served written discovery with the Summons and Complaint. Even though the instant matter was commenced over a year ago, the parties have been engaged in discovery disputes since November of 2019. Indeed, Plaintiff filed a Motion to Compel in November of 2019 and did not receive discovery responses from Defendant Murray Sand until January 23, 2020 and from Defendant Smoak until April of 2020. Plaintiff has since served Murray Sand with supplemental discovery requests. Plaintiff's Motion to Compel regarding her initial discovery requests was not heard until May 19, 2020 and is still pending before the Court.[1]

Based upon the posture of the case, the evidence produced during discovery, and the arguments advanced by the parties, the Court grants Plaintiff the relief requested in her Motion to Amend. The Court finds that Defendant Murray Sand has not established that the amendments are prejudicial or futile, and Defendant it is not at a disadvantage in defending the merits of the proposed amendments. The Court further finds that in accordance with the South Carolina Rules of Civil Procedure and in the interest of justice, the proposed amendments against Defendant Murray Sand are not subject to the statute of limitations; rather, because they necessarily arise out of the conduct, transaction and occurrence set forth or attempted to be set forth in the Complaint, they relate back to the date of the original pleading.

Further, the Court denies Defendant Murray Sand's Motion for a Protective Order. The discovery sought by Plaintiff in connection with the instant matter is within the ambit of the South Carolina Rules of Civil Procedure. Specifically, the Court finds that discovery sought is not oppressive, unduly burdensome, disproportionate to the needs of the case, or irrelevant. The Court

[1] On June 17, 2020, the Court notified the parties that "[a]fter extensive research, I find the motion to compel is granted." Proposed orders were prepared by the parties and submitted to the Court.

finds that, in the interest of justice, the discovery requested is relevant and does not rise to the level of harassment or annoyance to Murray Sand.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend is **GRANTED** and Defendant Murray Sand's Motion for Protective Order is **DENIED.** Plaintiff is instructed to file the Amended Complaint with the Clerk of Court.

IT IS FURTHER ORDERED that Defendant Murray Sand has thirty (30) days from the date this Order is filed to respond to Plaintiff's supplemental discovery requests.

_____
THE HONORABLE GEORGE M. MCFADDIN JR.

This ___ day of ____, 2020.

_____, S.C.

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Sumter Common Pleas

Case Caption: Judy Haselden VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Amend

So Ordered

S/George M. McFaddin, Jr., #2759

ELECTRONICALLY FILED - 2020 Aug 27 3:00 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **ORDER**

This matter is before the Court on a motion to compel filed by Plaintiff, Judy Haselden, on November 5, 2019. The matter came before this Court on May 19, 2020, by means of a video-conference. Present at the hearing were Alexander S. Hogsette (representing the Plaintiff), and Sarah Rand-McDaniel (representing Defendants Michael Smoak and Murray Sand, Co., Inc.). Following the able arguments of counsel and a thorough review of relevant case law, this Court hereby grants the underlying motion to compel.

BACKGROUND

This case stems from a motor vehicle accident that occurred on February 9, 2017 in Sumter County, SC. During the accident, Plaintiff Judy Haselden's vehicle was impacted from behind by a truck driven by the Defendant, Michael Smoak. The truck involved in the accident was owned by Murray Sand Company, Inc. (hereinafter "Murray Sand"). Defendant Smoak was an employee of Murray Sand at the time of the accident and was operating the truck in the course and scope of his employment. Plaintiff has alleged injuries resulted from the accident and filed the present lawsuit against both defendants on May 21, 2019. Murray Sand answered the complaint on July 25, 2019, and Smoak answered approximately one month later on August 26, 2019. Both

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defendants are represented by the law firm of Walker, Allen, Grice, Ammons, Foy & Klick, LLP. Following the filings of pleadings, the parties began the discovery process.

On November 5, 2019, Plaintiff filed the present motion to compel. On January 23, 2020, Defendants answered Plaintiff's initial round of discovery to Murray Sand. Subsequently, on February 3, 2020, Plaintiff's counsel wrote a letter to Defendant's counsel suggesting the discovery responses were deficient in four ways. The only deficiencies relevant to the present motion are #1 and #4. Number 1 requested "[a]ny and all incident reports completed by the Defendant Michael D. Smoak as a result of this accident." Number 4 requested the results of a post-accident drug test allegedly performed on Defendant Smoak in Columbia following the accident. The parties were unable to resolve the matter, and after filing respective memoranda supporting and opposing the motion, the matter came before this Court on May 19, 2020.

At the hearing, counsel for Plaintiff argued that deposition testimony of Defendant Smoak established that Smoak had filled out a post-accident incident report for Murray Sand and had received a post-accident drug test. Plaintiff further argued Defendant had failed to respond to a request for production related to the pre-litigation claim file of the relevant insurance company, The Travelers Indemnity Company of Connecticut ("Travelers").

Defendant argued Murray Sand had undertaken diligent efforts to locate records responsive to Plaintiff's requests but was not in possession of any post-accident report or post-accident drug test. Regarding the pre-litigation claim file, Defendant's counsel argued she had not been given sufficient notice under Rule 11, SCRCP, of the claimed deficiency in order to formally respond; however, she represented Smoak and Murray Sand, not Travelers, and she had no duty to produce materials from the third-party insurance company that were not in her possession.

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LAW/ANALYSIS

It is axiomatic that an "affirmative duty [exists] to answer interrogatories and respond to requests to produce." CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011). As regards Plaintiff's requests for any post-accident incident reports from Murray Sand and any post-accident drug testing, such documentation would certainly be relevant and not subject to any applicable privilege. Accordingly, the motion to compel as it relates to those materials is hereby granted. However, during the hearing, Defendant's counsel represented as an officer of the Court that extensive efforts to locate these documents to date has been fruitless and responsive documents are not in her possession.

With respect to Plaintiff's request for pre-litigation file materials, this Court first notes that Defendants' counsel represents Defendants Smoak and Murray Sand, not Travelers. See Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 826 S.E.2d 270, 273 (2019) (declining to recognize a "dual attorney-client relationship" between an insured and an insurer). Accordingly, to the extent Plaintiff wishes to obtain non-privileged pre-litigation claim file materials from Travelers, Plaintiff's appropriate recourse is to subpoena them directly from the insurer rather than from Defendants or their counsel by way of written discovery. *Id.* ("[W]e emphasize the insurer may not intrude upon the privilege between the attorney it hires and the attorney's client—the insured. We are confident the trial courts of this State are well-equipped to protect the attorney-client privilege according to law if any dispute over it arises.").

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel is **GRANTED** and Plaintiff may seek any non-privileged and relevant materials mentioned above directly from Murray Sand, or through Travelers, by way of the subpoena process.

IT IS SO ORDERED.

_____
THE HONORABLE GEORGE M. MCFADDIN JR.

This ___ day of ____, 2020.

_____, S.C.

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Sumter Common Pleas

Case Caption: Judy Haselden VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Compel

So Ordered

S/George M. McFaddin, Jr., #2759

ELECTRONICALLY FILED - 2021 May 17 4:26 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **CONSENT SCHEDULING ORDER**

COMES NOW BEFORE THE COURT, the parties in the above-captioned matter. Pursuant to the South Carolina Rules of Civil Procedure and upon consent of the parties, the Court hereby establishes the following scheduling order for this case:

1. Plaintiff shall identify by full name, address, and telephone number each person whom Plaintiff expects to call as an expert at trial by **June 1, 2021**.
2. Defendants shall identify by full name, address, and telephone number each person who Defendants expect to call as an expert at trial by **July 1, 2021**.
3. Written discovery shall be completed no later than **September 1, 2021**. Written discovery requests shall be served in time for the responses thereto to be served by this date. This shall not limit the parties from supplementing written discovery responses, nor shall it limit the parties from serving Requests to Admit pursuant to S.C. Code Ann. § 19-1-60.
4. This case is subject for being called for jury selection and/or trial on or after **November 1, 2021**.

IT IS SO ORDERED.

_____
George M. McFaddin Jr.
Chief Administrative Judge
Third Judicial Circuit

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Sumter Common Pleas

Case Caption: Judy Haselden VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Scheduling Order

So Ordered

S/George M. McFaddin, Jr., #2759

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C/A No.: 2019-CP-43-01021
	)	
Judy Haselden,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
Michael D. Smoak and Murray Sand Co., Inc.	)	
	)	
Defendants.	)	
_____	)	

The matter before the Court is Plaintiff Judy Haselden's motion for sanctions requesting the Court to strike Defendants Michael Smoak and Murray Sand Co., Inc.'s (collectively "Defendants") answer and hold them in default. A hearing on Plaintiff's motion was held on August 4, 2023. G. Murrell Smith, Jr., E. Hood Temple, and Alexander S. Hogsette appeared on behalf of Plaintiff. Jeffery T. Ammons and Sarah Rand-McDaniel appeared on behalf of Defendants. The Court has carefully considered Plaintiff's motion, the arguments offered during the hearing, and the relevant law. For the reasons set forth below, the Court grants the motion for sanctions, strikes Defendants' answer, and holds Defendants in default.

BACKGROUND

This case arises out of a motor vehicle accident that occurred in Sumter County. On February 9, 2017, Haselden was rear-ended by a tractor-trailer driven by Smoak and owned by Murray Sand. Smoak was acting in the course and scope of his employment with Murray Sand at the time of the accident. Specifically, Smoak was in the process of hauling riprap from Kershaw to Edisto Beach, where Crowder Construction Co. was involved in a beach renourishment project.

I. The Lawsuit and Initial Discovery

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Plaintiff filed her complaint against Smoak and Murray Sand on May 21, 2019, and immediately served Defendants with her first interrogatories and requests for production. Plaintiff's initial discovery requests sought basic information about the accident and parties involved, such as the load being hauled, the names of shippers and consignees, fax transmissions and invoices to any entity concerning the trip, trip summaries, pickup and delivery records, and applicable insurance policies. Murray Sand filed its answer on July 25, 2019, and Smoak filed his answer on August 26, 2019.[1] Plaintiff requested Defendants to respond to her first discovery requests on September 25, 2019. Neither Murray Sand nor Smoak timely responded, so Plaintiff filed her first motion to compel on November 5, 2019.

On January 23, 2020, approximately 8 months after being served with the requests, Murray Sand provided its first discovery responses. Along with its responses, Murray Sand produced 552 pages of documents without any Bates Stamps or numbers. As discussed in more detail below, Murray Sand did not produce all documents responsive to Plaintiff's requests.

On April 30, 2020, Smoak provided his first discovery responses. Smoak did not produce any documents along with his discovery responses. The same day, Murray Sand supplemented its discovery responses with 40 additional pages of documents. Like Murray Sand's first production, these documents were not Bates Stamped.

Defendants also filed their response to Plaintiff's motion to compel on April 30, 2020. In the response, Murray Sand represented that it had "spent a number of hours diligently searching for the records Plaintiff claims have been withheld, and has not, to date, discovered the documents Plaintiff describes in her memorandum. Murray Sand is not in possession of the documents

[1] Haselden filed an amended complaint on September 3, 2020. Defendants filed a joint answer to the amended complaint on September 17, 2020.

Plaintiff seeks[.]" Nevertheless, on May 18, 2020, the eve of the hearing on Plaintiff's motion to compel, Murray Sand produced an additional 246 pages of documents. Some of these documents were duplicates of documents already produced. The undersigned heard Plaintiff's motion to compel on May 19, 2020.

On May 27, 2020, Murray Sand moved to dismiss Plaintiff's complaint. Murray Sand's motion to dismiss did not state any grounds for dismissal, and Murray Sand never filed a memorandum in support of its motion. The same day, Murray Sand also moved for a protective order and for a stay of discovery. In a memorandum in support of its motion for a protective order filed July 22, 2020, Murray Sand again represented that it had produced all documents in its possession: "During the hearing [on Plaintiff's motion to compel], counsel for Murray Sand confirmed, again, that after numerous exhaustive searches on behalf of Murray Sand, she had produced everything in her possession that was not privileged."

The Court granted Plaintiff's motion to compel on August 27, 2020. Specifically, the Court ordered Murray Sand to produce all post-accident incident reports and post-accident drug testing. In contravention of the Court's Order, Murray Sand has never produced these documents. Murray Sand continues to represent that it is not in possession of these documents, despite Smoak's deposition testimony that he provided a written statement to Murray Sand and took a drug test on the day of the accident.

The Court also denied Murray Sand's motion for a protective order on August 27, 2020. The Court ruled: "The discovery sought by Plaintiff in connection with the instant matter is within the ambit of the South Carolina Rules of Civil Procedure. Specifically, the Court finds that discovery sought is not oppressive, unduly burdensome, disproportionate to the needs of the case, or irrelevant."

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On September 25, 2020, Murray Sand produced an additional 90 pages of documents. These documents were Bates Stamped, but in a different format from Murray Sand's previous production. As noted above, this production also did not include the documents the Court ordered Murray Sand to produce in its August 27, 2020 Order. Over the course of the next year, despite several requests from Plaintiff, Defendants did not supplement their production.

As of May 2021, Defendants had produced roughly 1,000 pages of documents throughout two years of litigation. The parties entered a consent scheduling order dated May 17, 2021. The Order provided: "Written discovery shall be completed no later than September 1, 2021."

II. Defendants' Belated Production and the Disclosure of Blue Max Trucking

As noted above, prior to the written discovery deadline, Defendants and their counsel represented on multiple occasions to both the Court and Plaintiff that they had searched for and produced all discoverable documents. However, on September 30, 2021, a month after the written discovery deadline, Defendants produced **5,110** pages of documents—over five times the total number of documents produced in the previous two years. Like their earlier productions, many of the documents were duplicates, and none were Bates Stamped. The production was simply separated into five pdf documents as follows:

- Document Production 1: This production was 532 pages of documents. 340 of these documents had already been produced, some of which more than once. However, Defendants also intermingled 192 new documents amongst the old documents.
- Document Production 2 RESP – SCYAP Subpoena: This production was 763 pages of documents Defendants received in response to a subpoena.
- Document Production 3 RESP – Medical: This production was 3,096 pages of documents Defendants received in response to subpoenas issued over two years prior.
- Document Production 4 Safety Meeting Docs: This production was 148 pages of new documents.

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- Document Production 5 Tax Returns: This production was 763 pages of documents that Defendants were ordered to produce following a motion to compel hearing.

All told, Defendants produced well over 3,000 pages of new, previously undisclosed documents in their September 30, 2021 production—contrary to Defendants' representations that they had been conducting exhaustive searches throughout the previous two years. Many of these documents were responsive to the initial discovery requests Plaintiff served in May 2019 and were undoubtedly within Defendants' possession from the time of the accident in 2017.

The September 30, 2021 production revealed several pieces of key, previously undisclosed information. For the first time, Defendants disclosed (1) accident registers and other data relating to Ms. Haselden's accident; (2) the existence of an excess liability insurance policy; and (3) the involvement of Blue Max Trucking. Accordingly, over two years into the case, after an unsuccessful mediation and the discovery deadline, Defendants first provided Plaintiff with basic information about the accident, Murray Sand's insurance coverage, and Blue Max Trucking. Again, Plaintiff requested this information in May 2019, and there is no question that Defendants should have provided it in their first production.[2]

Defendants' delayed disclosure of Blue Max Trucking particularly prejudiced Plaintiff. Buried amongst duplicate documents in Defendants' "Document Production 1" were three pages of documents revealing that Murray Sand was hauling riprap for Blue Max Trucking on the date of the accident. Specifically, the documents identifying Blue Max Trucking consisted of a two-

[2] Additionally, Defendants were copied on a subpoena Plaintiff served on Crowder Construction, dated March 30, 2021, in which Plaintiff asked Crowder Construction to produce all "contracts, agreements, purchase orders, schedules, receipts, delivery logs, delivery records, weight tickets, and any other documents in any form whatsoever relating to Murray Sand Company, Inc. from January 1, 2016 through July 1, 2017." Defendants knew or should have known by copy of this subpoena that Plaintiff was trying to discover the relationship between Crowder Construction and Murray Sand, which Defendants knew would yield nothing because it was Blue Max Trucking, not Murray Sand, that had the relationship with Crowder Construction.

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page document summarizing the trips Murray Sand completed for Blue Max Trucking between January 30, 2017 and February 22, 2017, and a one-page invoice dated February 27, 2017 from Murray Sand to Blue Max Trucking. These three pages revealed a significant amount of previously undisclosed information. They showed that Murray Sand hauled well over 1,000 tons of riprap for Blue Max Trucking to Crowder Construction at Edisto Beach throughout February 2017. The one-page invoice also included a customer ID, an invoice number, the identify of a shipper and consignee, and evidenced a $52,756.62 bill submitted to Blue Max Trucking for the month of February 2017.

Upon receiving this information, Plaintiff immediately issued a subpoena to Blue Max Trucking on October 8, 2021. However, because Defendants concealed Blue Max Trucking's involvement up to that point, Blue Max responded that all "documents responsive to this subpoena have been purged in accordance with State and Federal laws and regulations or are otherwise unable to be located."

As discussed in more detail below, Plaintiff was irreparably prejudiced by Defendants' intentional decision to hide Blue Max Trucking's involvement until September 30, 2021. Although the production demonstrated that Smoak and Murray Sand were hauling riprap for Blue Max Trucking on the date of the accident, Plaintiff was not aware of that fact until over two years into the litigation and after the statute of limitations had run. Additionally, because Defendants did not disclose Blue Max Trucking until after the discovery deadline and after Blue Max Trucking had purged all records relating to the accident, Plaintiff was unable to conduct discovery and learn the full scope of Blue Max Trucking's involvement in this accident.

LEGAL STANDARD

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The purpose of discovery is to ensure "full and fair disclosure" of information and to "prevent a trial from becoming a guessing game" for either party. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997); *Scott v. Greenville Housing Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151 (2003) ("The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming an guessing game or one of ambush for either party."). The South Carolina Supreme Court has held that the purpose of our State's discovery rules is not to promote gamesmanship or obfuscation, but rather to ensure that "lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of the S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (quoting *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 (Tex. 1999)).

"The selection of a sanction for discovery violations is within the trial court's discretion." *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990). "Rule 37 expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party's failure to respond to certain discovery requests." *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 682 (Ct. App. 1997). Rule 37 provides, in relevant part, that if a party "fails to obey an order to provide or permit discovery," the court may issue an order "striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party." Rule 37(b)(2)(c), SCRCP.

Before a court imposes a sanction tantamount to granting a judgment by default, "the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 199,

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511 S.E.2d 716, 719 (Ct. App. 1999). Additionally, "the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.*

ANALYSIS

The Court finds Defendants' discovery conduct in this case warrants the harsh sanction of striking Defendants' answer. Throughout this litigation, Defendants have systematically interfered with Plaintiff's ability to prepare for trial. Defendants consistently failed to provide or supplement discovery responses in a timely fashion, disobeyed the Court's discovery orders, and misled the Court and Plaintiff. Most importantly, Defendants intentionally withheld the identity of a potential defendant, Blue Max Trucking, from Plaintiff until after the statute of limitations. Because these willful actions have irreparably prejudiced Plaintiff, it is proper to strike Defendants' answer.

Before discussing this ruling in more detail, the Court notes that Plaintiff does not contend the discovery abuses in this case were orchestrated by defense counsel. Based on its review of the record, the Court agrees and finds that the prejudice Plaintiff has suffered is directly attributable to Defendants' bad faith conduct.

I. Discovery Posture

In determining the appropriate sanction to impose, the first factor the Court considers is "the precise nature of the discovery and the discovery posture of the case." *Griffin Grading & Clearing*, 334 S.C. at 199, 511 S.E.2d at 719. This factor supports the sanction of striking Defendants' answer.

Plaintiff filed her complaint in May 2019, and this litigation has been ongoing for well over four years. The parties have already attempted to mediate this case, and the discovery deadline has long passed. Although the South Carolina Rules of Civil Procedure exist to secure the "just,

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speedy, and inexpensive determination of every action," Rule 1, SCRCP, Defendants' conduct has continually frustrated Plaintiff's ability to obtain discoverable information in a timely fashion and prosecute this action.

Plaintiff served Defendants with her first discovery requests in May 2019. Defendants did not respond until after Plaintiff filed her first motion to compel on November 5, 2019. Even then, Defendants did not make a full production. Instead, Defendants only produced a portion of the documents in their possession responsive to Plaintiff's requests, forcing Plaintiff to file additional motions to compel on November 5, 2020, July 14, 2021, and September 15, 2021.

It is clear from the Court's review of proceedings in this matter that Defendants have engaged in a pattern of forcing Plaintiff to threaten or obtain court intervention before providing basic discovery. More troublingly, even after Plaintiff filed numerous motions to compel and the Court ordered Defendants to provide certain discovery, Defendants continued to withhold key information. Finally, over two years into the case, Defendants produced over 5,000 pages of documents on September 30, 2021.

However, the September 30, 2021 production did not remedy Defendants' prior discovery violations. Instead, because Defendants chose to disclose key case information after the statute of limitations, Plaintiff was denied the opportunity to pursue a claim against Blue Max Trucking. The Court finds the discovery posture in this case has been continually impaired by Defendants' bad faith and disobedience of the Court's orders. Moreover, because Defendants' discovery violations denied Plaintiff the opportunity to pursue a claim against Blue Max Trucking, this factor favors the harsh sanction of striking Defendants' answer.

II. Willfulness

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Next, the Court considers the willfulness of the discovery violation. *Griffin Grading & Clearing*, 334 S.C. at 199, 511 S.E.2d at 719. Before the Court may enter an order striking a party's pleading, "the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Id.* As the Court will now explain, Plaintiff has satisfied her burden of demonstrating that Defendants' conduct meets the "willful" standard. Specifically, Plaintiff has shown that Defendants intentionally withheld the identity of Blue Max Trucking until after the statute of limitations and violated Court orders relating to discovery.

At the hearing on Plaintiff's motion, Defendants raised two arguments in support of their position that the delayed disclosure of Blue Max Trucking was not intentional. First, Defendants contend Plaintiff's May 2019 discovery requests did not contain any interrogatories or requests for production that would have required them to disclose Blue Max Trucking's identity. Second, Defendants argue that any delay in disclosing Blue Max Trucking was merely the result of poor record keeping. The Court will address these arguments in turn.

Defendants' argument respecting the scope of Plaintiff's May 2019 discovery requests turns upon whether the three-page document identifying Blue Max Trucking was responsive to any of Plaintiff's first interrogatories or requests for production. As noted above, the three-page document consisted of a two-page summary of trips Murray Sand completed for Blue Max Trucking in February 2017 and a one-page invoice from Murray Sand to Blue Max Trucking. The two-page summary reveals that Murray Sand hauled over 1200 tons of riprap for Blue Max Trucking to Crowder Construction throughout February 2017. The summary also reveals that, on February 9, 2017, the date of Plaintiff's accident, Murray Sand hauled roughly 100 tons of riprap to Crowder Construction over the course of four separate trips. The one-page invoice reveals that

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on February 27, 2018, Murray Sand sent Blue Max Trucking a bill for $52,756.62 for the work it performed in the preceding weeks.

Contrary to Defendants' argument, the three-page document identifying Blue Max Trucking was responsive to several of Plaintiff's May 2019 discovery requests. In her first requests for production, Plaintiff requested Defendants to produce:

> 14. A copy of all fax transmissions to any entity concerning the trip surrounding the collision of February 9, 2017.
>
> 20. A copy of all pickup and delivery records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.
>
> 21. A copy of all trip summaries pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.
>
> 24. A copy of all expense sheets, all trailer interchange records, and bills of lading pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.
>
> 47. A copy of all trip reports pertaining to the trip in which the tractor trailer was engaged on February 9, 2017.

The Court finds the documentation identifying Blue Max Trucking was requested by each of the foregoing requests for production; therefore, Defendants should have produced the document in response to Plaintiff's May 2019 discovery requests, at the onset of this litigation. Defendants' arguments to the contrary strain credulity and work against the purpose of discovery—to promote "full and fair disclosure" and "prevent a trial from becoming a guessing game or surprise for either party." *Samples*, 329 S.C. at 113, 495 S.E.2d at 217. Defendants cannot avoid production of relevant and responsive materials by unilaterally narrowing the scope of discovery requests through forced interpretations. *See* Rule 34(b), SCRCP ("The party upon whom the request is served shall serve a written response . . . ." (emphasis added)); *Samples*, 329 S.C. at 109-10, 495 S.E.2d at 215-16 (stating that parties must disclose all evidence, or at least the existence of evidence, that relates to the case, not only evidence which they intend to use at trial).

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Of course, Defendants' argument that Plaintiff never requested the three-page document identifying Blue Max Trucking is further negated by the fact that Defendants ultimately produced the document in September 2021. Defendants cannot justify their belated production by pointing their fingers back at Plaintiff and arguing she never requested the materials.

Defendants' second attempt to explain the delayed disclosure of Blue Max Trucking also fails. Again, Defendants sought to explain away the September 2021 production by claiming any delay was the result of poor record keeping. Being disorganized, however, does not justify discovery misconduct. *See Ashmore v. Allied Energy, Inc.*, No. 8:14-CV-00227-JMC, 2016 WL 2898007, at *4 (D.S.C. May 18, 2016) ("The defendant may not excuse itself from compliance with Rule 34 . . . by utilizing a system of record-keeping which conceals rather than discloses relevant records[.]" (citation omitted)). Otherwise, litigants could effectively prevent opposing parties from obtaining relevant evidence simply by engaging in poor recordkeeping. Therefore, even assuming it were true that Defendants delayed disclosure was the result of disorganization, that would not excuse Defendants' bad faith conduct. *See Griffin Grading & Clearing*, 334 S.C. at 199, 511 S.E.2d at 719 (explaining the Court may enter an order striking a party's pleading if the moving party shows "bad faith, willful disobedience or gross indifference to its rights to justify the sanction").

In any event, the Court rejects Defendants' explanation that they misplaced or could not find the three-page document identifying Blue Max Trucking for the initial years of this litigation. It is clear from the Court's review that the document was significant to Murray Sand's business operations. In fact, the last page of the document was the invoice, sent to Blue Max Trucking, by which Murray Sand was paid over $50,000 for roughly several weeks' worth of work for Blue

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Max Trucking. Defendants' suggestion that they could not identify this document for several years is preposterous.

Instead, the Court agrees with Plaintiff that Defendants intentionally withheld the identity of Blue Max Trucking for over two years. The manner in which Defendants organized their September 2021 production reveals intent to hide discoverable information from Plaintiff. The Court finds the "Document Production 1" pdf that Defendants produced on September 30, 2021, was designed to prevent Plaintiff from finding the three-page document identifying Blue Max Trucking. This pdf contained 192 new documents intermingled between 340 pages of old documents—some of which had been produced multiple times. It is readily evident to the Court that Defendants buried the three-page Blue Max Trucking document with the hope that Plaintiff would skim past it. Of course, the timing with which Defendants disclosed Blue Max Trucking's identity speaks volumes as well—they waited until after the statute of limitations and document retention period provided by law had expired.[3]

Defendants also withheld other materials from Plaintiff for years of this litigation. Defendants failed to provide any credible explanation for why they did not produce the excess

[3] The Court is also persuaded by Plaintiff's argument that Defendants withheld information about Blue Max Trucking for self-serving reasons. Although Plaintiff was denied the opportunity to discover information about the relationship between Murray Sand and Blue Max Trucking, she argued during the hearing that Murray Sand likely agreed to indemnify and hold Blue Max Trucking harmless from any liability arising from Murray Sand's actions on behalf of Blue Max Trucking. Defendants did not respond to this argument or state that such an agreement did not exist. Accordingly, by hiding Blue Max Trucking's identity until after the statute of limitations, Murray Sand avoided the burden of indemnifying Blue Max Trucking. As Justice Hill once wrote, "[t]he practice of law is among the noblest of professions, but it is a hard enough way to earn a living without having to joist with the abrasive and improper tactics of opposing counsel. Courts should not sit passively by as mere spectators while the expanding tide of discovery abuse erodes the collegiality of the bar. The rules of discovery are simple; only one intent on accomplishing a secondary purpose such as stonewalling or delay could feign misunderstanding of their basic principles." *Spencer Pest Control Co. v. Wood*, No. 2005-CP-39-01347 (Pickens Cnty. Com. Pl. Oct. 11, 2006).

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insurance policy and the accident register until September 30, 2021. Defendants cannot claim they failed to search for these documents properly, as Defendants represented in April and July 2020 that they had conducted "numerous exhaustive searches" and "produced everything in [their] possession." Accordingly, the only logical explanation is that Defendants intentionally withheld these documents until after mediation and the discovery deadline to devalue Plaintiff's case. Although the insurance policy and accident register were certainly available to Defendants when they received Plaintiff's first discovery requests in May 2019, Defendants chose to delay their production and deny Plaintiff information about applicable insurance coverage and the circumstances of the accident.

Despite this intentional discovery misconduct, Defendants continue to maintain that it would be improper for the Court to strike their answer. Defendants argue they did not violate any Court orders which would warrant the harsh sanction Plaintiff seeks. This argument fails for two primary reasons.

Although the Court may strike a party's pleading when the party "fails to obey an order to provide or permit discovery," Rule 37(b)(2), SCRCP, that is not the only circumstance where such a sanction is proper.[4] Instead, the Court of Appeals has explained that Rule 37 also empowers the trial court to strike a party's pleading for "failure to respond to certain discovery requests." *Karppi*, 327 S.C. at 542, 489 S.E.2d at 682 ("Rule 37 expressly grants the trial court power to order

[4] *Estate of Chandler v. Five Star Quality Care, Inc.*, No. 2013-CP-40-03071 (Richland Cnty. Com. Pl. Dec. 29, 2015) (In rejecting this same argument, Judge Gee stated "the child's game reflected by the actions of [Defendants] is more akin to 'Go Fish,' where Plaintiff's counsel continually asks for discoverable material and instead of handing over that material, defense counsel makes opposing counsel 'go fish' until they happen to stumble upon crucial witnesses and critical documents. That defense counsel then makes those witnesses available for deposition and produces those documents for review does not insulate them from a motion for sanctions if the Court finds the failure to disclose the document was done in bad faith and caused prejudice to the opposing party.").

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judgment by default for either the violation of a court order, or, upon motion, for a party's failure to respond to certain discovery requests."). Defendants' argument overlooks the foregoing caselaw, as well as the settled principle that "the selection of a sanction is within the court's discretion." *Kershaw County*, 302 S.C. at 395, 396 S.E.2d at 372. Here, because Defendants intentionally refused to timely respond to discovery requests and withheld information about Blue Max Trucking, the Court finds the standard for striking their answer is amply satisfied.

Additionally, even assuming Defendants were correct that the Court could only strike a party's answer for violation of a court order, it would still be proper to do so here. As noted above, Defendants failed to comply with several orders in this matter. To this day, Defendants have not complied with the Court's August 27, 2020 Order granting Plaintiff's motion to compel and directing Defendants to produce all post-accident incident reports and post-accident drug testing. Again, while Defendants represent they are not in possession of these documents, Smoak testified in his deposition that he provided a written statement to Murray Sand and took a drug test on the day of the accident.[5] Defendants also violated the consent scheduling order dated May 17, 2021, which set a written discovery deadline of September 1, 2021. Defendants' violation of this order was particularly egregious—Defendants produced over 5,000 documents after the discovery deadline and after representing to the Court and Plaintiff on multiple occasions that they had conducted exhaustive searches and produced all documents in their possession.

[5] Notably, counsel for Plaintiff sent Murray Sand a letter of representation within one month of Ms. Haselden's accident, putting Defendants on notice of Plaintiff's claim. Although Defendants claim they did not receive this letter, they still offer no legitimate reason for their failure to produce any drug test results. During the hearing on Plaintiff's motion, defense counsel's only explanation for this failure was that Defendant Smoak may have mistakenly testified that he took a drug test after the accident with Plaintiff. However, Defendant Smoak has never contradicted his deposition testimony, via affidavit or otherwise. Similarly, Defendants have never produced an affidavit of a records custodian explaining that the test results do not exist.

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For the foregoing reasons, the Court finds Plaintiff has met her burden of proving Defendants' discovery misconduct was willful. This factor supports the harsh sanction of striking Defendants' answer and holding Defendants in default.

III. Prejudice

Finally, the Court considers the degree of prejudice caused by the discovery violation. *Griffin Grading & Clearing*, 334 S.C. at 199, 511 S.E.2d at 719. Although the Court is mindful that a sanction resulting in default is "harsh medicine that should not be administered lightly," *id.* at 198, 511 S.E.2d at 718, the irreparable prejudice Defendants have caused Plaintiff in this case warrants striking Defendants' answer.

Defendants' discovery violations have repeatedly prevented Plaintiff from learning basic facts about this accident.[6] Although Plaintiff knew from early on in this case that Murray Sand was hauling riprap to Crowder Construction Company in Edisto at the time of the accident, Defendants refused to provide any documents relating to their agreement with Crowder Construction. Accordingly, Plaintiff issued a subpoena to Crowder Construction on March 30, 2021, requesting "any and all contracts, agreements, purchase orders, schedules, receipts, delivery logs, delivery records, weight tickets, and any other documents in any form whatsoever relating to Murray Sand Company, Inc. from January 1, 2016 through July 1, 2017." As noted above, Defendants were copied on this subpoena and it is clear that Plaintiff was doing everything in her power to discover the relationships between the entities involved in this transaction.

On May 19, 2021, a representative from Crowder Construction responded, "Although we worked on the Edisto project, we do not have records of Murray Sand working for us." Of course,

[6] "Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed." *Scott v. Greenville Housing Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (2003).

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because Defendants continued to withhold the information, Plaintiff would not know until months later that Crowder Construction did not have any records relating to Murray Sand because its contracts were with Blue Max Trucking.

Defendant Murray Sand, on the other hand, has known throughout this litigation that it did not have a contract to haul riprap on the date of the accident and that it was hauling for and being paid by Blue Max Trucking. However, to protect Blue Max Trucking, Defendants did not disclose its identity until over two years after Plaintiff filed this action and served her discovery requests. Of course, Plaintiff was unable to obtain any meaningful information from Blue Max Trucking at that time because the records retention period provided by law had passed.[7] More significantly, Plaintiff was unable to amend its Complaint to name Blue Max Trucking as a new defendant because the statute of limitations had run. Accordingly, Defendants' discovery violations have severely prejudiced Plaintiff by preventing her from pursuing claims against all potentially liable parties.

Defendants do not deny that Plaintiff was prejudiced by their belated disclosure of Blue Max Trucking. Instead, Defendants' only response is a far-flung argument that Plaintiff should have attempted to amend her complaint or otherwise bring a claim against Blue Max Trucking after learning of its involvement. This specious argument underscores the irreparable prejudice Plaintiff suffered because of Defendants' untimely disclosure.

[7] Appendix A to Part 379 of the Federal Motor Carrier Safety Regulations requires companies like Murray Sand to retain the following: all contracts until expiration; financial and accounting records for at least three (3) years; shipping and agency documents for at least one year; all claim records, together with supporting data, for one year following settlement of the claim; and records, reports, orders and tickets pertaining to weighting of freight for three (3) years. 49 C.F.R. part 379, Preservation of Records.

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As explained above, Defendants did not produce any documents identifying Blue Max Trucking until September 2021—over two years into the litigation and after the statute of limitations had run. *See* S.C. Code Ann. § 15-3-530(5) (setting forth three-year statute of limitations for negligence actions). Under these circumstances, any separate action against Blue Max Trucking clearly would have been time barred, and it was reasonable for Plaintiff not to pursue such a futile claim. Additionally, Defendants' suggestion that Plaintiff simply could have amended her complaint to include a claim against Blue Max Trucking is without merit. Although Rule 15(c), SCRCP, allows certain amendments to "relate back" to the original complaint, that rule does not apply when the amended pleading includes an additional defendant. *Jackson v. Doe*, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) ("The language of Rule 15(c) clearly speaks to a *change* in party, not the *addition* of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of party." (emphasis in original)). There is no legal authority or logical support for Defendants' assertion that Plaintiff should incur costs and engage in meritless motions practice, especially when such an attempt could result in Plaintiff having to reimburse fees and costs to Blue Max Trucking for having to defend against the same. Thus, the Court rejects Defendants' argument that Plaintiff should have attempted to pursue a claim against Blue Max Trucking after learning of its involvement.

The Court agrees with Plaintiff that the prejudice caused by Defendants' untimely disclosure of Blue Max Trucking is substantial. As counsel for Plaintiff noted during the hearing, our Supreme Court recently clarified that a principal can be held liable for harm caused by its negligent selection of an independent contractor. *See Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 652, 889 S.E.2d 577, 579 (2023). In this case, had Defendants timely disclosed Blue Max Trucking's involvement, Plaintiff may have determined a viable negligent selection claim

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against Blue Max Trucking existed. On the other hand, investigation may have revealed such a claim was not viable. The prejudice here stems from the fact that Defendants' intentional misconduct denied Plaintiff the opportunity to make that determination. Under the circumstances of this case, that prejudice cannot be remedied by any lesser sanction.

More generally, Defendants' repeated abuses have prevented Plaintiff from prosecuting this case and preparing for trial. "The rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed." *Samples v. Mitchell*, 329 S.C. 105, 113–14, 495 S.E.2d 213, 217 (Ct. App. 1997). Because Defendants have repeatedly provided dilatory and incomplete discovery responses, Plaintiff has been unable to learn basic information about the accident in a timely manner. Because Defendants have undoubtedly prevented Plaintiff from preparing for trial, a high degree of prejudice is presumed.

Finally, the severe sanction of striking Defendants' answer is warranted because nothing else would be adequate. Defendants' pattern of ignoring this Court's orders and the Rules of Civil Procedure demonstrates that a less severe sanction would not protect Plaintiff's discovery rights. In sum, the events to date leave no doubt that meaningful discovery in this case will never occur, and it is proper for the Court to strike Defendants' answer. *See Griffin Grading & Clearing*, 334 S.C. at 199, 511 S.E.2d at 719 ("If there was ever a case where striking a party's pleading was an appropriate sanction, it is this case where the record is full of multiple, egregious discovery abuses that blocked the opposing party's attempts to conduct meaningful discovery.").

CONCLUSION

The Court finds Defendants' actions in this case have repeatedly exceeded the realm of excusable discovery misconduct. No other sanction can remedy the severe prejudice Plaintiff has

realized as a result of Defendants' conduct. Therefore, the Court strikes Defendants' Answer and holds them in default. A damages hearing will be scheduled at a date and time that is convenient for the Court, the parties, and their counsel.

_____

The Honorable George M. McFaddin, Jr.
Circuit Court Judge

January ___, 2024
Sumter, South Carolina

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Sumter Common Pleas

Case Caption: Judy Haselden VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Sanctions

So Ordered

S/George M. McFaddin, Jr., #2759

ELECTRONICALLY FILED - 2024 May 15 1:51 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** JUDY ANN HASELDEN, Plaintiff, v. MURRAY SAND CO., INC., MICHEAL DANIEL SMOAK, Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **ORDER**

The matter before the Court is a Motion to Substitute a party pursuant to Rule 25 of the South Carolina Rules of Civil Procedure filed by Kimberly Welch, as Personal Representative of the Estate of Judy Ann Haselden. For the reasons and findings of fact set forth herein, the Motion is **GRANTED**.

This action arises out of a February 9, 2017, motor vehicle accident in which Plaintiff Judy Ann Haselden alleges she was rear-ended by a tractor-trailer driven by Defendant Smoak and owned by Defendant Murray Sand.

Plaintiff Haselden filed her initial complaint against Defendants on February 9, 2017, and she filed an amended complaint against Defendants on September 3, 2020. Plaintiff asserts causes of action against Defendants for negligence, gross negligence, negligence per se, and negligent hiring, training, and supervision.

Plaintiff Haselden passed away in February 2024 while this litigation was proceeding and on March 22, 2024, Kimberly Welch was appointed as Personal

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Representative of the Estate of Judy Ann Haselden by the Sumter Probate Court. A true and accurate copy of the Certificate of Appointment was attached to the Motion.

Rule 25 of the South Carolina Rules of Civil Procedure provides, "If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties." Rule 25(a)(1), SCRCP. Haselden's claims against Defendants were not extinguished by her death. *See* S.C. Code Ann. § 15-5-90; *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 97 (2002), *overruled on other grounds by Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 898 S.E.2d 102 (2024).

As such, permitting the substitution of Kimberly Welch, as Personal Representative of the Estate of Judy Ann Haselden, for Haselden is proper under the applicable laws and would serve no undue or unfair prejudice against Defendants. Notably, Defendants and the UIM carrier consented to the Motion.

THEREFORE, **IT IS ORDERED, ADJUDGED, AND DECREED** that Kimberly Welch, as Personal Representative of the Estate of Judy Ann Haselden, is hereby substituted as a party. The Court kindly asks the Clerk of Court to note this substitution of the Plaintiff in the record.

This ____ day of _____, 2024
_____, SC

_____
The Honorable Kristi F. Curtis
Chief Administrative Judge

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Sumter Common Pleas

Case Caption: Judy Haselden VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Substitution of Parties

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Sumter
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4301021

Judy Haselden et al
PLAINTIFF(S)

Micheal D. Smoak et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is respectfully declined.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/06/2024 .

Kimberly Welch PR of Estate of Judy Ann Haselden

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Sep 08 3:32 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Sumter Common Pleas

Case Caption: Judy Haselden , plaintiff, et al VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Electronic Form 4

So Ordered

S/George M. McFaddin, Jr., #2759

ELECTRONICALLY FILED - 2019 May 21 3:02 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, Vs. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A #** **COMPLAINT** **(Jury Trial Requested)**

The plaintiff, complaining of the defendant herein, alleges:

1. That the plaintiff is a resident and citizen of the County of Sumter, State of South Carolina.

2. That the plaintiff is informed and believes that the defendant, Micheal Daniel Smoak, is a resident and citizen of the County of Colleton, State of South Carolina.

3. That the plaintiff is informed and believes that the defendant, Murray Sand Co., Inc., is a corporation organized and existing under the laws of one of the states of the United States and owns property, employs agents and transacts business in Sumter County, South Carolina.

4. That at all times hereinafter mentioned, the defendant, Micheal Daniel Smoak, was acting in his individual capacity or as the agent, servant and employee of the defendant, Murray Sand Co., Inc.

5. That heretofore, on or about February 9, 2017, the plaintiff was stopped in traffic on US 15 when she was rear-ended by a tractor trailer driven by the defendant, Micheal Daniel Smoak which was owned by the defendant, Murray Sand Co., Inc.;

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that as a result of the collision the plaintiff was injured and damaged as more specifically hereinafter set forth.

6. That the injuries and damages sustained by the plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent and unlawful conduct on the part of the defendant, Micheal Daniel Smoak, in one or more of the following particulars, to-wit:

(a) In failing to have the vehicle equipped with adequate brakes or if the said automobile was equipped with adequate brakes, in failing to properly apply the same;

(b) In driving a vehicle in an unsafe condition upon the roadways of the State of South Carolina;

(c) In driving a vehicle at an excessive rate of speed, too fast for the conditions then and there existing;

(d) In failing to yield the right of way to the plaintiff;

(e) In failing to keep a proper lookout;

(f) In failing to maintain proper control over the vehicle which the defendant was driving;

(g) In driving a motor vehicle in a dangerous and improper manner without regard for the rights of others on said road;

(h) In failing to avoid colliding with plaintiff's vehicle after having ample opportunity to do so, thus failing to exercise the doctrine of last clear chance;

(i) In driving said vehicle into and against the plaintiff's vehicle;

(j) In failing to give any warning or signal to the plaintiff that defendant was about to collide with the vehicle of the plaintiff;

(k) In following too closely.

All of the above being in violation of the laws of the State of South Carolina.

7. That as a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the defendant, Micheal Daniel Smoak, the plaintiff was thrown violently in and about plaintiff's automobile; that the plaintiff was greatly and severely injured in and about plaintiff's head, neck, arms, body, back, limbs and other parts of the plaintiff's body; that plaintiff was rendered sick, sore, lame, disabled, bruised and shocked thereby and continues so to be; that all of such injuries have caused plaintiff extreme and excruciating pain continuously to this date and the plaintiff will suffer such pain in the future; that as a direct and proximate result of the negligence of the defendant as aforementioned the plaintiff suffered severe bruises, lacerations and contusions and great pain and suffering.

8. That as a direct and proximate cause of said negligence, wantonness, recklessness, and unlawfulness on the part of the defendant, Micheal Daniel Smoak:

(a) The plaintiff was committed to the hospital and will be required to enter the hospital in the future for long and extensive periods of time;

(b) The plaintiff was confined to the care and treatment of skilled physicians and nurses; that plaintiff is presently being treated by such persons and will continue to receive treatment from them in the future; that plaintiff has

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expended large sums of money for such treatment and will be obligated to expend even more money in the future for such care and treatment;

(c) The plaintiff was hindered and prevented, and in the future will be hindered and prevented from transacting and attending to plaintiff's necessary and lawful affairs since the date of the collision and loss and was deprived of divers gains, profits, salaries, pleasures, advantages, and earning capacity and ability which plaintiff would have otherwise derived and acquired;

(d) The plaintiff was in the past, present and will continue in the future to be put to great expense for medicine and drugs;

(e) The plaintiff has expended large sums of money in the past and present for transportation to and from the doctor's office and hospitals and will continue to have such expenses in the future for consultations and treatment;

(f) The plaintiff's previous good health has been permanently impaired.

(g) The plaintiff has suffered a loss of wages and in the future will suffer a loss of wages due to the injuries received.

9. That as a result of the Defendant's negligence set forth, the Plaintiff has suffered actual damages.

10. That the Plaintiff is informed and believes that (s)he is entitled to an award of punitive damages.

WHEREFORE, Plaintiff asks judgment against the defendants for actual damages and punitive damages, the cost of this action, and for such other and further relief as this court may deem just and proper.

Florence, SC

May 21, 2019

/s/ E. Hood Temple

E. HOOD TEMPLE,
Attorney for Plaintiff
SC Bar No. 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com

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ELECTRONICALLY FILED - 2019 Jul 25 4:29 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SUMTER	)	**C/A No.: 2019-CP-43-01021**
	)	
	)	
	)	
Judy Haselden	)	
Plaintiff,	)	
vs.	)	**DEFENDANT MURRAY SAND CO. INC.'S ANSWER**
	)	**(JURY TRIAL DEMANDED)**
Michael D. Smoak and Murray Sand Co., Inc.	)	
Defendants.	)	
	)	

The Defendant, Murray Sand Co. Inc., answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant is without sufficient information to form a belief as to the truth of veracity of said allegations; therefore said allegations are denied.

2. Defendant is without sufficient information to form a belief as to the truth of veracity of said allegations; therefore said allegations are denied.

3. Admitted.

4. It is admitted that Defendant Smoak was employed by this answering Defendant at the time of the accident and any negligence, which may be found against Defendant Smoak, would be imputed to this answering Defendant. Except as admitted herein; denied.

5. It is admitted Defendant Smoak made contact with the rear of Plaintiffs vehicle on February 9, 2017. Except as admitted herein; denied.

6. Denied.

7. Denied.

8. Denied.

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9. Denied.

10. Denied.

FOR A SECOND DEFENSE

The Summons and Complaint fail to state facts sufficient to state a cause of action.

FOR A THIRD DEFENSE

The Defendant would allege that upon information and belief that the claims of the Plaintiff are barred or partially barred by virtue of the Plaintiff's failure to mitigate Plaintiff's alleged damages.

FOR A FOURTH DEFENSE

Punitive damages are unconstitutional fifth (5th), eighth (8th) and fourteenth (14th) amendments of the United States Constitution and some of the provisions of the South Carolina Constitution.

WHEREFORE, having truly answered the Complaint of the Plaintiff, Defendant Murray Sand Co, Inc. prays that the complaint be dismissed, with costs assessed to Plaintiff, and for such and further relief as the Court may deem proper.

THIS THE 25TH DAY OF JULY, 2019.

WALKER ALLEN GRICE AMMONS & FOY LLP

/s Carrie Hailman O'Brien
Carrie Hailman O'Brien
S.C. Bar No.: 68540
Email: carrie@walkerallenlaw.com
225 E. Worthington Ave, Suite 200
Charlotte, NC 28203
(704) 247-0159 (phone)/(980) 819-6780 (fax)
ATTORNEYS FOR DEFENDANT

ELECTRONICALLY FILED - 2019 Aug 26 4:56 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SUMTER	)	**C/A No.: 2019-CP-43-01021**
	)	
	)	
	)	
Judy Haselden	)	
Plaintiff,	)	
vs.	)	**DEFENDANT SMOAK'S ANSWER**
	)	**(JURY TRIAL DEMANDED)**
Michael D. Smoak and Murray Sand Co., Inc.	)	
	)	
Defendants.	)	
	)	

The Defendant, Michael D. Smoak, answer the Complaint of the Plaintiff and incorporates the Answer of Murray Sand Co, Inc. as follows:

FOR A FIRST DEFENSE

1. Defendants are without sufficient information to form a belief as to truth or veracity of said allegations; therefore said allegations are denied.

2. Denied.

3. Admitted.

4. Admitted.

5. Denied as stated. It is admitted Defendant Smoak made contact with the rear of Plaintiff's vehicle.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

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10. Denied.

FOR A SECOND DEFENSE

The Summons and Complaint fail to state facts sufficient to state a cause of action.

FOR A THIRD DEFENSE

The Defendants would allege that upon information and belief that the claims of the Plaintiff are barred or partially barred by virtue of the Plaintiff's failure to mitigate Plaintiff's alleged damages.

FOR A FOURTH DEFENSE

Punitive damages are unconstitutional fifth (5th), eighth (8th) and fourteenth (14th) amendments of the United States Constitution and some of the provisions of the South Carolina Constitution.

WHEREFORE, having truly answered the Complaint of the Plaintiff, Defendants pray that the complaint be dismissed, with costs assessed to Plaintiff, and for such and further relief as the Court may deem proper.

THIS THE 26TH DAY OF AUGUST, 2019.

WALKER ALLEN GRICE AMMONS & FOY LLP

/s Carrie Hailman O'Brien
Carrie Hailman O'Brien
S.C. Bar No.: 68540
Email: carrie@walkerallenlaw.com
225 E. Worthington Ave, Suite 200
Charlotte, NC 28203
(704) 247-0159 (phone)/(980) 819-6780 (fax)
ATTORNEYS FOR DEFENDANTS

ELECTRONICALLY FILED - 2019 Nov 05 10:53 AM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, Vs. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUEST FOR PRODUCTION**

TO: CARRIE HAILMAN O'BRIEN, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney, appearing on behalf of the Plaintiff in the above entitled action, will move before the Presiding Judge of the Court of Common Pleas for the Third Judicial Circuit at his chambers in the Sumter County Courthouse, , on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an order requiring the Defendants and their attorney to answer Plaintiff's interrogatories and respond to Plaintiff's request for production of documents dated May 20, 2019.

PLEASE TAKE FURTHER NOTICE that Plaintiff seeks an award of expenses, including attorney's fees, pursuant to SCRCP 37(a)(4) necessitated by the Defendant's refusal to answer said interrogatories.

This motion is based on the South Carolina Rules of Civil Procedure and the pleadings in this case.

Pursuant to Rule 11(a), South Carolina Rules of Civil Procedure, Plaintiff's counsel certifies that prior to the filing of this motion he communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained herein.

Florence, SC

November 5, 2019

s/ E. Hood Temple

E. HOOD TEMPLE,
Attorney for Plaintiff
SC Bar No. 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com

ELECTRONICALLY FILED - 2019 Nov 05 10:53 AM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

ELECTRONICALLY FILED - 2020 Apr 23 5:35 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc. Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL**

TO: THE DEFENDANTS MICHAEL D. SMOAK AND MURRAY SAND CO., INC., AND THEIR ATTORNEYS:

The Plaintiff, Judy Haselden, hereby submits the following memorandum in support of her Motion to Compel, filed on November 5, 2019.

BACKGROUND

The above-captioned matter arises from a motor vehicle v. 18-wheeler accident that occurred on February 9, 2017, at or around 1:10 pm, near Sumter, South Carolina (hereinafter, the "Accident"). Plaintiff Judge Haselden was stopped in traffic when Defendant Michael D. Smoak (hereinafter, "Smoak"), driving an 18-wheeler owned by Defendant Murray Sand Co., Inc. (hereinafter, "Murray Sand") loaded with riprap during the course and scope of his employment with Murray Sand, collided with the rear of Plaintiff's vehicle. The Complaint, filed on May 21, 2019, asserted claims against Murray Sand and Smoak for injuries she sustained in the Accident.

Murray Sand filed an Answer on July 25, 2019. Smoak filed his Answer on August 26, 2019. Murray Sand and Smoak have at all times been represented by attorneys with the Walker Allen Grice Ammons & Foy, LLP law firm. Plaintiff's Interrogatories and

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Requests for Production as to both Murray Sand and Smoak were served with the Summons and Complaint on Murry Sand (attached as Exhibit A).

Murray Sand responded to Plaintiff's discovery requests on January 23, 2020 (attached as Exhibit B). Smoak has yet to respond to Plaintiff's discovery requests. On February 3, 2020, the undersigned wrote defense counsel regarding deficiencies with Murray Sand's responses/answers and the lack of any responses from Smoak (attached as Exhibit C).[1] Subsequently, on April 16, 2020, the undersigned wrote defense counsel again requesting a response to the February 3rd letter. To date, Smoak has yet to respond to any discovery in this case and Murray Sand's responses/answers remain deficient.

STANDARD OF LAW

Rule 37(a), SCRCP, provides that a party, after reasonable notice to the opposing party has been given, may file a motion requesting an order compelling a party to respond to discovery. A party may file such a motion when a party fails to answer an interrogatory submitted under Rule 33, fails to answer a request for production of documents under Rule 34, or provides an evasive or incomplete answer. Rule 37(a)(2)–(3), SCRCP. Disclosure of evidence before trial is designed to avoid surprise and promote decisions on the merits after a full and fair hearing. *Reed v. Clark*, 277 S.C. 310, 286 S.E.2d 384 (1982).

[1] Plaintiff acknowledges that counsel for Defendants, while remaining within the same firm, has been transferred among different attorneys. Plaintiff has provided/consented to extensions for discovery responses and for her Motion to Compel on multiple occasions.

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ARGUMENT

I. DEFENDANT MURRAY SAND'S RESPONSES ARE EVASIVE OR INCOMPLETE

Several of Defendant Murray Sand's responses to interrogatories and requests for production of documents are evasive or incomplete. Plaintiff will address each discovery response it believes to be evasive or incomplete and the reasons for each separately below.

A. Interrogatory #12: State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

Murray Sand responses that this request was unduly burdensome because Smoak's driving record is a public record.

This response by Murray Sand is evasive. The Interrogatory did not ask for Smoak's public record; rather, it was specifically tailored to discovery the knowledge Murray Sand had about Smoak's record both prior to and during his employment with Murray Sand. Plaintiff requests Murray Sand amend their answer to provide the information requested.

B. Interrogatory #15: State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

Murray Sand's response stated that it does not currently have an employee with the title of safety director.

This response by Murray Sand is evasive or incomplete. Defendant Smoak testified at this deposition that there was a safety director named Suzanne at the time of the collision. Ex. D, pg. 56, lns. 15–24; pg 57, lns. 2–21; pg. 88, ln 1. It is clear from this testimony that Murray Sand does have a safety director position. While this position may have been vacant the day Murray Sand answered these Interrogatories, this is still

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an evasive and incomplete answer. Plaintiff requests that Murray Sand supplement their response to provide the requested information regarding a safety director at the time of the collision.

C. Interrogatory #20: State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.

Murray Sand responded that "upon information and belief" they did not have any such logs or records. This response appears incomplete.

Defendant Smoak testified at his deposition that he had a recollection of the accident. Deposition of Smoak, Exhibit D, pg. 14, lns. 3–9. Defendant Smoak further testified that on the day of the accident he completed a "driving log", which he subsequently provided to Murray Sand. Ex. D pg 36, ln. 18 – pg. 37, ln. 15; pg. 42, lns. 8–14; pg. 44, ln. 16 – pg.46, ln. 1. Based upon the testimony of Smoak, Plaintiff requests Murray Sand supplement their response and provide a complete answer to this interrogatory.

D. Request for Production #1: Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.

Request for Production #34: A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

Murray Sand's response included only two photos that were arguably taken at the accident scene. It appears that this response is incomplete.

Defendant Smoak testified at this deposition that not only did he take pictures with a camera provided by Murray Sand that he subsequently turned this camera over to Murray Sand later in that same day. Ex D, pg. 98, ln 5–9. The Employee Handbook provided by Murray Sand states that it is their "post-accident policy" to require that drivers involved in accidents take pictures of not only the damage to the vehicles

involved but also of the accident scene itself. Murray Sand did not provide any photographs of the accident scene nor did they specify if the two photographs in question were taken by Smoak with the camera provided by Murray Sand. Plaintiff requests that Murray Sand supplement this response to provide clarification on the identification issue and provide any other photographs in their possession.

E. Request for Production #3: Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

Murray Sand responded to this request by stating that "the answering Defendant" did not have any statements in its possession. Again, this response appears to be evasive or incomplete.

Defendant Smoak testified that he prepared written statements regarding this accident and that this/these statement(s) were given to Murray Sand. Ex. D, pg.14, ln. 13 – pg. 16, ln. 10. Not only does Smoak remember providing a written statement to Murray Sand, he remembers signing this/these statement(s). Ex. D, pg. 16, ln. 21 – pg. 17, ln. 2; pg. 57, lns. 15–21; pg. 87, lns. 3–24. Plaintiff requests Murray Sand supplement their response and provide the statement(s) given by Smoak to his employer at or around the time of the accident.

F. RPD 42: A copy of any and all accident reports prepared by your company or any other company or individual at your request. objection without privilege log.

Murray Sand responded to this request by asserting the attorney-client privilege and the work product doctrine were applicable to this request but did not provide a privilege log.

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Simply put, based on this objection, it is impossible to know what, if anything, is being withheld on the basis of privilege / work product. Plaintiff requests that Murray Sand remove all objections related to privilege or the work product doctrine from your responses to our interrogatories and requests for production unless you are actually withholding materials or other information on those bases.

If Murray Sand is withholding any materials or information on the basis of privilege or work product, please comply with Rule 26(b)(5)(A), S.C. Rules of Civil Procedure, and provide a privilege log setting forth:

a) The identity of all communications by stating the participants in the communication, the date of the communication, and the general subject matter;

b) The identity of all documents by setting forth the type of document (letter, memo, email, etc..); the general subject matter; the date of the document; and the author(s), addressee(s), and recipient(s);

c) The nature of the privilege / protection asserted; and

d) The detailed factual and legal basis for the claim of privilege.

G. Request for Production #48: All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

Request for Production #49: All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years:

Murray Sand responded to these requests by stating that it was not in possession of any drug or alcohol tests administered to the driver but reserved the right to supplement this response.

Defendant Smoak, however, testified several times during his deposition that he took a drug test the day of the accident. Ex. D, pg 45 ln 15–18; pg 87, lns. 10–22; pg

88, lns 1–3. Furthermore, the employee handbook produced by Murray Sand sets forth that all drivers for Murray Sand are required to submit to a drug and alcohol test anytime a "driver receives a citation for a moving violation arising from the accident. . .". Defendant Smoak received a citation for a moving violation for this accident.

Moreover, the employee handbook also states that all drivers must submit to a pre-employment drug test and random drug testing. Further, the handbook states that Murray Sand was required by "DOT regulations . . . to obtain certain drug and alcohol testing records from the driver's previous employers for the previous (2) years." As such, the testimony of Smoak and the evidence produced indicate that Smoak would have been required to submit to at least two drug tests through his employment and Murray Sand would have obtained testing records from his previous employer. Therefore, Plaintiff requests that Murray Sand supplement their response to include the records requested or set forth the reason why they do not have any records responsive to this request.

II. DEFENDANT SMOAK HAS YET TO RESPOND TO PLAINTIFF'S DISCOVERY REQUESTS

It is anticipated that Defendant Smoak will contend that he was not "properly" served with any discovery requests, and therefore, cannot be compelled to respond. Defendant Smoak and Murray Sand are represented by the same law firm. This law firm has not only filed an Answer and accepted service on behalf of both Defendants but has also provided a defense for Smoak at his deposition. *See* Ex. D, pg. 2. Murray Sand's discovery responses admit that he was an employee on the subject accident date. The discovery that was served on Murray Sand was not separately addressed to each Defendant but did request responses from each Defendant. Exhibit A. Counsel for Defendants was served with Plaintiff's discovery almost one year ago. As such,

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Plaintiff requests the Court issue an order compelling them to respond on behalf of their client, Defendant Smoak.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court issue an order compelling Defendants Murray Sand and Michael Smoke to provide complete responses to Plaintiff's discovery requests.

Florence, South Carolina

April 23, 2020

s/Alexander S. Hogsette

Alexander S. Hogsette, SC Bar No. 101244
E. Hood Temple, SC Bar No. 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com
ATTORNEYS FOR PLAINTIFF

ELECTRONICALLY FILED - 2020 Apr 23 5:35 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

HATFIELD TEMPLE LLP
ATTORNEYS

170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
Telephone: (843) 662-5000
Fax: (843) 678-9273

Web: www.htlawsc.com
E-Mail: ehtemple@htlawsc.com

WILLIAM P. HATFIELD
E. HOOD TEMPLE

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May 23, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Charles F. Jones
Registered Agent
Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, SC 29483

Re: Judy Haselden vs. Micheal D. Smoak and Murray Sand Co., Inc.
C/A #2019-CP-43-01021
Our File # 2017017 T

Dear Mr. Jones:

Pursuant to Rule 4(d)(8), South Carolina Rules of Civil Procedure, enclosed you will find a certified copy of the Summons, Complaint, along with Plaintiff's Interrogatories and Request for Production dated May 21, 2019 and filed on May 21, 2019 which is hereby served upon you as Registered Agent for the Defendant, Murray Sand Co., Inc.

With kindest regards, I am

Yours very truly,

E. HOOD TEMPLE

EHT:tls
Enclosures
cc: Mrs. Judy Ann Haselden

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SUMTER	)	
	)	**Civil Action No.: 2019-CP-43-01021**
	)	
Judy Haselden	)	
Plaintiff,	)	**DEFENDANT MURRAY SAND CO, INC.'S RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**
	)	
vs.	)	
	)	
Micheal D. Smoak and Murray Sand Co., Inc.,	)	
Defendants.	)	
	)	

INTERROGATORIES

1. Is Defendant, Murray Sand Co., Inc., owned by or a subsidiary of another company? If so, state the full name, address and telephone number of such company?

ANSWER: No.

2. Is Defendant, Murray Sand Co., Inc., a common carrier, a contract carrier or a private carrier?

ANSWER: Murray Sand Co., Inc. is a common carrier.

3. Does, Defendant, Murray Sand Co., Inc., hold a certificate of authority, a license or a permit issued by the Department of Transportation or the Interstate Commerce Commission? If so, state which?

ANSWER: Yes. Murray Sand Co., Inc. holds a certificate of compliance (#4387) with the S.C. Department of Motor Vehicles.

4. State what type of authority, license or permit to engage in Interstate Commerce is held by Defendant, Murray Sand Co., Inc.

ANSWER: See this answering Defendant's response to interrogatory number 3 above.

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5. State the name, address and telephone number of the owner of the truck/tractor involved in the February 9, 2017, accident made subject of this litigation.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

6. Describe the truck/tractor involved in the February 9, 2017, accident by stating the year of manufacture, manufacturer, model and configuration.

ANSWER: 2007 Tk Kenworth T800.

7. State the name, address and telephone number of the owner of the trailer being pulled by the tractor involved in the accident of February 9, 2017.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

8. State the year of manufacture, manufacturer, model and configuration of the trailer which was involved in the accident of February 9, 2017.

ANSWER: 2009 TRST DS2SD2 TL.

9. If, Defendant, Murray Sand Co., Inc., was not the owner of the truck/tractor or trailer involved in the accident of February 9, 2017, state whether these vehicles were being operated by your company under lease and provide the name, address and telephone number of the lessor of each and state whether the lease was a permanent lease or a trip lease.

ANSWER: Not applicable. Murray Sand Co., Inc. owns the truck and trailer involved in the accident at the center of this dispute.

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10. State the name, address and telephone number of the driver of the truck/tractor trailer involved in the accident of February 9, 2017, and whether he is your regular employee. If so, state the date that employment began and whether he is still in your employ.

ANSWER:

Michael Daniel Smoak;
9147 Augusta Hwy, Smoaks, SC 29418 (former) – Mr. Smoak currently is an inmate in a federal correctional facility;
No current telephone number;
Michael Smoak is no longer employed by Murray Sand Co., Inc.

11. State whether you have retained a driver qualification file for the driver of the truck/tractor trailer involved in the accident of February 9, 2017. If so, list each of the documents in that file.

ANSWER: Yes. The driver qualification file includes an application for employment, CDL & Medical Card, certificate of compliance, addendum to employment application, record of road test, & E-Verify verification.

12. State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

13. State whether Defendant, Murray Sand Co., Inc., has knowledge of any hours of service violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: This answering Defendant does not recall being made aware of any hours of service violations committed by the driver. This answering Defendant reserves the right to supplement this answer on a later date.

14. State whether any disciplinary action was taken either by Defendant, Murray Sand Co., Inc., or a company union against the driver as a result of his driving that resulted in the accident of February 9, 2017. If so, state whether any action was considered and whether his actions were reviewed by any persons.

ANSWER: To the best of this answering Defendant's knowledge, no disciplinary action was taken against the driver after the accident at the center of this dispute occurred. This answering Defendant reserves the right to supplement this response on a later date.

15. State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

ANSWER: Defendant Murray Sand Co., Inc. does not have a safety director at this time.

16. State whether Defendant, Murray Sand Co., Inc., has written driving standards and/or instructions for its drivers.

ANSWER: Yes.

17. State the method by which compensation was determined for the payment of the driver and/or the lessor for the trip during which the accident of February 9, 2017, occurred.

ANSWER: The driver was paid a commission-based salary which is calculated based upon the total gross cost per load transported. Specifically, this driver was compensated with a monetary value equivalent to twenty-two percent (22%) of the gross cost of the load transported.

18. State the place of origin and place of destination of the truck/tractor involved in the accident.

ANSWER:

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Place of Origin – Willow Oak Quarry, LLC in Kershaw County, South Carolina. Destination – Crowder Construction Company in Edisto Beach, South Carolina.

19. State the exact time and date when the truck/tractor left its place of origin and the scheduled arrival time at the place of destination.

ANSWER: Upon information and belief, the truck tractor left its place of origin at 5:46 AM and 12:13 PM on February 9, 2017. The answering Defendant lacks sufficient knowledge to provide the scheduled time of arrival. See attached scale ticket for said information. This answering Defendant reserves the right to supplement this response on a later date.

20. State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.

ANSWER: Upon information and belief, no. Drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

21. State whether Defendant, Murray Sand Co., Inc., is in possession of the bill of lading, freight bill and expense invoices generated during the course of the trip and also whether the truck/tractor trailer was transporting a load of cargo at the time of the accident of February 9, 2017.

ANSWER: Yes. Defendant Murray Sand Co., Inc is in possession of the records in question. Upon information and belief, the truck was transporting cargo at the time of the accident.

22. If No. 21 above is yes, describe as follows:

(a) describe the load;
(b) state the names, addresses and telephone numbers of the shippers
(c) state the names, addresses and telephone numbers of the consignees.

ANSWER:

(a) Class F Rip Rap

(b) Willow Oak Quarry, LLC - (803) 475-2328 – 168 Quarry Road, Kershaw, SC 29067
(c) Crowder Construction Co. – (800) 849-2966 - 6425 Brookshire Blvd. Charlotte, NC 28216

The remaining information requested will be supplemented on a later date.

23. State whether the trailer was loaded by the shipper or by the driver and, if by neither, then state by whom and their address and telephone number.

ANSWER: This answering Defendant believes that the trailer was loaded by the shipper. The answering Defendant reserves the right to supplement this response on a later date.

24. State whether the driver was required to secure the load by any means or devices.

ANSWER: The driver is required to deploy a mechanical tarp to cover the contents placed in the truck's bed or trailer to prevent loose material from becoming airborne.

25. State whether the truck/tractor and/or trailer underwent any repairs during the trip and, if so, state the nature of the repairs and the names, addresses and telephone numbers of the repair facilities.

ANSWER: Upon information and belief, this answering Defendant does not believe the truck and/or trailer underwent any repairs during the trip. This answering Defendant reserves the right to supplement this response on a later date.

26. Does your company retain possession of repair and warranty invoices and bills covering the history of the truck/tractor and/or trailer involved in the accident of February 9, 2017? If not, state the name, address and telephone number of the individual or company who does.

ANSWER: Yes. Murray Sand Co., Inc. retains possession of repair invoices.

27. State whether the truck involved in the accident of February 9, 2017, has an on-board computer and, if so, identify all discs, computer tapes and other written materials generated by the use of the on-board computer during the trip.

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ANSWER: The truck involved in the accident of February 9, 2017 does not have an on-board computer.

28. State whether these items are in the possession of Defendant, Murray Sand Co., Inc., or any individual, representative or company under your control or direction.

ANSWER: See response to interrogatory number 27.

29. Have you ever been notified by the driver of the truck in question of a conviction or suspension for violating a state or local law relating to motor vehicle traffic control in accordance with 49CFR383.31.

ANSWER: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waving the stated objection, this answering Defendant is not aware of any reported violations.

30. With regard to the accident of February 9, 2017, please state the following:

(a) Was a drug test administered to the truck driver within thirty-two (32) hours of the accident? **To the best of this answering Defendant's recollection – no.**
(b) Who administered the test? **N/A**
(c) What was the result? **N/A**
(d) Was an alcohol test administered to the truck driver after the accident? **To the best of this answering Defendant's recollection – no.**
(e) How long after? **N/A**
(f) If not done within two (2) hours, what was the reason for the delay? **To the best of this answering Defendant's recollection, a test was not administered.**

ANSWER: See responses above.

31. Do you know whether the truck driver has ever reported to duty while having an alcohol concentration of 0.04% or greater in contravention of 49CFR382.201.

ANSWER: Upon information and belief, no. The answering Defendant reserves the right to supplement this response on a later date.

32. Has the truck driver involved in the accident of February 9, 2017, ever refused to submit to the following:

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(a) post-accident alcohol or controlled substances test required under 49CFR382.303;
(b) a random alcohol or controlled substance test required under 49CFR382.305;
(c) a reasonable suspicion alcohol or controlled substance test required under 49CFR382.307; or
(d) a follow-up alcohol or controlled substance test required under 49CFR382.3211.

ANSWER: To the best of his knowledge, this answering Defendant does not believe that the truck driver refused to submit to any of the testing scenarios outlined in subsections (a) through (d) above. This answering Defendant reserves the right to supplement this response on a later date.

33. Has the truck driver involved in the accident of February 9, 2017, ever been disqualified from driving a truck when in your employ? If so, when and under what circumstances?

ANSWER: No, not to the knowledge of this answering Defendant. This answering Defendant reserves the right to supplement this answer on a later date.

34. Has your company ever undergone an FHWA compliance review? If so, what was your rating?

ANSWER: To the best of this answering Defendant's knowledge, no. The answering Defendant reserves the right to supplement this response on a later date.

35. Was a Certificate of Insurance filed with the Interstate Commerce Commission and/or the Public Utilities and/or Commerce Commission in the state in which the accident occurred?

ANSWER: Upon information and belief, yes. This is a requirement under the Certificate of Compliance issued by the South Carolina DMV described in interrogatory number 3. The answering Defendant reserves the right to supplement this response on a later date.

36. State whether your insurance policies contain the MCS-90 endorsement or the equivalent endorsement required under state law.

ANSWER: Yes.

37. State whether the truck/tractor trailer rig involved in the collision of February 9, 2017, was equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM? If so, state whether the system includes an accident reconstruction option which allows the last ten (10)

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minutes of recorded activity on the system to be store in a buffer memory and retrieved in the event of the accident.

ANSWER: The truck involved in this incident is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

38. State whether the truck/tractor trailer involved in the accident was equipped with the QUALCOMM OMNI TRAX SYSTEM or any other type of satellite tracking system. If so, list the records other type of satellite tracking system. If so, list the records in your possession of the tractor's activities which were generated by the QUALCOMM SYSTEM.

ANSWER: The truck involved in the accident was not equipped with the QUALCOMM OMNI TRAX SYSTEM.

39. If you contend that Defendant, Murray Sand Co., Inc., is not liable for the collision of February 9, 2017, state in exact details the reasons for that contention.

ANSWER: Objection. This request seeks to discover the trial strategies and mental impressions of defense counsel. Subject to and without waiving the stated objection, see Answer.

40. Identify each person you expect to call as an expert witness at trial and with respect to each person, state:

(a) The name, current address and phone number;
(b) The subject matter on which the expert is expected to testify;
(c) The substance of the facts to which the expert is expected to testify;
(d) The substance of the opinions to which the expert is expected to testify;
(e) A summary of the grounds for each opinion;
(f) The expert's professional title and qualifications;
(g) A list of all publications to which the expert has contributed which relate in any way to the subject area, facts or opinions to which the expert is expected to testify at trial;
(h) Identify each expert, by name, address and phone number, that has been retained, consulted with or specifically employed in anticipation of this action or in preparation for trial;
(i) Identify each and every occasion where said expert has been retained, consulted with or specifically employed by this defendant, its attorneys or insurance carrier in other matters for the period of the last five years.
(j) State the expert's compensation rate in U.S. dollars for any work performed in anticipation of this action or in preparation for trial.

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ANSWER: Objection. This interrogatory seeks to obtain information protected by the work product doctrine and/or the attorney client privilege. Subject to and without waiving the stated objection: The Defendant does not yet know who, if anyone, will be consulted or called to testify as an expert witness at the trial of this matter. If and when any such experts are identified, this response will be supplemented in accordance with the South Carolina Rules of Civil Procedure and any applicable scheduling order.

41. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: Not Applicable. The Defendant is properly identified.

42. What social media sites do you belong to? (i.e. Facebook, MySpace, etc.) Please state the media site, your user name, and the URL (web address) of your homepage.

ANSWER: This answering Defendant does not belong to any social media websites.

43. Please list all e-mail accounts that you use or have used since the date of the accident.

ANSWER: dispatch@murraysand.com and bjones@murraysand.com. The answering Defendant reserves the right to supplement this response on a later date.

44. Please state all websites that you have commented on since the date of the accident. Please state the website and the URL (web address).

ANSWER: None.

REQUESTS TO PRODUCE

1. Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.

RESPONSE: See attached photos.

2. Produce a copy of your ten-year driving record or, in the alternative, a color copy of your Driver's License.

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report. Subject to and without waiving the stated objection, please see Defendant's Smoak's drivers license which contains his CDL.

3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

RESPONSE: This answering Defendant is not in possession of any recorded statements. The parties are expected to testify as to the facts and circumstances surrounding the incident.

4. Any and all diagrams, sketches, drawings, prints, negatives and layouts that relate in any manner to the allegations of the Complaint, the defenses of the Defendant, and the accident scene.

RESPONSE: See attached police report.

5. Any and all reports, studies, analyses, or other documentation of any accident reconstructionist, investigator, adjuster, expert, consultant, independent contractor, or engineer that relate in any manner to the allegations of the Complaint or the defenses of the Defendant.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

6. Any and all insurance policies which may provide liability insurance coverage to any and all claims set forth in the Complaint.

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RESPONSE: See attached insurance policy.

7. Any and all procedural manuals, directives, written memoranda or documents regarding store maintenance procedures pertaining to floors, common areas in the store and parking lots, and entrance ways into the store in effect on the date of Plaintiff's injury and the five-year period immediately preceding.

RESPONSE: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

8. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: Any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

9. Please produce your individual Federal and State income tax returns with all schedules for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

10. Please produce any and all audited and/or unaudited annual and interim financial statements for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

11. A copy of all tachometer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached tachometer records documented on maintenance reports.

12. A copy of all on-board computer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: The tractor involved in the collision is not equipped with an on-board computer system.

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13. A copy of all dispatch records related to the trip of the tractor and/or trailer involved in the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the dispatch records related to the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

14. A copy of all fax transmissions to any entity concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

15. A copy of all telephone records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

16. A copy of all mobile radio records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The Defendant is not in possession of any said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

17. A copy of all pro-rate records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant lacks sufficient knowledge to ascertain what documents are sought in this request for production. The answering Defendant reserves the right to supplement this response on a later date.

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18. A copy of all tow truck records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such documents.

19. A copy of the tractor license and the trailer license of the vehicles involved in the collision of February 9, 2017.

RESPONSE: See attached licenses plates for both tractor and trailer. This answering Defendant reserves the right to supplement this response at a later date.

20. A copy of all pickup and delivery records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

21. A copy of all trip summaries pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

22. A copy of all credit card receipts, toll tickets, fuel receipts, weight tickets, fuel tax records, state entry and departure records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the requested records from the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

23. A copy of the registration and title to the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached registration and title to the tractor involved in the collision on February 9, 2017.

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24. A copy of all expense sheets, all trailer interchange records, and bills of lading pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

25. A copy of all manifests and weigh bills pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket and trip summary.

26. A copy of all rental contracts concerning the tractor involved in the collision of February 9, 2017.

RESPONSE: Objection. This request is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and is not reasonably limited in time or scope. Subject to and without waiving the stated objections: Defendant is not in possession of any such documents.

27. A copy of all the written response from each state agency contracted with reference to the driver's driving record (49CFR391.23).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

28. A copy of all written records with respect to each past employer who was contracted about the truck driver's qualifications.

RESPONSE: See attached inquiry to past employer(s).

29. A copy of the driver's qualification file (49CFR391.51).

RESPONSE: See attached CDL, Medical Card, Record of Road Test, and Certification of Compliance.

30. A copy of the driver's list of violations of motor vehicle traffic laws (49CFR391.27).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

31. A copy of the driver's personnel files.

RESPONSE: See attached employment application, addendum to employment application, and e-verification.

32. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such records. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

33. A copy of any and all insurance policies, liability insurance policies, excess liability policies or any other insurance policies providing coverage to the truck and the trailer involved in the collision of February 9, 2017, even if the vehicles are not specifically designated therein.

RESPONSE: See response to request for production number 6.

34. A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

RESPONSE: See response to request for production number 1.

35. All records pertaining to annual reviews of the driver's record with him for each year of employment with your company (49CFR391.25).

RESPONSE: See attached annual review(s).

36. A copy of a certificate of road test pertaining to the driver of the tractor involved in the collision on February 9, 2017.

RESPONSE: See attached certificate of road test.

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37. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017 (49CFR391.31(e)).

RESPONSE: See response to request number 32.

38. All copy of all out of service orders for the tractor involved in the collision of February 9, 2017, for the three (3) years prior to the accident.

RESPONSE: See attached service orders.

39. A copy of the driver's logs for the six (6) months prior to February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the driver's logs for the six (6) months prior to the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

40. A copy of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six (6) months prior to February 9, 2017.

RESPONSE: See attached maintenance records.

41. A copy of the accident register (49CFR391.3).

RESPONSE: See attached FR10.

42. A copy of any and all accident reports prepared by your company or any other company or individual at your request.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

45. A copy of all repair invoices during the period that the tractor has been operated in your behalf.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome

and not reasonably limited in time or scope. Subject to and without waiving the stated objection, see previously attached maintenance and service records.

46. A copy of all permanent lease and trip lease contracts between you and the tractor and/or trailer owner and operator.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objections, this answering Defendant is not in possession of any such documents.

47. A copy of all trip reports pertaining to the trip in which the tractor trailer was engaged on February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

48. All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any drug or alcohol tests administered to the driver. The answering Defendant reserves the right to supplement this answer on a later date.

49. All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years.

RESPONSE: See response to request for production number 49.

50. A copy of all company manuals covering truck safety, maintenance, fleet safety programs and driver's standards.

RESPONSE: See attached employee handbook.

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51. A copy of all records generated by on-board recording devices with which the tractor was equipped as of February 9, 2017.

RESPONSE: See response to request for production 12.

52. A copy of all records generated through the use of the QUALCOMM OMNI TRAX SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the QUALCOMM OMNI TRAX SYSTEM.

53. A copy of all records generated through the use of the EATON VORAD COLLISION AVOIDANEC SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

54. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: See response to request number 8.

55. Copy of Defendant's cell phone records for the month preceding the accident and one month after the accident.

RESPONSE: The answering Defendant is not in possession of any such records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

56. Please permit counsel for Plaintiff to access, inspect, and copy all of Defendants' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Defendants. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, emails, photographs, and other material contained in the accounts or profiles so identified. (Please Note: No written

material, information, correspondence, writings, internet posts, updates, emails, photographs, etc., should be deleted from any account or profile identified by Defendants without prior written consent from counsel for the Plaintiff. All accounts, websites, and profiles should be preserved in their present condition. Failure to preserve all such information and records may constitute spoliation of evidence.)

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objection, the answering Defendant does not maintain accounts to any social networking websites, internet groups, forums, organizations, or other entities. See this answering Defendant's answers to interrogatories numbered 42 and 44.

THIS THE 23TH DAY OF JANUARY, 2020.

WALKER ALLEN GRICE AMMONS FOY & KLICK, LLP.

/s Carrie Hailman O'Brien
Carrie Hailman O'Brien
S.C. Bar No.: 68540
Email: carrie@walkerallen.com
225 E. Worthington Avenue
Suite 200
Charlotte, NC 28203
(704) 264-0775 (phone) / (980) 819-6780 (fax)
ATTORNEY FOR DEFENDANT MURRAY SAND CO.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, DEFENDANT MURRASY SAND CO, INC.'S RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, was served upon all counsel of Record:

☒ as an attachment to an electronic correspondence

☒ by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope

☐ via facsimile, or

☐ by hand delivery

addressed as follows:

E. HOOD TEMPLE
HATFIELD TEMPLE, LLP
170 COURTHOUSE SQUARE
PO BOX 1770
FLORENCE, SC 29503
PHONE: (843) 662-5000
EHTEMPLE@HTLAWSC.COM

THIS THE 23RD DAY OF JANUARY, 2020.

/s Carrie Hailman O'Brien
Carrie Hailman O'Brien

HATFIELD TEMPLE LLP
ATTORNEYS

170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
Telephone: (843) 662-5000
Fax: (843) 678-9273

Web: www.htlawsc.com
E-Mail: ehtemple@htlawsc.com

WILLIAM P. HATFIELD*
E. HOOD TEMPLE
*Board Certified Civil Trial Specialist by the National Board of Trial Advocacy

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February 3, 2020

VIA EMAIL ONLY TO: sarah@walkerallenlaw.com

Sarah Rand-McDaniel
Walker Allen Grice Ammons & Foy, LLP
880 Whipple Road, Suite 200
Mt. Pleasant, SC 29464

Re: Judy Haselden vs. Michael D. Smoak and Murray Sand Co., Inc.
C/A # 2019-CP-43-01021
Our File # 2017017 T

Dear Sarah:

It was a pleasure meeting you during the deposition of the Defendant Michael D. Smoak. It appears that discovery responses have only been filed on behalf of the Defendant, Murray Sand Co.

Originally, Interrogatories and Requests for Production were sent on behalf of both Defendants and it was my understanding that your firm was representing both Murray Sand Co. and the individual Defendant, Michael D. Smoak. Specially your Answer was filed on behalf of both Defendants.

Now, it is my understanding that because Mr. Smoak was not individually served with the discovery, the carrier believes they have no obligation to provide discovery responses. Please confirm with me that this is the case and that you are not accepting service on behalf of Mr. Smoak going forward.

Additionally, according to the discovery responses filed on behalf of Murray Sand Co., the responses indicated that various documents and/or information was not available or did not exist. Specifically, I would appreciate your providing the following:

1. Any and all incident reports completed by the Defendant Michael D. Smoak as a result of this accident.

2. The name, full title, address, and telephone number of the safety director. See Interrogatory Response No. 15 denying a safety director. Defendant testified that the safety director at the time of this accident was a lady named "Suzanne."

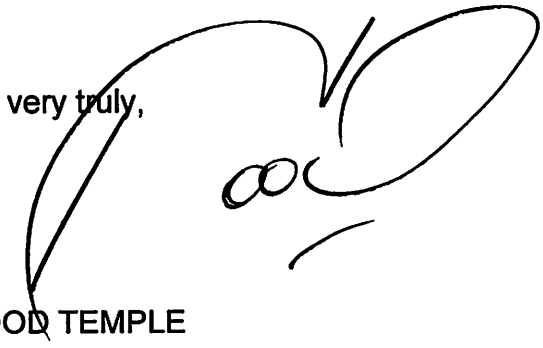
3. Interrogatory Response No. 20. Please produce the driver's logs maintained by the Defendant, Michael D. Smoak. The Defendant testified that was in the possession of Murray Sand Co.

4. Interrogatory Response No. 30 denied that no drug or alcohol test was administered to the Defendant, Michael D. Smoak. The Defendant, Michael D. Smoak, testified that he was sent to Columbia, SC for that testifying. Please produce the results of the tests.

Presently, we are scheduling the deposition of Dr. Rakesh Chokshi and we will coordinate that with your office.

With kindest regards, I am

Yours very truly,



E. HOOD TEMPLE

EHT:tls
cc: Mrs. Judy Ann Haselden

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State of South Carolina

Common Pleas Court

County of Sumter

Judy Haselden,
plaintiff,

V.

#2019-CP-43-01021

Michael D. Smoak and
Murray Sand Company, Inc.,
defendants.

COPY

Deposition of: Michael D. Smoak

Location: 100 Prison Road
Estill, South Carolina

Date: Tuesday, January 28, 2020

Time: 11:32 a.m. - 1:00 p.m.

Court Reporter: Roger R. Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A COURT REPORTING SERVICES
Post Office Box 4563 (29502)
273 West Evans Street (29501)
Florence, South Carolina
Telephone: (843) 673-9845
E-mail: info@qacourtreportingonline.com
Visit: Www.qacourtreportingonline.com

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A P P E A R A N C E S

For the Plaintiff:
Hatfield Temple, L.L.P.
170 Courthouse Square
Florence, South Carolina 29501
By: E. Hood Temple, Esq.
ehtemple@htlawsc.com

For the Defendant:
Walker, Allen, Grice, Ammons and Foy, L.L.P.
880 Wipple Road, Suite 200
Mount Pleasant, South Carolina 29464
By: Sarah Rand-McDaniel, Esq.
sarah@walkerallenlaw.com

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E X H I B I T S

pg/ln	ex.	description
	2	Arrest Record (premarked)
	3	Inquiry to Past Employers (premarked)
	4	Record of Road Test (premarked)
	5	Application for Employment(premarked)
	6	Equipment Transport Service Form(premarked)
	7	Repair Order (premarked)
	8	Repair Order (premarked)
	9	Repair Order (premarked)
	14	Employee Handbook (premarked)
	17	Request for Payment (premarked)
DEFENDANT'S		
94/13	1A	Photo
94/13	1B	Photo
94/13	1C	Photo
95/03	2	Photo

** Uh-huh = Affirmative
Huh-uh = Negative

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STIPULATIONS

It is stipulated between Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated between Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

THEREUPON,

Michael D. Smoak,

being first duly sworn by the court reporter, as hereinafter certified, testified as follows:

EXAMINATION

By Mr. Temple:

Q Thank you. Mr. Smoak, please give me your full name for the record.

A Michael Daniel Smoak.

Q All right. And Mr. Smoak, let's get a couple of things on the record and then I'm going to give you some background. Can you give me your social security number, please?

A [redacted]

Q And can you give me your driver's

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license number? I understand you have a C.D.L., or had a C.D.L.?

A Yes, I still have it. 008466666.

Q All right. And I know where you currently are. Can you tell me where your permanent residence is?

A 9147 Augusta Highway, Smoak, South Carolina.

Q All right. And where is Smoak, South Carolina?

A Off of Highway 61.

Q All right. What county is it?

A And Canadys -- Colleton County.

Q All right. Mr. Smoak, thank you for being here today and allowing me to take your deposition. I'm Hood Temple and I'm going to ask you some questions today about an automobile accident that occurred on February the 9th, 2017. If you don't understand my questions, just ask me to clarify or repeat it. I'll be happy to do that. If you don't ask me to clarify or repeat it, then I'll assume you've understood my questions and answered them accurately and honestly to the best of your ability. Is that fair?

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A Yes.

Q All right. And I'll also ask you to do this for me. The court reporter is here and he'll be taking down everything you say verbatim. He cannot pick up a shake or a nod of the head or an unclear answer like an uh-huh or a huh-uh. So if you would, a yes or a no is fine. You're always welcome to explain your answer. If I interrupt you, just let me know and I'll -- I'll stop talking and I'll let you answer. Okay? Because I may be jumping ahead to what I want to do. I just want to make sure we have a clear record.

Also, I certainly was taught manners when I grew up, growing up, so if you need a bathroom break or you just need to stretch your legs, let me know. I don't anticipate that it will last very long, but it may last longer than I anticipate. We're here. We've driven a long way to see you today, and so we'll need to ask the questions that we -- that we need of you. Okay?

A Okay.

Q At the end of your deposition --

Mr. Temple: And Roger if you would, make a note of this, if you would ask me, we may

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adjourn. I think the answers to the discovery were incomplete.

By Mr. Temple:

Q I'll see what you provide to me. If we need to reconvene, we'll do that instead of just terminating the deposition. We'll make that decision as we finish the deposition today. Okay?

A Okay.

Q All right. Let me get a little bit of back--- background information from you, if you don't mind. Are you married?

A Yes, I am.

Q All right. And what is your wife's name?

A LaTonya Smoak.

Q All right. And how long have you been married to her?

A Well, we was living together for about 22 years, but we've been married for like four years.

Q Four years?

A Uh-huh.

Q Okay. And of this marriage, do you have any children?

A Yes, sir. Two.

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Q Two?
A Uh-huh.
Q What are their names and ages?
A My daughter's named Laola Renee Smoak. And she's 17. And my son is Daniel Smoak. And he's 18.
Q Okay. And obviously, those were not of this marriage. They were from a prior relationship?
A Huh-uh. From this -- this one.
Q Oh, this marriage?
A Uh-huh.
Q So you've been married for four years, but you had children --
A Uh-huh. Yeah.
Q -- before you were married?
A Like I said, we was together for like 22 years.
Q I see. Thank you.
A We was just living together.
Q I gotcha. Have you been married before?
A Yes, sir.
Q All right.
A Twice.

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Q All right. And to whom, please?
A Tammy Coaxum.
Q Spell the last name.
A C-O-A-X-U-M.
Q Okay.
A And Alaina Wimbley.
Q All right. Spell the last name.
A W-I-M-B-L-E-Y.
Q And of those marriages, were there any children born?
A Alaina Wimbley, three.
Q Three children?
A Uh-huh.
Q So you have -- is that a yes?
A Yes.
Q So you have six kids altogether?
A Seven.
Q Seven. So of that marriage, there are three. And are those all emancipated?
A Yes.
Q They are all over 18?
A Yes, sir.
Q All right. Do any of those children live in the county of Sumter?
A No, sir.

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Q All right.
A They are all in New York.
Q Okay. And of the other marriage, you obviously had one of that marriage.
A No, sir. None.
Q All right. You said seven children?
A Yes. Seven.
Q So there's three currently of this marriage.
A Uh-huh.
Q And two of the present marriage?
A Uh-huh.
Q So where are the other two -- two children?
A They are from two other --
Q Non-marriages or non-relationships?
A Uh-huh.
Q Oh -- is that a yes?
A Yes.
Q Okay. I know we have a -- we both have a tendency. I do that all of the time. I'm not being rude. I would just remind you so that Roger doesn't punch me --
A Okay.
Q -- while we're sitting here. Okay?

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A All right.
Q Is that fair enough?
A That's fair.
Q All right. Now, are any of the -- do any of your children live in Sumter County?
A No, sir.
Q All right. This action is currently pending in Sumter County, so I'm particularly interested in anyone that you're related to by blood or marriage in Sumter County. Are you related to anyone there?
A No, sir.
Q Do you have any contacts in Sumter County?
A No, sir.
Q Are you a member of any church or other affiliation in Sumter County?
A No, sir.
Q All right, sir. Any contacts whatsoever in Sumter County?
A None whatsoever.
Q All right. Tell me how old you are and what's your date of birth.
A I'm 43, about to be 44. Date of birth is [redacted]

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Q Okay. Are you sure you're not 53?
A Fifty-three.
Q Yeah. Yeah. I was about to say, I -- that looks very close to my birthday --
A I thought about that just while I was --
Q And -- and --
A I was like 43?
Q -- I'm not 43. Do you have any health issues?
A No, sir.
Q All right. Do you --
A Diabetes.
Q Diabetes?
A Uh-huh.
Q Are you on insulin or do you take --
A Metformin.
Q -- Metformin?
A I'm about off it now.
Q Is that --
A I've been doing a lot of walking and laps and I'm about --
Q Okay.
A I lost weight and --
Q You have type two diabetes, then?

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A Yes, sir. Yes, sir.
Q Mellitus?
A Yes, sir.
Q Okay. And it's controlled with Metformin?
A Yes, sir. Metformin.
Q Okay. Are you on any type of medication today that would prevent you from giving truthful testimony or -- or accurate testimony?
A No, sir.
Q All right. And other than diabetes, do you have any other health problems?
A No, sir.
Q All right. Are you prepared to give your testimony today?
A Yes, sir.
Q Do you feel competent to do that?
A Yes, sir.
Q Do you feel like you're under any pressure or coercion today?
A No, sir.
Q All right. I'm going to -- I'm going to kind of jump around a little bit and I'll -- we'll get to different things. And I've got some

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things I want to ask you about, but I want to first just talk about do you understand why we're here today? We're talking about a collision that happened on February the 9th, 2017 in Sumter County. Are you familiar --

A Uh-huh.

Q You -- you have a recollection of that?

A Yes, sir. I do.

Q Okay. Did you -- before I ask you questions, did you take any pictures of the scene?

A No, sir.

Q Do you have any written statements or anything like that?

A Uh-huh.

Q Yes? Is that a yes?

A Yes.

Q All right. Where -- where is that information?

A I don't have it with me.

Q Where would it -- where is it physically located?

A Murray Sand. Murray Sand, they had some pictures that I -- some photos that I -- I've tooken because, you know, when you drive for them,

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you've got to have a camera in the truck at all times so if an accident occurs, you've got to take pictures and stuff.

Q Okay. All right. And -- and you think -- can you tell me what those pictures -- to the best of your knowledge, what those pictures were of?

A It was a black pickup. I don't -- I've forgot the name of the truck and everything, but it was a black truck, I remember.

Q Okay.

A And --

Q Any other pictures?

A It was the back -- it just was the back. And I had to take pictures of her truck and mine as well. Wasn't no damage to mine, though.

Q Okay.

A Hardly none that we could see on her's either, but --

Q Okay.

A As I can -- as I remember.

Q Okay.

A There wasn't none --

Q You do not recall the back of her bumper being bent down?

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A I think the -- the passenger side, it went -- it went in about -- about that much right there.

Q Okay. All right.

A Uh-huh.

Q Now, let me ask you this question. So -- and I'm going to come back to that. Did you sign a written statement for your employer, a written accident report?

A Yes, sir.

Q All right.

Mr. Temple: Do you have a copy of that?

Ms. Rand-McDaniel: It --

Mr. Temple: Because it was not provided to us.

By Mr. Temple:

Q Okay. All right. So we'll get back to that, but you're --

A Uh-huh.

Q -- confident that per the handbook, there's a document in there that requires a driver to fill out an accident report and you recall doing that specifically?

A I think I did.

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Q Okay.
A I know I did sign it at some point.
Q All right. Tell me in your words what happened in this accident. How did this accident occur?
A Well, I was coming from Kershaw, leaving out of Kershaw from the rock quarry and I was heading to Edisto -- Edisto Beach with a load of riprap. That was during the time when the storm came in and pushed all the sand out and they was trying to build it back up. And we was hauling over there and --
Q Tell me how much your truck weighed. Did you -- you have to weigh it when you leave --
A Uh-huh.
Q -- the quarry?
A Uh-huh.
Q Is that a yes?
A Yes. Yes, sir.
Q All right. How much did it weigh with the riprap in the back?
A I think it's 76--- it was 76,000 -- 76,000, something like that, 76--- 600.
Q Well, it wouldn't be hundred. It's 76,000 pounds?

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A Uh-huh, 76,000 -- 76,000 -- about 76, 800, something like that.

Q Okay. And that would be --

A Like six --

Q That's loaded?

A Yeah, that's loaded.

Q Okay. So the tractor, the trailer and the contents of the trailer -- bless you -- was about 76-, 77,000 pounds?

A Yes, sir.

Q Okay. All right. And is that reflected on the scale when you leave out of there? They weigh your truck empty and then they weigh it with your -- the contents --

A That's right.

Q To know how much you're --

A Uh-huh.

Q -- taking out of there? Is that a true statement?

A That's right.

Q Right. And then you deliver that to the quarry in Edisto?

A It was to the beach.

Q To the beach. I'm sorry. From the quarry. All right. And according to -- well,

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we're going to review this in a minute, but it looks like you began your day about 4:00 a.m. that morning.

A Yes, sir.

Q And -- and you finished at about 4:00 p.m.?

A Yes, sir.

Q And this accident occurred about 1:00 p.m.?

A It was some -- yes, sir, somewhere in that neighborhood.

Q All right. Tell me what happened.

A We was coming out of town. And --

Q What road were you on, sir?

A I've forgotten the name of the road.

Q If I said U.S. 15, would that be correct?

A Yes, sir.

Q Okay. All right. What happened?

A We was coming out of town. Well, we was going toward where I was -- my destination and we was coming up to a light. The light was on green --

Q What was -- what was the speed limit?

A Forty-five.

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Q Okay. All right.

A And we was real -- right almost under the light and the light just turned yellow. And when the light turned yellow, she just -- she stopped.

Q Okay.

A And she made a sudden stop. And -- and then I went to stop. I almost stopped, but it wasn't in time enough to keep from hitting her in the back.

Q All right. Do you accept responsibility for this accident?

A Yes, I do.

Q All right, sir. And do you also agree that -- that Ms. Haselden was not negligent in this accident, was not responsible for this accident?

Ms. Rand-McDaniel: Objection.

Mr. Temple: You can answer.

Ms. Rand-McDaniel: You can answer.

The Deponent: Well, it's hard to say. As -- as we were talking, she -- she explained to me why she slammed on brakes. But I mean...

By Mr. Temple:

Q All right. Well, tell me this. Were

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you keeping a safe distance behind her --
A Yes, sir.
Q -- where you could bring your car --
A Yes --
Q -- your truck to a stop?
A I was about the distance of a tractor-trailer.
Q Okay.
A Yeah.
Q And in fact, you still couldn't bring the vehicle -- your truck to a stop before you impacted the rear of her vehicle?
A Yeah, because I didn't intend on slamming on brakes on the light just turning yellow. It was green and -- and I was -- I didn't anticipate on her stopping and...
Q All right. And let -- so you accept responsibility for this accident?
A Yes, sir.
Q Were you charged with this accident by the law enforcement?
A I think I was.
Q All right. According to the report, it says you were charged with too fast for conditions.

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A Uh-huh. That's what they said.
Q Is that -- is that a true statement?
A No.
Q No. Is that true that you were charged with too fast for conditions?
A That's what I was charged with.
Q All right. How did you resolve that charge?
A I'm not even sure.
Q Did you pay the ticket?
A Oh, yeah.
Q Did you go to trial for that?
A I paid the ticket. I didn't go to trial, but I paid the ticket.
Q Did you plead guilty for it?
A Uh-huh.
Q Yes? Is that a yes?
A Yes.
Q All right. Mr. Smoak, if we are able to present evidence to a jury that Ms. Haselden was injured in this accident as a result of this collision, would you want her to be fairly compensated for her injuries?
Ms. Rand-McDaniel: Objection. You can answer.

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By Mr. Temple:

Q You can answer now.

A Yes. But she said she -- she wasn't injured at the time. She said -- you know, she told the officer that she was fine.

Q Was she polite to you?

A Huh?

Q Was she polite to you?

A Very.

Q Okay.

A She was very polite.

Q So again, I'll ask you the question. If we're able to present medical evidence to a jury that Ms. Haselden was -- sustained injuries as a result of this accident, would you want her to be fairly compensated for those injuries?

Ms. Rand-McDaniel: Object. Asked and answered. You can --

By Mr. Temple:

Q You -- you can answer.

Ms. Rand-McDaniel: You certainly can.

By Mr. Temple:

Q Do you want me to repeat that? From time to time, Mr. Smoak, you have a very good lawyer and she's going to object. And that's just

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what lawyers do. We object. If she doesn't want you to answer, she's going to instruct you not to answer. And there are reasons for that. We'll have to go back and we'll have time to go before a judge and -- and talk about that. So as we stand here today, she'll object because she's objecting to the form of the question. And then -- but you have to answer unless she tells you not to answer. And I want you to listen to her. If she tells you not to answer, then I don't want you to answer. Do you understand what I'm saying?

A I understand what you're saying.

Q All right. So let me ask that question again. And subject to counsel's objection.

A Uh-huh.

Q If we're able to establish through medical evidence that Ms. Haselden sustained injuries that were causally related to this accident, would you want the jury to -- to fairly compensate her for those injuries?

Ms. Rand-McDaniel: Same objection. You can answer. You can answer it.

The Deponent: Okay. Yes. If -- if -- if she's -- if she got injured in the

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accident, then...

By Mr. Temple

Q Okay. Do you have anything to add to that? Okay. Think about it. If you --

A I mean, if my lawyer -- you know, she -- she was saying some things to me.

Ms. Rand-McDaniel: No. No, you can't talk about what you and I talked about.

The Deponent: Oh, okay. All right. I'm talking about what the -- what happened at the accident. You know, she was telling me some stuff that happened. And I mean, if that's irrelevant, then ain't no need to talk about it.

By Mr. Temple:

Q Okay. Well, you're welcome to tell us. Today's your chance to tell us if you have something that you want to talk about.

A Yeah, I meant, well, she was saying that she was injured before.

Q Right.

A And -- and she was going through something.

Q Right.

A Uh-huh.

Q And she doesn't contest that. She had

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a prior neck injury. So --

A Uh-huh.

Q And -- but this is not a neck injury that she had. She ended up --

Ms. Rand-McDaniel: I'm going to object to this.

Mr. Temple: Yeah. And that's fine.

Ms. Rand-McDaniel: Okay.

By Mr. Temple:

Q She had -- we're contending, just so you know, because I'm sure you've thought about this today, that she -- that she has low back injuries as a result of this accident.

A Uh-huh.

Ms. Rand-McDaniel: Objection to all of this narrative.

Mr. Temple: Sure.

By Mr. Temple:

Q All right. Mr. Smoak, do you know of any witnesses to this accident?

A It was somebody that stopped, but I don't know. She was -- she was like -- I don't know. She was like -- I don't know what happened. I don't know if she -- I think she left -- she stopped, but she left. That was the only witness,

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but she left.

Q Okay. Did you get her name or know how to contact her?

A Huh-uh.

Q Okay.

Ms. Rand-McDaniel: Is that a no?

The Deponent: That's a no.

By Mr. Temple:

Q Okay. All right. Tell me how you were classified that day in terms of your driving. Were you a short haul, a long haul? What do you -- what were you driving? What classification were you driving under?

A It was considered as a long haul from up there because it was like a three-hour destination drive.

Q Okay. All right. Tell me about your commercial driver's license. What endorsements do you have on your license?

A Class A.

Q All right. And just for the -- for the record, tell me what you believe class A means.

A Tractor-trailer.

Q Okay.

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A A weight limit of 80,600 pounds. Unless you get special, you know, license to carry over --

Q Okay.

A Permits to carry over that.

Q Do you -- have you ever gotten a special license to do that?

A No, just a -- a permit.

Q Okay.

A Sometimes if you're going to carry more weight, you would have to get a permit, a weight permit.

Q Okay. All right. And do you have any other endorsements on your license? Some would be, examples, hazardous material or that kind of --

A No. No.

Q All right. So you're a straight class A with a limit of 80,600 pounds?

A Yes, sir.

Q And has that license ever been suspended or revoked for any reason?

A I think I paid a ticket late and they were suspended.

Q Okay. And I'm going to go through

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that with you. I don't have your driving record, but I do have your other record that I would like to review with you in a minute.

A Uh-huh.

Q Has your driver's license ever been suspended other than the one time that you talked about the ticket? And you understand you're under oath today.

A Yes. Well, I think -- I think it has been.

Q Okay.

A But when I started driving truck, when I got my C.D.L. back in 2002, I think it had been suspended like once -- once after that from paying a ticket late. But other than that, if it was, I don't remember because --

Q Okay. So --

A -- I was driving during the whole time --

Q All right.

A So...

Q All right. So the first time you received your commercial driver's license was in 2002?

A Uh-huh.

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Q Is that a yes?
A Yes.
Q And who were you working for then?
A A logging company.
Q Okay.
A The Koath Brothers Logging Company. Koath.
Q Spell it.
A K-O-A-T-H.
Q Okay.
A Brothers. Koath Brothers.
Q Okay. And it's your sworn testimony today that since 2002, it's only been -- your commercial driver's license has been suspended one time, and that was because of a not --
A A ticket being --
Ms. Rand-McDaniel: Objection.
By Mr. Temple:
Q A failure to pay a ticket?
Ms. Rand-McDaniel: That's not what he said.
By Mr. Temple:
Q And -- and this is a discovery deposition today, so I'm just trying to get information from you and I want you to -- I'm not

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trying to trick or deceive you.

A Uh-huh.

Q So if I misstate something, correct me, okay? I want to know the truth.

A Uh-huh.

Q Okay. So tell me, from -- since you received your commercial driver's license in 2002, how many times has your license, to your knowledge, been suspended?

Ms. Rand-McDaniel: Objection.

Mr. Temple: What's your objection?

The Deponent: Maybe once or twice.

Ms. Rand-McDaniel: Asked and answered.

Mr. Temple: Well, I thought you just asked me to clarify it.

By Mr. Temple:

Q Go -- go ahead.

A Maybe once or twice.

Q Okay. And what -- one time is for failure to pay a ticket?

A Uh-huh.

Q Is that a yes?

A Yes.

Q And what was the other time for?

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A Probably the same thing.
Q Okay. Have you had any other motor vehicle accidents since you -- since 2002?
A No accidents, but my tailgate came open one day. She said that a rock came out in the tailgate -- she said that a rock came out of my truck, but I don't think it did.
Q All right. So somebody -- another driver said that, when you say she?
A Yeah, it was a lady.
Q Okay.
A It was a lady.
Q You don't know who -- somebody filed a claim because --
A Uh-huh.
Q Okay. Is that a yes?
A Yes.
Q All right. Other than your tailgate coming open, have you been involved in any motor vehicle accidents?
A No, sir.
Q Okay.
A None -- none --
Q Other than this one?
A Other than this.

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Q Other than this one.
A No, none recently.
Q All right. Well, all right, what I'm asking you is to go back to 2002 --
A Uh-huh.
Q -- so we're talking about 18 years now.
A Uh-huh.
Q Tell me about the accidents you've had since 2002.
A It's -- it's very little as it's just that and -- and I can't really think of none since -- since that one and the one on 26 where the lady said the rock came out of my truck. But I don't even think that, though, because the tailgate was locked, so...
Q All right. When you say that one, do you mean the one we're here about today?
A Uh-huh.
Q Is that a yes?
A Yes.
Q Okay. So in 18 years, it's your sworn testimony that there was this accident that we're here about today, February 9, 2017, and a -- an event where a rock allegedly came out of a

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trailer --

A Uh-huh.

Q -- and struck a vehicle?

A Uh-huh. And I was in my vehicle one day at a -- at a store -- well, it was at the gas -- fuel station where I -- I went to -- to pay my fuel bill.

Q Uh-huh.

A And I was backing up -- me and my son was riding together and I was in my pickup and I was backing out. And -- and a car ran into the side of my -- the back of my bumper.

Q Were you charged with that?

A At first, I wasn't. But after somebody came and talked to the officer, I was.

Q Okay. All right. Any other accidents other than that?

A I can't remember none other than that.

Q All right. Have you been charged with any moving violations that affect your commercial driver's license since 2002?

A Like -- explain.

Q Well, examples would certainly be, in this accident, traveling too fast for conditions or having an alcohol content of point-zero-four or

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more --

A No, no, no. I ain't never --

Q Or --

A Never -- I ain't never drinked and behind the wheel, nothing.

Q Okay. That is fine.

A If I drink, I ain't even going to ride a bicycle.

Q All right. So -- so let me ask you this.

A Uh-huh.

Q Those were just examples. So I'm --

A Uh-huh.

Q -- asking you, have you had moving violations that you had to report for your commercial driver's license since then?

A No, sir. None that I remember.

Q In -- in 18 years. Any speeding?

A None that I can remember.

Q Okay.

A I've had a few speeding tickets.

Q While you've been driving?

A Yes.

Q Okay. Tell me about the ones you recall.

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A I remember one -- once or twice in a commercial vehicle and -- and I think the rest had to been in my -- in my -- in my personal vehicles.

Q All right. Do you have any points against your commercial driver's license as we stand here today?

A I shouldn't have nothing against me right now.

Q Okay. All right. And the speeding tickets that you got, you --

A All of them are gone. They're gone. They -- they -- they shouldn't even been nowhere on there.

Q Okay.

A That was over -- it was over three years. You know, after three years, you know, everything is -- is gone too.

Q All right. Mr. Smoak, do you keep a driving log?

A Yes.

Q All right. And on the day of this service, on this accident, February the 9th of 2017, did you -- did you log your driving hours that day?

A Yes, I did. Every day.

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Q All right. Where is that driving log?
A Murray Sand.
Q All right. All right. And you're confident that -- do you have a copy of that?
Ms. Rand-McDaniel: I do not.
Mr. Temple: They didn't produce that either.
By Mr. Temple:
Q You're confident that they have your driving log?
A Yes, they should have it.
Q Can you --
A Because you have to turn them in every -- every -- every -- every afternoon, you got to turn them in and fuel up.
Q Okay. You drove 12 hours that day of the accident that --
A It was less than 12 hours that day 'cause --
Q All right.
A -- when I got held up --
Q Okay.
A -- I -- I couldn't go back, so --
Q Well, according to your ledger, it shows -- I'm going to show you what's been marked

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as plaintiff's 17, and it shows that you started at 4:00 p.m. that morning -- 4:00 a.m., and ended at 4:00 p.m.

A Uh-huh.

Q Is this your document?

A Yes, sir. That's what -- this -- this is what we turn in every afternoon.

Q And is this your signature at the bottom?

A Uh-huh.

Q And is that a yes?

A Yes. Yes, sir.

Q And you -- and you drove a total of 676 miles that day? Look where your finger is right there, right above your signature.

A Yeah, I see it. I see it. I don't -- I don't think it was quite that far, but I don't know. If you say that, then --

Q Is this your handwriting?

A Yes, this is my handwriting.

Q And would you agree with me that it says mileage began 27,879 and concluded mileage ended at 28,554?

A Where do you see that at? Twenty-seven---

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Q Right here.
A Okay. Twenty-seven -- yeah, that's about -- that's about. Yeah.
Q And you were driving truck number nine?
A Truck number nine.
Q Okay.
A Uh-huh.
Q And so according to this, you were paid it looks like $460.98 for the day. Is that right?
A Yes, sir.
Q And that's based on the mileage of 676.
A Uh-huh.
Q Is that yes?
A Yes.
Q All right. So as we go back to it, you would agree with me that this is -- you drove on the date of this accident beginning at 4:00 a.m., concluding at 4:00 p.m., a 12-hour day --
A Uh-huh.
Q -- 676 miles.
A Yes, sir.
Q Okay. All right. Now, did you --

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other than going to Willow Creek, Willow Oak, then delivering to the beach at Edisto, were there any other stops or breaks that you took during that day?

A Yeah. You got to take a -- a -- a lunch break. And other than that, just when I leave -- when I -- once I drop my second load off, I didn't have to go back to Summerville. We had a fuel stop in Walterboro and I always stopped in Walterboro on my way home to fuel up.

Q Okay. So you would have just gone back and forth -- just so the record is clear, Willow Oak is located where?

A In Kershaw.

Q Kershaw.

A Kershaw County.

Q And you would -- you went back and forth between Kershaw County from your --

A To Edisto Beach.

Q Would you have originated at your home? Do you take your truck and trailer home?

A Uh-huh.

Q Is that a yes?

A Yes.

Q All right. So you would have taken it

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from Smoak, South Carolina --
A Uh-huh.
Q -- to Kershaw County?
A Uh-huh.
Q Picked up the riprap at Willow oak.
A Yes, sir.
Q Gone to Edisto Beach.
A Uh-huh.
Q Gotten fuel?
A No. No. I fuel up at night.
Q I gotcha.
A And once I fuel up, then I fuel up that -- the next afternoon.
Q Okay. So after you finished --
A Uh-huh.
Q -- you would have fueled up?
A Uh-huh.
Q So you would -- and that's a yes?
A Yes.
Q And you would have gone to Edisto, back to Willow Oak and then to Edisto again, and then would you have come straight back to Smoak or would you have gone some place else first?
A Smoak. I go -- go through Walterboro because once I leave Edisto, you got to go through

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Walterboro. I would stop in Walterboro, I would fuel up and then I would go home.

Q Okay. All right.

A And -- and all of that is like -- when I leave Edisto, all of that is like coming back towards 95. And I live a mile and a half off of 95.

Q When would you have turned your driving log in?

A In the afternoon -- I turns it in the afternoon -- that day, I turned it in that day. But normally, if I don't go back to Murray Sand, like if I don't go that afternoon, if I go the next day, I'll turn it in the next day.

Q All right. Now, this is now what I'm including there as your driving log.

A Uh-huh.

Q Do you agree with me that you have a separate driving log and this is just your -- your request for payment --

A Yeah, that's -- that's -- yeah, that's what they keeps up with. But the driving logs we normally turn in -- what day we -- normally, every -- well, whenever we go by the office, we normally will turn them in.

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Q Okay. All right. So there's a separate driving log that you turn in once a week? Or how many times a week?

A I -- whenever we turn -- whenever we turn -- go to Murray Sand, we just turn it in that day.

Q Okay. All right.

A But I -- when I was on this trip here, I wasn't going by Murray Sand every day because I wasn't going up there to fuel up. And it was way out of the way to come from Edisto Beach all the way back to Summerville and then come all the way back a hour and ten minutes away from where I live at.

Q I gotcha. So --

A So --

Q So this request for payment --

A Uh-huh.

Q -- what I -- and this is what I'm referring to is plaintiff's exhibit number 17 --

A Okay.

Q -- is your request for payment on that day, and that would have been turned in at some point --

A Uh-huh.

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Q -- around the time that -- that it took place. Is that true?

A This one was turned in the day of the accident.

Q Okay. So you -- you actually -- all right, so now I'm unclear now. When did you go back to Murray Sand in Summerville to turn it in? I thought --

A The same day.

Q -- your testimony was that you went from Edisto to home to Smoak, South Carolina that night.

A You're talking about -- you're talking about this -- this was the accident day. Right?

Q That's what I'm talking about. Yeah.

A All right. When I had the accident, I went straight to Murray Sand.

Q Okay.

A Straight to Murray Sand.

Q Okay. All right. So after the accident, you went straight to Murray Sand.

A Straight to Murray Sand.

Q You -- you were loaded at that time.

A I was loaded.

Q Okay. So you went straight to Murray

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Sand.

A Uh-huh.

Q And what did you do at Murray Sand?

A They checked the truck out and everything and made sure everything was all right. And then after -- after everything was checked out all right and I did all of my paperwork, I had to go take a drug test and -- a drug test and everything. And when I got back, then I went and dropped the load off.

Q All right. So you took a drug and alcohol test?

A Uh-huh.

Q Is that yes?

A Yes. That was the first thing I had to do. When I left the accident, I had to go to drop the truck off and go straight and take the drug test and everything the same day.

Q Okay. Don't have any -- because she said there was none, so --

Ms. Rand-McDaniel: No. Right.

Mr. Temple: Okay. All right. So let's -- we'll -- we'll work on that.

The Deponent: I remember it. They -- they got the paperwork because I had to go

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straight there and --
By Mr. Temple
Q You took a urine test or a blood test?
A Yes, sir. Urine test and blood test.
Q And where did you go?
A To Charleston.
Q Okay. So where in Charleston did you go?
A It's to the -- it's to the -- the facility that they use. It's a big facility. They're on the second floor.
Q Is it M.U.S.C. or where was it?
A No. It wasn't M.U.S.C. It's off of -- off of the Interstate 26.
Q Okay. And you drove your truck.
A No, I drove my truck and left it at the shop and I drove their personal pickup to go take my test.
Q So you went and took your test. Then you came back --
A Back.
Q -- and picked your truck up and then you delivered it to --
A Uh-huh.
Q -- Edisto.

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A Yes, sir.

Q I gotcha. All right. And you did all of that within this time and was through at 4:00 p.m. that day?

A No. No, no, no. When I got back from the drug test, it was around about -- let me see what time. I think it was two-something.

Q Uh-huh.

A 2:00 or 3:00-something. It was 2:00 or 3:00-something. That load, I -- I don't think I delivered that load until the next day because if you don't get there at a certain time, they be done gone.

Q All right. So --

A And -- and normally, we -- we got to be there before 2:00 because if you go there after 2:00, they done gone 'cause --

Q All right. So let me ask you this. Before this accident took place, you had already been to Edisto Beach twice, then.

A Uh-huh.

Q Is that a yes?

A That was the second load coming back over.

Q Right. But you were -- but your truck

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was loaded at the time of the accident.

A Uh-huh. That was around about 11:00 or 12:00, somewhere around in there.

Q All right. The accident report says 1:00.

A 1:00? Yeah, that probably was sometime in that -- around that time.

Q All right. Let -- I want to make sure -- this is confusing. Okay?

A Uh-huh.

Q So I want to make sure that -- that we're clear.

A Okay.

Q So at 4:00 a.m., according to this document, number 17, you went to Willow Oak, you began your morning --

A Uh-huh.

Q -- you left your point of origin.

A Uh-huh.

Q Went to Willow Oak and loaded the riprap?

A Uh-huh.

Q And then you made a trip to Edisto Beach?

A That's right.

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Q And then you would have delivered the riprap there. So you would have been unloaded at that point.

A Uh-huh.

Q Is that a yes?

A Yes.

Q Then you came back to Willow Oak again. True?

A That's right.

Q And then you were coming back to Edisto -- Edisto at the time of the accident.

A Uh-huh.

Q Is that a yes?

A Yes.

Q So then the truck was loaded at that point.

A Yes.

Q All right. Then you took the truck to Murray Sand in Summerville, South Carolina?

A Uh-huh.

Q Yes?

A Yes.

Q And then you took their personal truck to somewhere in Charleston and had a urine and a blood test done?

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A Yes.
Q And then you came back to Murray Sand?
A Uh-huh.
Q And you took the truck that was still loaded --
A Uh-huh. Yes.
Q -- with you --
A Yes.
Q -- to your house?
A Yes.
Q And then you delivered it the next day?
A Yes.
Q Okay. All right. So you didn't deliver -- so on here where it says to Edisto Beach, that second entry would have actually been done on the 10th, not the 9th, because you didn't get back to Edisto that day.
A Uh-huh. That's right.
Q Is that true?
A That's right.
Q Okay. All right. Now, Mr. Smoak --
A Uh-huh.
Q -- does your -- does truck number nine -- I believe it is a 2007 Kenworth T800. Is

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that correct?

A That's right.

Q And the trailer was a 2009 and it's just got a -- a number to it. Now, just for the record, TRSTDS2SD2TL, does that mean anything to you?

A Huh-uh.

Q Your attorney, your very good attorney, provided that information to me. Were you familiar with that truck? Is that a truck you drove regularly?

A Yes, sir.

Q Okay.

A It was.

Q Very well. Now, does -- is that -- does that truck have any collision avoidance computers on it?

A Not that I know of.

Q All right. Examples -- are you familiar with collision avoidance?

A No, sir.

Q All right. Does it have an Eaton VORAD collision avoidance system on it?

A No, sir.

Q Does it have a Qualcomm Omnitracs

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system on it?

A A what?

Q A Qualcomm system or an Omnitracs system on it?

A Not that I know of. I don't know.

Q Okay.

A It might have, now, but I don't...

Q Now, you've been working for them for about two years. Is that --

A Uh-huh.

Q I'm sorry?

A Yes.

Q You began working for them I believe a year before this accident took place. Is that right?

A Yes, sir.

Q And -- and I think -- my notes -- was it April -- from what I remember -- I remembered it from your job application. Let me just ask it cleanly. When did you begin your employment with Murray Sand?

A I know it was in 2016.

Q Okay. All right.

A I'm thinking in April.

Q Okay.

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A I think it was in April. I'm not sure.

Q And this accident happened in 2017 in February. So you had been there almost a year at the time of this accident?

A I thought it was a little over a year, but it might be so. You might be right.

Q Okay.

A I don't know. I thought it was over a year.

Q All right. You've only been employed with them one time. I'm just going by the application.

A Yes. Yes.

Q Okay. All right. Are you familiar with this truck?

A Yes, sir.

Q All right. Are there any -- is there any equipment on your -- is there any equipment on this truck that allows your employer to monitor you?

A The G.P.S. That's it.

Q All right.

A I'm thinking. I'm thinking.

Q Now, does your G.P.S. that you have on

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this vehicle, is it your private G.P.S. or is it G.P.S. that your employer can also see where you are?

A I'm thinking -- I'm thinking they can see where I'm at.

Q All right. Do you know what it -- do you know what the name of it is?

A No, I don't.

Q Can you actually speak into the G.P.S. like a Qualcomm?

A No, sir.

Q All right. But you think it's a -- when you crank up your truck, does the G.P.S. automatically come on?

A I think it does.

Q All right. And you don't cut it on or off. It -- when you ignite your engine, it -- it activates. Is that a true statement?

A Yes, it's supposed to be. I mean, I -- I -- I ain't never know of them having them, but I heard some people say that they do. And I ain't -- I didn't -- I don't know if they do or don't, but --

Q All right.

A But I don't --

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Q So there is a G.P.S., and it's your belief that your employer can determine where that truck is by accessing the G.P.S. system in that truck?

A That's what I've been told.

Q Okay. Do you have a -- do you have -- and I've asked you this, but just so -- now we're talking about this. Do you have any collision avoidance system? Let me tell you what I mean by that. It would be a system on a truck that would tell you if somebody's in your blind spot --

A Oh, no, sir.

Q -- or too close to the side --

A Huh-uh.

Q -- in front of you, too close in front or you're closing in on someone.

A No.

Q Okay.

A I think that would only be on cars --

Q All right.

A -- I understand.

Q Tell me, as a result of this accident, did Murray Sand discipline you?

A As a --

Q Did they -- did they dock your pay?

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Did they suspend you? Did they reprimand you or put something negative in your employment file because of this accident occurring?

A No.

Q Did you have to do any recurrent training because of that?

A I went through something, but I'm forgetting what it was. You know, it happened -- you know -- you know, my mind ain't -- don't think like it used to.

Q That's all right. You believe, though, as we sit here today, that as a result of this accident, you went through some retraining. Is that right?

A No, I had a lot of questions and stuff that was -- it was asked. And -- and you know, when I -- when -- when -- when -- straight when I left the accident, I went straight to the -- the -- to the drug place and did that. And it was something else. I'm trying to -- I -- something -- something else. And I had to go through a lot of things with the lady, what -- the safety lady, a lot of -- every other -- every day, I just had to go in there and talk to her.

Q After this accident?

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A Uh-huh.
Q Who is the safety lady?
A Ms. Suzanne. I forgot her last name.
Q And -- and she was the -- she is the safety lady --
A Uh-huh.
Q -- for Murray Sand?
A That's right.
Q And so as a result of this accident, you had to speak with her on more than one occasion?
A Oh, yeah.
Q All right. And what was the substance of those conversations?
A She just asked me how is everything going, everything all right and -- and was I hurt or had I gotten hurt in the accident. And I told her I was fine. I mean...
Q Did she get a written statement from you?
A Yes, she did.
Mr. Temple: Just so --
Ms. Rand-McDaniel: I -- I --
Mr. Temple: Off the record. Yeah. She --

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Ms. Rand-McDaniel: Whatever you have is what I...

By Mr. Temple:

Q Other than Suzanne, do you -- did you talk to anyone else or give anyone else a recorded statement as a result of this accident?

A No, sir.

Q Okay.

A State trooper.

Q Okay. All right. I'm going to show you what's been marked as plaintiff's 3. And I'm not trying to embarrass you here, but it says -- this was an inquiry to your past employers. And at the bottom, it says would you reemploy, and they say not at this time. Do you know why Three Gen would not rehire you to go to work there?

A Why Three Gen wouldn't hire me back?

Q Yes, sir.

A Because I quit.

Q You quit?

A Uh-huh.

Q Why did you quit?

A I just quit. They wasn't -- they was working six days a week. I mean, I was working six days a week. And I'm talking about full six

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days a week. On Saturday, we had to work all day long.

Q Okay.

A And I did that for over a year.

Q All right. And so the -- you were not terminated?

A No.

Q You quit?

A I quit. And one of the reasons why I quit, because when my mom passed, they got a little upset, you know, because I stayed off that week.

Q Okay.

A And my mom passed. She means more to me than any job in this world.

Q I -- I lost my mom --

A You know, my mom -- my mom was my best friend. And she was blind right after she had me. And me and her was real close. And -- and -- and I don't care what they think. I would have -- I would have never gone back there anyhow because I really was upset because I was working there over a year and then my mom was passed. You ain't even had the decency to say you got my condolences or nothing, not even a flower or nothing. And nobody

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called me to say we're sorry that -- you know, and when -- and -- and when I had to take off, they acted like they was upset because I had to take off that week.

Q I understand.

A I mean, we had little problems after that.

Q So -- so after that, you quit there is your testimony?

A Uh-huh.

Q And did you ever have any accidents or problems as a result of being there?

A None.

Q Okay. All right. You took a -- let me show you what's been marked plaintiff's 4, a record of road test --

A Uh-huh.

Q And it looks like this was done -- or dated April 25th, 2016, and then is signed by Jay -- it looks like -- who -- can you read that name? Who is that person?

A Where is that?

Q Jay Preacher or --

A Yes. I know who you're talking about. The guy who do the driving -- your driving

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record -- drive you around. Uh-huh.

Q All right. Did you take a driving test?

A Yes, sir.

Q All right. Was that the only test that you took while you were there?

A No, sir. I had to ride a week with another driver. I had to ride with him. The first day I rode with him all day long. And then the second and the third -- the second and the third and fourth day, I drove.

Q Okay.

A And he --

Q Okay. That was when you first got hired?

A Uh-huh.

Q All right. Is that a yes?

A Yes, sir.

Q All right. So after that, were there -- did you have any -- after this accident, did they make you do another road test?

A No, sir.

Q All right. Subsequent to your employment in April of 2016 and up until the time that you left --

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A Uh-huh.

Q -- did you have any other driving test or any other training?

A No, sir.

Q And you -- you indicated that you talked to Suzanne, the safety director, after this accident. She asked you questions. You responded. You gave her information. You signed a written statement. And other than that, was there any retraining or -- or recurrent training that you had?

A None that I remember.

Q Okay. All right. In this -- I'm going to ask you this. And again, I'm not here to embarrass you. Prior to being employed with Murray in April of 2016, had you ever been convicted of a crime?

A You're saying before then?

Q Before you went to work with Murray Sand. I'm -- I'm going to show you what's been marked as -- this is your employment application?

A Uh-huh.

Q And it asks, have you ever been convicted of a felony? And you said no.

A I wasn't.

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Q Is that a true statement?
A That's true.
Q Okay. Are you sure about that?
A I got convicted of a felony in 2018 when I went to court.
Q All right. So any -- so is it your sworn testimony today that any charges you had prior to 2016 were not felonies?
A None that I know of was a felony.
Q All right. Tell me what crimes you've been convicted of -- let's leave out why you're here today.
A Uh-huh.
Q We'll deal with that in a moment. Tell me what other crimes you've been charged with and convicted of.
A Well, what I'm in here for was the felony charge and --
Q I understand.
A And -- and it --
Q Let's leave that alone for a minute because I'm going to come back to that. Other than what you're incarcerated for now, what other charges have you been charged with?
A I don't know.

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Q You don't know? Are you sure?
A Tell me about it. Tell me about it. I don't know. You tell me.
Q All right. Well, let's look at it.
A Uh-huh.
Q Here's your -- let's just make sure we're clear on this.
A Uh-huh.
Q You are Michael Daniel Smoak?
A Yes, that's me.
Q Date of birth [redacted]?
A Sixty-six. That's right.
Q All right. It looks like -- this is the -- this is a document produced from South Carolina Law Enforcement Division, from N.C.I.C --
A Uh-huh.
Q And it's got a lot of charges on here.
A Uh-huh.
Q And so let me walk you through that. Looks like in 1985, you were arrested for petty larceny. Look on the first page at the bottom.
A Man, that's '85. Not -- this is 2020. Why would I be remembering stuff like that, man?
Q I'm asking you. I just need to know what -- what we got here because there's -- there

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are a lot more recent than that. So let me walk you through it. Tell me about that and what petty larceny was that back in --

A I don't even remember.

Q All right. All right. And then you have 1985, driving under suspension. Do you remember that?

A I don't remember that either.

Q Do you remember 1988, driving under suspension?

A No, I don't.

Ms. Rand-McDaniel: Mr. Temple, did you produce this --

Mr. Temple: I did.

Ms. Rand-McDaniel: -- in discovery?

Mr. Temple: Y'all -- y'all -- yeah, we did.

By Mr. Temple:

Q Do you remember in 1991, racing on the highway?

A Yes, sir. I remember that one.

Q All right. What was that about?

A Racing on the highway.

Q What were you charged with?

A Racing on the highway.

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Q Did you plead guilty for that?
A Yes.
Q Do you remember being charged also driving under suspension again?
A I don't remember it.
Q Okay. 1992, it looks like you were convicted; you got one year probation.
A I don't remember it.
Q All right. All right. Then it looks like you had another driving under suspension, a concurrent charge in 1992. Do you remember that?
A No, sir. I had a bad driving record before I started driving a truck.
Q All right.
A I ain't gonna lie. I ain't been a perfect angel. I ain't been a bad person, but I ain't been an angel either.
Q Well, then let's talk about 1998, then. How about grand larceny? What was that about?
A Grand larceny?
Q Yeah.
A In '98?
Q Yeah. That's a -- it says two felony counts. Orangeburg County.

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A Oh, you're talking about -- that was some guys did -- I bought a car from somebody and it was stolen. It was stolen. It -- the car was stolen, but I bought a car from some guys and I -- I did got charged for buying it from him.

Q All right. You got ten years suspended to 18 months probation.

A Uh-huh.

Q Is that a yes?

A Yes, it is.

Q And you made restitution of 1287?

A Uh-huh.

Q Okay. Is that a yes?

A Yes.

Q All right. Then it looks like 2001, fraudulent check. What was that about?

A I have no idea.

Q Don't know?

A Huh-uh.

Q Don't remember?

A Don't remember.

Q Okay. How about March of 2002, there's another charge it looks like arson third degree. Tell me about that.

A Arson third degree.

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Q Do you know what arson is?
A Yeah, that's fire.
Q All right. You don't recall that?
A Huh-uh.
Q No? It's a felony.
A I don't remember it.
Q You don't remember it?
A Huh-uh.
Q You think that's a mistake?
A I don't remember it.
Q This is your sworn testimony today as we sit here that you were charged with arson and you don't remember it, third degree?
A I don't -- I don't remember it.
Q All right. Let's talk about February of 2009. Assault and battery high and aggravated nature. Do you remember that?
A I remember that.
Q What was that about?
A Backing -- driving down a dirt road, flying, and he almost ran me in the ditch, so I, you know, turned back around with my kids. I left them back there riding the bikes in the -- in the road playing. So I went and asked him why he came back there driving so fast. And he cursed me out

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and pushed me and me and him got in a fight.

Q Okay. Did you hurt him?

A He got the worst end of it.

Q All right. All right. So it says you got eight years with three years suspend--- suspension. So you went to jail for three years?

A No. I was on probation for three years.

Q All right. And made restitution?

A Yes, I did.

Q Forty hours of public service?

A Uh-huh.

Q Is that a yes?

A Yes.

Q All right. Then after that, it looks like December of 2009, another aggra--- assault and battery high and aggravated nature. Do you remember that?

A Huh? I don't -- there ain't been but one, now.

Q Now you remember it, huh?

A Right. There ain't been but one.

Q Okay. Just one time?

A 2009.

Q Okay. One was September and one --

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I'm sorry, one was February and one was December.

A I don't remember. You sure that ain't the same thing?

Q I'm asking you, sir.

A Well, that got to be the same thing.

Q All right.

A I can't see without my glasses.

Q It's your testimony that you've only been arrested for assault and battery high and aggravated on one time?

A One time.

Q All right. Then January the 3rd of 2011, fraudulent check. What was that about?

A Which one? In two-thousand and what?

Q Eleven.

A All them fraudulent check charges, that's why I'm in here.

Q That's what?

A That's why I'm in here right now.

Q Oh, that's --

A This sentence is back then, but I just went to court for them until 2018.

Q Okay. So this is 2011?

A Well, I'm telling you when I went to court, it was 2018. And that's what I'm in here

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for, fraudulent checks. Fraudulent checks.

Q All right. We're going to get to that in a minute. I just want to make sure that that's what your testimony is and then we'll go to look at that. There's other charges, it says obtained signature false pretense, 2000 to 10,000 dollars. Do you know what that is?

A Say it again.

Q On the top page, it looks like the top of the page, it says -- October 17th, 2013, it says obtained signature P-R-O-P, false pretense. And it looks like there's one, two, three, four, five, six -- at least six counts there. Do you know what that's about?

A The checks, all I can tell you, they was fraudulent checks.

Q Tell me --

A Business checks.

Q -- what they were.

A Business checks.

Q Whose -- whose business checks were they?

A My business checks, S and S Trucking.

Q All right. And who -- you were -- you were self-employed?

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A Uh-huh.
Q Yes?
A Yes, I was.
Q S and S Trucking?
A Yes, sir.
Q Okay. And you wrote bad checks or they were false checks or they were not on bank -- tell me -- tell me about your record.
A They was -- they was -- they was -- they was fraudulent checks.
Q How does -- tell me what you mean by fraudulent.
A They are checks -- they didn't have the money in the bank to cover them.
Q Okay.
A And it was -- this is -- this is what I'm in here for. But it -- it happened since back then and -- and -- and back then, I went -- I went to court and got on probation for it. But then it became a federal because the guys that was doing it, they ain't never stopped. You can see it has a --
Q Yeah.
A It has a certain point --
Q Who was the guys doing it? What are

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you talking about?

A There ain't but one of them ever came to prison, which he came with me and he got six months and he go on home.

Q All right. And he's somebody that worked with you?

A No, he wasn't nobody that worked with me. He was somebody that was in -- in part of this check fraud thing.

Q All right. So tell -- explain to me --

A It was 141 people all included in that. And half of them, I don't even know.

Q All right. So explain to me simply what happened. You -- is this a situation that you were -- you wrote checks that bounced or was there a scheme to it? Or are you going to -- tell me about what happened.

A There was a scheme.

Q What was the scheme?

A I don't know. I just got the checks and give them to him and he was writing the checks and -- and -- and whatever check that -- that -- that he wrote, I was getting half the money off of them, so --

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Q All right. So you -- it was on your bank account?

A It was on my bank account.

Q And where's your bank?

A It was -- I've forgotten the name of the bank. It was my company checks. And the only way that you can get a -- a business check, you know, you have to be L.L.C.'d and everything like that. So --

Q Uh-huh. And -- and as a result of these, how much money are we talking about? How much were the checks that you were charged with?

A Altogether, it was almost 800,000.

Q What did you do with all of that money?

A Spent it.

Q Eight-hundred-thousand dollars?

A No, but I don't -- I probably -- out of the 800, I probably -- probably about 300.

Q All right. How long are you in jail for?

A Thirty-five months that I'm doing now.

Q Are you ordered to pay restitution?

A Uh-huh.

Q So there were about 800,000 and you --

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you got 35 months. And how -- how long have you been here?

A Seventeen.

Q Seventeen months?

A Uh-huh.

Q And you -- when you get out, you're ordered to pay 106,000?

A 106,000. Five people supposed to pay 106,000.

Q Okay. Each?

A Uh-huh.

Q Is that yes?

A Yes, sir.

Q All right. Let's move down this same document. I want to see -- it looks like 2013, it's got in Beaufort County. Is this a whole other county?

A Uh-huh.

Q It says similar charges.

A Same thing.

Q Same thing?

A Uh-huh. Probably a whole bunch of counties.

Q Jasper County?

A Uh-huh.

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Q Those are the same counts?
A Yep. Same counts. Same thing.
Q Bamberg County?
A That's right.
Q What is the forgery? Tell me about the forgery at the bottom. So you got check charges, obtaining property under false pretenses, but then you've got forgery. What does that mean? What forgery did you --
A That was a check that was given to us for -- for equipment that -- that we purchased with my check and we took it to the person and sold it to him. And he gave us a check. And it had the other five names on it and my name on it and he said it was forgery. They had to put my name on it.
Q They're saying you -- so you didn't forge your -- you didn't forge somebody else's name. Somebody forged your name or what happened?
A No, the guy that gave it to me put my name on it there. He said that he didn't put his -- he didn't list it like that when he left him. And he showed that when it left him, it only had Ryan North's name on it.
Q Okay.

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A But then Ryan North gave it to me because he was supposed to get half and I was supposed to get half. So what he did, he signed my name on it and told me to go on and cash it.

Q All right. So the rest of these documents here or the rest of these charges that are included for the counties that we talked about are all related to this --

A All related to this. That's why I was telling you all this -- all this stuff right here. It's all related to them. That's just what I'm in here right now for. And it only came out in 2018. For every check that's on there, that was --

Q When were you arrested?

A In '17. In 2017.

Q How soon -- what month in 2017?

A September.

Q All right.

A No, July.

Q July of 2017?

A Uh-huh.

Q Were you working for Murray at the time?

A No, sir. I was with Dorchester Logistics.

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Q So when did you leaving Murray Sand?
A Probably February. I'm thinking in February.
Q All right. So right after this accident, you left?
A No, I --
Q This accident occurred?
A I stayed -- I stayed there -- I stayed there a good while after I left --
Q Well, this accident occurred on February the 9th of 2017.
A Uh-huh.
Q How long did you continue working for Murray Sand before you left?
A Probably almost a whole year.
Q So --
A I've been with Murray Sand for like two years.
Q All right. All right. Well, that doesn't make any sense. Let me ask you this question.
A Uh-huh.
Q You just told me you got arrested in July of 2017, which would have been five months after this accident took place. And you told me

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you were working for somebody else when you were arrested.

A When I was arrested, now -- when I first got arrested for this here, they just -- they didn't arrest me. They sent me a letter through the mail.

Q Hold on. I don't -- I don't need those details yet.

A Uh-huh.

Q I'm just trying to get a timeline here. After -- this accident happened in February of 2017. How long did you continue working with Murray Sand after this accident? A month, two months, a year?

A I don't remember.

Q All right.

A I don't remember the times that they -- they might -- they ain't coming together, but I don't remember the times.

Q And you think you got arrested in July of 2017?

A I'm thinking it was '17.

Q All right. And so you were not working for Murray at the time you were arrested?

A No, I don't think I was with Murray --

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Q All right --
A -- during the time I got arrested. I think I was with -- oh, that was before then too. That was before -- I think that was in 2016. And they sent me a letter through the mail saying I had to go to court. I remember it was on a December -- in -- in -- right after -- it was sometime in December, they sent me a letter through the mail saying I had to go to court, me and -- and five -- four other conspirators.
Q So in 2016, then --
A I'm thinking it was '16. I can't remember the date, the exactly date when. I --
Q All right. So before this accident, you had already been notified that you were going to jail -- or that you were being charged.
A No, that I was being charged.
Q Okay.
A Uh-huh.
Q Did you tell your employer that?
A No.
Q Okay. Did they know that?
A No.
Q When did they -- what was the --
A They ain't ever found out. I ain't

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ever told them nothing and they ain't never knew.

Q Did --

A And I didn't even go to court. I -- I went to court -- I went to court a couple of times when I was working with them, but they never knew because I -- I took -- I would take off that day and told them I had something to do.

Q Okay. Why did you leave Murray Sand? Did you -- did you get fired or did you -- did you quit?

A I quit.

Q Why?

A I got in an argument with the dispatcher one morning.

Q Okay. Who was the dispatcher?

A That was the new fellow that came. I forgot his name. I think it was Craig.

Q Craig?

A Uh-huh.

Q And what were you arguing with him about?

A He called me and said something -- let me see, he said somebody called and said I was driving reckless, said I was -- said they was trying to get past me and they couldn't get past

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me. And I said I can only go 72 miles per hour and I'm on the interstate and they can't pass me going 72 on the interstate? I said, well, they -- they -- either they need -- they need to upgrade their car or get a different car. And anyhow, it was real early. It was around about 7:30 or 8:30 that morning.

Q Uh-huh.

A And -- and I just -- I don't know. I just -- me and him just started arguing and --

Q So was that because Craig could monitor your vehicle for how you were driving when he said you were driving reckless or did somebody call in and report --

A No, he said somebody said that.

Q Reported you.

A He said the guy -- he said the guy said he was a retired D.O.T. officer. And he said that you was -- he said -- he said you was driving reckless. He said you wouldn't let him pass you. I said how could I stop him from passing me, three lanes and -- and you know, we're on 26. It made me upset because I know I wasn't driving reckless. You know, people get mad at you. And if you've got a number on that truck, they are going to

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call. Because I have did the same thing before I started driving trucks. If I get mad at a truck driver, I -- I couldn't catch them, I'm going to call the company name and tell them they are driving reckless.

Q Uh-huh.

A And we've all probably did that at one time or another when you couldn't -- something happened with a truck and you didn't like that -- what they did.

Q All right.

A So -- and I --

Q So you got in a fuss with the dispatcher --

A With the dispatcher, uh-huh.

Q And you quit?

A And I quit.

Q All right. And you don't know when that was?

A Right before I started -- well, two -- a week after that, I started with Dorchester.

Q All right. And it was before July of 2017 when you got arrested?

A Yeah, it was before then.

Q All right. And you were being charged

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while you were at Murray Sand and you were making court appearances during that time, using your days off, as you've testified to?

A Yeah. Yeah.

Q All right. I'm going to show you this. Looks like a -- tell me what that is. Do you know what that is?

A Yeah.

Q What is that?

A It's the -- to check the equipment.

Q Okay. Is that something you do or something that somebody else does?

A This is something somebody else does here. It looks like service shop.

Q All right. So this was done right before -- this was about two weeks before this accident took place?

A I ain't sure.

Q Okay.

A I see the date, but I'm not sure.

Q What's the date, sir?

A The date said January 25th, '17.

Q Okay. Any -- do you see any problems with this document?

A What do you mean, do I see any

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problems with it?

Q Yeah, do -- any problems in terms of issues with the truck?

A I don't see none.

Q Okay. What is that adjusted values over on the right? Do you know what that means at the top right-hand corner? What does that mean?

A I have no idea.

Q Okay. All right. Let me ask you about -- when -- when the truck -- after this accident took place, there was some repair orders done. Do -- do you recall that? Let me show you what's been marked as plaintiff's 7, plaintiff's 8 and plaintiff's 9. Take a look at those, if you would. Have you had a chance to look over that?

A Yeah, but I don't know what it means.

Q All right. You don't know -- have you seen these before?

A Huh-uh.

Q Okay. You would all agree with me that -- that 7 and 8 are on the day of this accident, and then 9 is from one week prior to this accident. Correct?

A February the 9th, February the 9th and this here's 1st/25th.

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Q This -- it says revised, October 23rd, 2017. Do you have the prior -- do you know of any changes?

Ms. Rand-McDaniel: That's the only one that I've got.

Mr. Temple: Okay. That was what was provided but I just don't know if there's any changes in it.

By Mr. Temple:

Q All right. You don't know what those documents in that -- you can -- you can put those down for a minute. Let me show you this. Have you ever seen this, employee's handbook?

A Oh, yeah. Uh-huh.

Q Is that a yes?

A Yes.

Q And were you ever tested on this employee's handbook?

A No, but we -- we had to go through -- the time before I had gotten hired, there was a test we had.

Q All right. And in terms of the post-accident policy, are you familiar with that, the post-accident policy for Murray Sand?

A Uh-huh.

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Q Yeah? Is that a yes?
A Yes.
Q Okay. And it's your testimony under oath that you filled out a post-accident --
A Yes, I did.
Q -- form?
A Uh-huh.
Q Okay. Is that a yes?
A Yes.
Q And you went and took a drug and blood alcohol test?
A Yes, I did.
Q Okay. Have you ever seen that?
A I know it came back negative.
Q Okay. Have you seen it?
A No, I don't have to see it. I know I ain't been on no drugs or alcohol.
Q Uh-huh. But you think you went and did that?
A Huh-uh.
Q You think you went and took that test?
A I know I went and took the test.
Q And you wrote out a report?
A Yes. I -- I signed my name on there. There it is on the back of that -- that sheet

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there. I went to the -- to the safety lady and I signed some stuff and they sent me straight to the drug testing place.

Q Do you hold a driver's license in any other state other than South Carolina?

A Once was New York, but that was back in the nineties.

Q That -- you no longer have a valid driver's license there?

A No, sir. I -- I switched it over because you can't -- if you're living in South Carolina, you can't have a New York license, so I switched it over to South Carolina.

Q Did you pay for the ticket of driving too fast for conditions or did Murray Sand pay for that, for the -- the violation that you -- as a result of this accident?

A I don't even remember.

Mr. Temple: Okay. Subject to what we said earlier about the adjourning, I would do that, that's all the questions I have for you at this time, Mr. Smoak.

The Deponent: Uh-huh.

Mr. Temple: Your counsel may have questions.

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E X A M I N A T I O N

By Ms. Rand-McDaniel

Q Again, Mr. Smoak, were you able to have a conversation with the lady you hit at the accident scene?

A Uh-huh.

Q Is that a yes?

A Yes, ma'am.

Q Did she -- was she crying?

A She was laughing and talking and telling me that her husband used to drive a truck before he died. He died with some kind of cancer, she was telling me. And -- and you know -- and -- and we had a long conversation because it took the cop forever to get there, almost 45 minutes to get there -- 30 -- 30 minutes to get there. And we was just sitting outside talking.

Q Did she indicate that she was injured?

A No, she said she wasn't injured at all.

Q Was she holding her back?

A Huh-uh.

Q No?

A We was just talking and walking around. And she told me -- she said in her --

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now, I wasn't -- I ain't going to say, but if you want to know, I'll tell you what she said.

Q What did she say?

A She said that you don't have to worry about me trying to sue you because my husband used to be a truck driver. And that's when that came up that her husband was a truck driver. And she said, I know somebody did him like that, so I would never do you like that because I know what he went through.

Q And you're paraphrasing today?

A Uh-huh.

Q Yes?

A Yes.

Q Okay. Did you see her get out of her vehicle?

A Uh-huh.

Q Yes?

A Yes, ma'am.

Q Did she have any difficulty getting out of the vehicle?

Mr. Temple: Object to the question -- object to the form.

By Ms. Rand-McDaniel:

Q You can -- you can answer.

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A She was laughing and in no condition at all. She got out and walked around and stand up the whole time and even when the state trooper and all the time.

Q Is the statement that you testified you gave to Murray Sand --

A Uh-huh.

Q -- the same statement that you would have given the trooper on the scene that day?

A Yes, ma'am.

Mr. Temple: Object to the form.

By Ms. Rand-McDaniel:

Q Is that a yes?

A Yes.

Q Was Murray Sand a good employer while you were there?

A It was the best I ever worked with. They was one of the best companies I ever worked with since I was out there with like my own truck. They was the best. And I thought -- I thought Three Gen was a good company, but they ain't all that -- they will work you to death. And you know, I was working six days a week and I ain't made but 54,000 with them. And I went to Murray Sand for four-and-a-half days and made 65,000 at

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four-and-a-half days a week.

Q Do you -- compared to the other trucking companies that you worked for, do you believe that they did an adequate job training you?

A Uh-huh.

Mr. Temple: Object to the form.

By Ms. Rand-McDaniel:

Q Is that a yes?

A Yes.

Q How fast do you believe you were driving when you impacted the rear of the vehicle?

A It was less than ten miles per hour because I was about to be stopping, but she just slammed on brakes so fast in front of me, by the time I -- and then I was trying to make up my mind. I was going to get into the left turn lane to try to miss her, but she had her left turn signal on, so I just stayed right behind her because I thought she was going to get in that lane. But she never got over, so -- and I told the state trooper the same thing, but -- I thought she was going to turn, so that's why I didn't got in the left lane, because it was a turning lane -- there was two lanes. There was two lanes and a --

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a turning lane. And if I had gotten in the turning lane, I would have missed her, but she had on her left turn signal, so I couldn't get over. So I stayed right there.

Q Did she say anything to you about why she stopped for the yellow light?

A She said there was an accident there before and somebody got killed at that light and she said she always get nervous coming through that light. And that's why I think when the light changed yellow, she slammed on brakes like that. I mean, she just -- the front end -- the back end of the truck went up in the air, she jammed so hard. And so I couldn't stop in time once that happened 'cause, you know, that vehicle can stop way quicker than a loaded truck. And when she did that, I almost stopped. But she -- I just didn't have enough room to miss her.

Q Did the brakes feel like they were working?

A Oh, they were working good.

Mr. Temple: Objection.

The Deponent: She just -- she just stopped on me so quick. She jammed on the --

By Ms. Rand-McDaniel:

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Q All right. Listen to my question.
A Uh-huh.
Q Do you have any knowledge of the brakes not being adequate that day on the truck you were driving?
A Huh-uh. No, they was --
Mr. Temple: Objection.
The Deponent: They was real good. Real good.
Ms. Rand-McDaniel: All right. I want to mark these as Defense 1-A, B and C. And these are the -- I'll let Mr. Temple look at those.
(Defendant's exhibits 1-A, B and C marked for identification.)
By Ms. Rand-McDaniel:
Q They are of Ms. Haselden's vehicle. I want you to look at these and tell me whether they display the -- any -- the damage that you saw on the date of the accident.
A I don't remember that bumper being like that.
Q You remember there being bumper damage?
A There was a little bit. Very little damage.

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Q All right. Here's -- I'm going to mark this as Defense 2.
(Defendant's exhibit number 2 marked for identification.)
By Ms. Rand-McDaniel:
Q Is this a -- is this a photograph of the front of the -- the truck that you were driving that day?
A Yes, ma'am.
Q Is that a picture that you took --
A Uh-huh.
Q -- on the scene?
A That's the pictures there.
Q Is that a --
A Uh-huh. Yes, ma'am.
Q All right. Is there any damage to the front of that truck?
A None whatsoever.
Q And Mr. Temple went through a bunch of charges and took you through your -- your SLED record. Were you convicted for all of those things that he was talking to you about?
A Just the checks.
Q Just the checks?
A Just the checks.

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Q And the assault and battery?

A No, that was -- that was prior stuff. The assault and battery was in '09.

Q Okay. But you admit that you were convicted of that?

A Uh-huh.

Q Is that a yes?

A Yes, ma'am. But the officer that charged me, he had gotten fired -- he got fired. That -- that should have been off of my record now, but I ain't had a chance to get out and get it off because he had gotten -- he have gotten fired because of some other stuff that he'd been doing. And a guy was telling me, you know, that he was doing all kind of stuff and he had gotten fired for it. So that should be able to come off of my record too.

Ms. Rand-McDaniel: I don't have any other questions. Mr. Temple may have a couple of follow-ups.

Mr. Temple: Yeah. I just have a couple of questions.

F U R T H E R E X A M I N A T I O N

By Mr. Temple

Q Sir, it's your responsibility as a

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driver with a commercial driver's license when you're fully loaded to maintain a safe and proper distance behind other vehicles. That's a true statement, isn't it?

A That's true.

Q And you said you had photographs that you took of the vehicles that day?

A Uh-huh.

Q Where are those photographs? Are these the photographs that counsel has put in the record?

A Could be.

Q Do you know -- do you have other photographs that you have not shared with us? I want to make sure we know where all the photographs are.

A These photographs here don't...

Q Is it your testimony that you don't recognize those photographs?

A I don't recognize the area 'cause it looked like these was at her house.

Q Okay. And -- and do you recognize his vehicle as the vehicle being involved in this accident?

A That's the vehicle.

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Q All right. And the damage on the rear bumper, is that the damage that -- that you recall or you don't recall the damage or you don't have the specific recollection?

A Well, the pictures that I took, I don't think it was that much damage.

Q Where are the pictures you took?

A I turned them in -- I turned the camera in to the office.

Q All right. We'll see if we can get that.

Ms. Rand-McDaniel: We produced photographs.

Mr. Temple: Okay. So --

The Deponent: No, I don't think it was the --

Ms. Rand-McDaniel: Those are photographs you produced to us or that --

The Deponent: But I don't think it was that -- that I can remember, I don't think it was that day because you couldn't even tell --

By Mr. Temple:

Q All right. So you can't -- you can't identify that vehicle as the vehicle involved in this automobile accident?

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A That was the pickup. That was the pickup. But back then, I don't know, it looked like something pulled it down. I don't -- I'm not quite sure, now. To -- but to my knowledge, I don't think it was the -- the bumper was like that.

Q Okay.

A But now, I can't say little -- might -- it might be something I've missed, but I don't think it was like that because if a flat bumper hit you, a flat bumper ain't going to turn a bumper down.

Q All right. You're not an accident reconstruction expert, are you?

A No, I ain't, but I know --

Q You don't have any --

A I know right from wrong.

Q Yeah, you didn't --

Ms. Rand-McDaniel: Don't interrupt him.

By Mr. Temple:

Q You obviously don't know right from wrong --

A Okay.

Q -- 'cause you're here.

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Ms. Rand-McDaniel: Objection.
By Mr. Temple:
Q And I don't mean that in an insulting way --
A No.
Q But you opened up your -- your background.
A No, 'cause I could say some things too and it won't be an insulting way either.
Q Right. Now, you said that you tried to avoid the rear of her -- of the back of her truck after -- when she slammed on brakes. Is that right? Did you take any evasive action --
A No. You know what, I just want this to end right now 'cause you're saying some things that I don't like and I'm going to come at you the wrong way. So I might as well go on back out here and do my time.
Q Well, I'm not trying to be --
A Well, don't -- don't -- don't come telling me what I did.
Q Well, I --
A You did some wrong stuff in your life as well. You might be thinking you're perfect, but you're not God, so you can't cast a stone at

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nobody.

Ms. Rand-McDaniel: Mr. Smith --

Mr. Temple: You're right. You're right. We'll end this right now.

Ms. Rand-McDaniel: Just take a deep breath.

Mr. Temple: Good luck to you, sir.

The Deponent: Good luck to you.

(Deponent excused.)

(Whereupon, at 1:00 p.m., the taking of the foregoing deposition was adjourned as opposed to concluded, by agreement.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Florence

I, Roger Williamson, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the deponent in the foregoing deposition was, by me, first duly sworn to testify to the truth, the whole truth and nothing but the truth; that said deposition transcript contains a true record of the deposition of said deponent.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 16th day of February, 2020.

_____

Roger Williamson

MY COMMISSION EXPIRES:
March 18, 2022

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	CASE NO.: 2019-CP-43-01021
JUDY HASELDEN, Plaintiff, v. MICHAEL D. SMOAK and MURRAY SAND CO., INC., Defendants.	**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

This matter comes before the Court on Plaintiff's Motion to Compel Defendants' discovery responses. Defendants respectfully respond as follows:

Deficiencies in Defendant Murray Sand Company's Discovery Responses

In her memorandum to this Court, Plaintiff presumes a number of documents responsive to her discovery requests have been either negligently or illicitly withheld by Defendant Murray Sand Company. However, counsel assured Attorney Temple before, during, and following Defendant Smoak's January 28, 2020 deposition, that all documents in Defendant's possession at that time, consisting of 552 pages, had been produced prior to the deposition. Defendant Murray Sand has spent a number of hours diligently searching for the records Plaintiff claims have been withheld, and has not, to date, discovered the documents Plaintiff describes in her memorandum. Murray Sand is not in possession of the documents Plaintiff seeks, as is indicated in Defendant's attached supplemental responses to Plaintiff's discovery requests. The only remaining document Murray Sand has uncovered in its extensive search for the documents identified by Plaintiff as withheld, is an employee handbook predating the handbook previously produced, which has since been supplied to counsel for Plaintiff. Undersigned counsel came into possession of the

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supplemental handbook on April 24, 2020. Likewise, Defendant Murray Sand's first responses to Plaintiff's Interrogatories contained as much information it had known at the time it responded, and wholly denies the responses were "evasive".

Murray Sand has, in most instances without objection, freely produced over 550 pages of records and an abundance of information regarding financial disclosures, operations, licensure, and equipment – information that very well could be irrelevant in an action for vicarious liability in which Defendant Smoak has admitted negligence. Therefore, Defendant Murray Sand respectfully asks this Court to review the attached supplemental responses that have been provided to Plaintiff, and deny Plaintiff's Motion to Compel.

Defendant Smoak's Discovery Responses

With regard to Plaintiff's Motion to Compel responses from Defendant Smoak, undersigned counsel states that he was substituted as counsel long after Defendant Smoak raised objections to responding to discovery on service grounds. As Plaintiff points out in her memorandum, this case was previously defended by undersigned counsel's colleague, Carrie O'Brien, out of Walker Allen's Charlotte office. Ms. O'Brien departed from the firm 3 days prior to Defendant Smoak's deposition, which Plaintiff's counsel noticed. It was understood that Defendant Smoak's deposition had been previously noticed and re-noticed; therefore, undersigned did not seek postponement. At no time prior to Defendant Smoak's deposition did undersigned or any attorney working in Walker Allen's Charleston office have any knowledge or dealings with the subject case. This was made expressly clear to Plaintiff's counsel at the deposition and Plaintiff's counsel had every opportunity to seek answers to any of the discovery requests Plaintiff now seeks to compel. Indeed, most, if not all, of the answers to Plaintiff's voluminous discovery requests were answered under oath at Defendant Smoak's deposition.

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Since the deposition, the Defendants' insurer requested undersigned counsel serve as counsel of record in, not only this case, but over 60 other filed cases throughout the state, and the Court was given notice of the intrafirm transfer on February 4, 2020. Defendant Smoak is a prisoner at FCI Estill and is not easily contacted. To date, undersigned counsel has not independently met with Defendant Smoak, and there is no way of determining when such an opportunity will arise given the ongoing public health crisis. In an effort to resolve the discovery issue, counsel has prepared responses on behalf of Defendant Smoak to the best of his ability, reserving the right to supplement the responses in the future.

Therefore, Defendant Smoak respectfully asks this Court to review Defendant Smoak's attached discovery responses, and deny Plaintiff's Motion to Compel.

Respectfully submitted,

THIS THE 30TH DAY OF APRIL, 2020.

s/Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand- McDaniel
S.C. Bar No.: 101340
Attorneys for the Defendants
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2019-CP-43-01021

JUDY HASELDEN,

Plaintiff,

v.

MICHAEL D. SMOAK and
MURRAY SAND CO., INC.,

Defendants.

DEFENDANTS' ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Pursuant to the provisions of Rule 36 of the South Carolina Rules of Civil Procedure, the defendants hereby submit the following answers to Plaintiff's Request for Admission:

1. In regard to the automobile accident that is the subject of this litigation, admit or deny that the Defendant Michael D. Smoak was negligent.

   ANSWER: Admit.

2. Admit that Defendant Michael D. Smoak was an employee/agent/servant of Defendant Murray Sand Co., Inc. and that he was operating the tractor-trailer in the course and scope of his employment when the subject incident occurred.

   ANSWER: Admit.

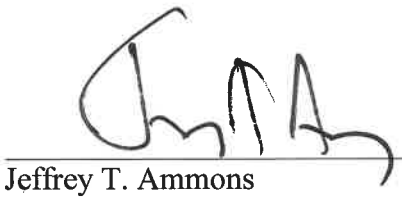
3. Admit the Plaintiff was not negligent.

   ANSWER: Deny.

4. Admit the Plaintiff was not more than fifty (50%) percent negligent.

   ANSWER: Admit.

THIS the 30th day of April, 2020.



Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand- McDaniel
S.C. Bar No.: 101340
Attorneys for the Defendants
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2019-CP-43-01021

JUDY HASELDEN,

Plaintiff,

v.

MICHAEL D. SMOAK and
MURRAY SAND CO., INC.,

Defendants.

DEFENDANT MURRAY SAND'S FIRST SUPPLEMENTAL ANSWERS TO PLAINTIFF'S INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORIES

1. Is Defendant, Murray Sand Co., Inc., owned by or a subsidiary of another company? If so, state the full name, address and telephone number of such company?

ANSWER: No.

2. Is Defendant, Murray Sand Co., Inc., a common carrier, a contract carrier or a private carrier?

ANSWER: Murray Sand Co., Inc. is a common carrier.

3. Does, Defendant, Murray Sand Co., Inc., hold a certificate of authority, a license or a permit issued by the Department of Transportation or the Interstate Commerce Commission? If so, state which?

ANSWER: Yes. Murray Sand Co., Inc. holds a certificate of compliance (#4387) with the S.C. Department of Motor Vehicles.

4. State what type of authority, license or permit to engage in Interstate Commerce is held by Defendant, Murray Sand Co., Inc.

ANSWER: See this answering Defendant's response to interrogatory number 3 above.

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5. State the name, address and telephone number of the owner of the truck/tractor involved in the February 9, 2017, accident made subject of this litigation.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

6. Describe the truck/tractor involved in the February 9, 2017, accident by stating the year of manufacture, manufacturer, model and configuration.

ANSWER: 2007 Tk Kenworth T800.

7. State the name, address and telephone number of the owner of the trailer being pulled by the tractor involved in the accident of February 9, 2017.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

8. State the year of manufacture, manufacturer, model and configuration of the trailer which was involved in the accident of February 9, 2017.

ANSWER: 2009 TRST DS2SD2 TL.

9. If Defendant, Murray Sand Co., Inc., was not the owner of the truck/tractor or trailer involved in the accident of February 9, 2017, state whether these vehicles were being operated by your company under lease and provide the name, address and telephone number of the lessor of each and state whether the lease was a permanent lease or a trip lease.

ANSWER: Not applicable. Murray Sand Co., Inc. owns the truck and trailer involved in the accident at the center of this dispute.

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10. State the name, address and telephone number of the driver of the truck/tractor trailer involved in the accident of February 9, 2017, and whether he is your regular employee. If so, state the date that employment began and whether he is still in your employ.

ANSWER:

Michael Daniel Smoak;
9147 Augusta Hwy, Smoaks, SC 29418 (former) – Mr. Smoak currently is an inmate in a federal correctional facility;
No current telephone number;
Michael Smoak is no longer employed by Murray Sand Co., Inc.

11. State whether you have retained a driver qualification file for the driver of the truck/tractor trailer involved in the accident of February 9, 2017. If so, list each of the documents in that file.

ANSWER: Yes. The driver qualification file includes an application for employment, CDL & Medical Card, certificate of compliance, addendum to employment application, record of road test, & E-Verify verification.

12. State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

SUPPLEMENTAL ANSWER: Defendant objects to the interrogatory on grounds that is vague and ambiguous. To the extent this interrogatory seeks to learn what knowledge Murray Sand has about traffic violations Smoak committed while driving in the course and scope of his employment, Murray Sand states it verified with Smoak's prior employer, Three Gen, that he had not committed any traffic violations while driving in their employ. Please see previously produced inquiries to past employers. Other than the subject accident, Defendant is unaware of any driving violations Smoak committed while driving for Murray Sand. Any knowledge this answering Defendant had regarding Smoak's driving record prior to his employment

with Murray Sand is included in the previously produced employment application and employee file.

13. State whether Defendant, Murray Sand Co., Inc., has knowledge of any hours of service violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: This answering Defendant does not recall being made aware of any hours of service violations committed by the driver. This answering Defendant reserves the right to supplement this answer on a later date.

14. State whether any disciplinary action was taken either by Defendant, Murray Sand Co., Inc., or a company union against the driver as a result of his driving that resulted in the accident of February 9, 2017. If so, state whether any action was considered and whether his actions were reviewed by any persons.

ANSWER: To the best of this answering Defendant's knowledge, no disciplinary action was taken against the driver after the accident at the center of this dispute occurred. This answering Defendant reserves the right to supplement this response on a later date.

15. State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

ANSWER: Defendant Murray Sand Co., Inc. does not have a safety director at this time.

SUPPLEMENTAL ANSWER: Defendant objects to this interrogatory on grounds that it is vague and ambiguous. To the extent this interrogatory seeks information about the company's safety director at the time of the accident, Murray Sand states that it did not employ anyone with the title "safety director". However, Heather Williams was employed at the time of the accident as an administrator. Her duties included record keeping, human resources, handling safety, and other clerical tasks. Upon current information and belief, her phone number is 843-609-7876. Her address is unknown at this time. Should this Defendant come to learn the address, it will be supplemented.

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16. State whether Defendant, Murray Sand Co., Inc., has written driving standards and/or instructions for its drivers.

ANSWER: Yes.

17. State the method by which compensation was determined for the payment of the driver and/or the lessor for the trip during which the accident of February 9, 2017, occurred.

ANSWER: The driver was paid a commission-based salary which is calculated based upon the total gross cost per load transported. Specifically, this driver was compensated with a monetary value equivalent to twenty-two percent (22%) of the gross cost of the load transported.

18. State the place of origin and place of destination of the truck/tractor involved in the accident.

ANSWER:
Place of Origin – Willow Oak Quarry, LLC in Kershaw County, South Carolina.
Destination – Crowder Construction Company in Edisto Beach, South Carolina.

19. State the exact time and date when the truck/tractor left its place of origin and the scheduled arrival time at the place of destination.

ANSWER: Upon information and belief, the truck tractor left its place of origin at 5:46 AM and 12:13 PM on February 9, 2017. The answering Defendant lacks sufficient knowledge to provide the scheduled time of arrival. See attached scale ticket for said information. This answering Defendant reserves the right to supplement this response on a later date.

20. State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.

ANSWER: Upon information and belief, no. Drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

SUPPLEMENTAL ANSWER: No. Drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100

air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

21. State whether Defendant, Murray Sand Co., Inc., is in possession of the bill of lading, freight bill and expense invoices generated during the course of the trip and also whether the truck/tractor trailer was transporting a load of cargo at the time of the accident of February 9, 2017.

ANSWER: Yes. Defendant Murray Sand Co., Inc is in possession of the records in question. Upon information and belief, the truck was transporting cargo at the time of the accident.

22. If No. 21 above is yes, describe as follows:

(a) describe the load;
(b) state the names, addresses and telephone numbers of the shippers
(c) state the names, addresses and telephone numbers of the consignees.

ANSWER:

(a) Class F Rip Rap
(b) Willow Oak Quarry, LLC - (803) 475-2328 – 168 Quarry Road, Kershaw, SC 29067
(c) Crowder Construction Co. – (800) 849-2966 - 6425 Brookshire Blvd. Charlotte, NC 28216

The remaining information requested will be supplemented on a later date.

23. State whether the trailer was loaded by the shipper or by the driver and, if by neither, then state by whom and their address and telephone number.

ANSWER: This answering Defendant believes that the trailer was loaded by the shipper. The answering Defendant reserves the right to supplement this response on a later date.

24. State whether the driver was required to secure the load by any means or devices.

ANSWER: The driver is required to deploy a mechanical tarp to cover the contents placed in the truck's bed or trailer to prevent loose material from becoming airborne.

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25. State whether the truck/tractor and/or trailer underwent any repairs during the trip and, if so, state the nature of the repairs and the names, addresses and telephone numbers of the repair facilities.

ANSWER: Upon information and belief, this answering Defendant does not believe the truck and/or trailer underwent any repairs during the trip. This answering Defendant reserves the right to supplement this response on a later date.

26. Does your company retain possession of repair and warranty invoices and bills covering the history of the truck/tractor and/or trailer involved in the accident of February 9, 2017? If not, state the name, address and telephone number of the individual or company who does.

ANSWER: Yes. Murray Sand Co., Inc. retains possession of repair invoices.

27. State whether the truck involved in the accident of February 9, 2017, has an on-board computer and, if so, identify all discs, computer tapes and other written materials generated by the use of the on-board computer during the trip.

ANSWER: The truck involved in the accident of February 9, 2017 does not have an on-board computer.

28. State whether these items are in the possession of Defendant, Murray Sand Co., Inc., or any individual, representative or company under your control or direction.

ANSWER: See response to interrogatory number 27.

29. Have you ever been notified by the driver of the truck in question of a conviction or suspension for violating a state or local law relating to motor vehicle traffic control in accordance with 49CFR383.31.

ANSWER: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waving the stated objection, this answering Defendant is not aware of any reported violations.

30. With regard to the accident of February 9, 2017, please state the following:

(a) Was a drug test administered to the truck driver within thirty-two (32) hours of the accident? **To the best of this answering Defendant's recollection – no.**
(b) Who administered the test? **N/A**
(c) What was the result? **N/A**
(d) Was an alcohol test administered to the truck driver after the accident? **To the best of this answering Defendant's recollection – no.**
(e) How long after? **N/A**
(f) If not done within two (2) hours, what was the reason for the delay? **To the best of this answering Defendant's recollection, a test was not administered.**

ANSWER: See responses above.

SUPPLEMENTAL ANSWER: In addition to the above, Murray Sand states that it has no documentation to confirm whether a drug or alcohol test was administered following the subject accident. To the extent a test may have been administered, it likely would have been conducted by Lowcountry Drug Screening or Carolina Center for Occupational Health.

31. Do you know whether the truck driver has ever reported to duty while having an alcohol concentration of 0.04% or greater in contravention of 49CFR382.201.

ANSWER: Upon information and belief, no. The answering Defendant reserves the right to supplement this response on a later date.

32. Has the truck driver involved in the accident of February 9, 2017, ever refused to submit to the following:

(a) post-accident alcohol or controlled substances test required under 49CFR382.303;
(b) a random alcohol or controlled substance test required under 49CFR382.305;
(c) a reasonable suspicion alcohol or controlled substance test required under 49CFR382.307; or
(d) a follow-up alcohol or controlled substance test required under 49CFR382.3211.

ANSWER: To the best of its knowledge, this answering Defendant does not believe that the truck driver refused to submit to any of the testing scenarios outlined in subsections (a) through (d) above. This answering Defendant reserves the right to supplement this response on a later date.

33. Has the truck driver involved in the accident of February 9, 2017, ever been disqualified from driving a truck when in your employ? If so, when and under what circumstances?

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ANSWER: No, not to the knowledge of this answering Defendant. This answering Defendant reserves the right to supplement this answer on a later date.

34. Has your company ever undergone an FHWA compliance review? If so, what was your rating?

ANSWER: To the best of this answering Defendant's knowledge, no. The answering Defendant reserves the right to supplement this response on a later date.

35. Was a Certificate of Insurance filed with the Interstate Commerce Commission and/or the Public Utilities and/or Commerce Commission in the state in which the accident occurred?

ANSWER: Upon information and belief, yes. This is a requirement under the Certificate of Compliance issued by the South Carolina DMV described in interrogatory number 3. The answering Defendant reserves the right to supplement this response on a later date.

36. State whether your insurance policies contain the MCS-90 endorsement or the equivalent endorsement required under state law.

ANSWER: Yes.

37. State whether the truck/tractor trailer rig involved in the collision of February 9, 2017, was equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM? If so, state whether the system includes an accident reconstruction option which allows the last ten (10) minutes of recorded activity on the system to be store in a buffer memory and retrieved in the event of the accident.

ANSWER: The truck involved in this incident is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

38. State whether the truck/tractor trailer involved in the accident was equipped with the QUALCOMM OMNI TRAX SYSTEM or any other type of satellite tracking system. If so, list the records other type of satellite tracking system. If so, list the records in your possession of the tractor's activities which were generated by the QUALCOMM SYSTEM.

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ANSWER: The truck involved in the accident was not equipped with the QUALCOMM OMNI TRAX SYSTEM.

39. If you contend that Defendant, Murray Sand Co., Inc., is not liable for the collision of February 9, 2017, state in exact details the reasons for that contention.

ANSWER: Objection. This request seeks to discover the trial strategies and mental impressions of defense counsel. Subject to and without waiving the stated objection, see Answer.

40. Identify each person you expect to call as an expert witness at trial and with respect to each person, state:

(a) The name, current address and phone number;
(b) The subject matter on which the expert is expected to testify;
(c) The substance of the facts to which the expert is expected to testify;
(d) The substance of the opinions to which the expert is expected to testify;
(e) A summary of the grounds for each opinion;
(f) The expert's professional title and qualifications;
(g) A list of all publications to which the expert has contributed which relate in any way to the subject area, facts or opinions to which the expert is expected to testify at trial;
(h) Identify each expert, by name, address and phone number, that has been retained, consulted with or specifically employed in anticipation of this action or in preparation for trial;
(i) Identify each and every occasion where said expert has been retained, consulted with or specifically employed by this defendant, its attorneys or insurance carrier in other matters for the period of the last five years.
(j) State the expert's compensation rate in U.S. dollars for any work performed in anticipation of this action or in preparation for trial.

ANSWER: Objection. This interrogatory seeks to obtain information protected by the work product doctrine and/or the attorney client privilege. Subject to and without waiving the stated objection: The Defendant does not yet know who, if anyone, will be consulted or called to testify as an expert witness at the trial of this matter. If and when any such experts are identified, this response will be supplemented in accordance with the South Carolina Rules of Civil Procedure and any applicable scheduling order.

41. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: Not Applicable. The Defendant is properly identified.

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42. What social media sites do you belong to? (i.e. Facebook, MySpace, etc.) Please state the media site, your user name, and the URL (web address) of your homepage.

ANSWER: This answering Defendant does not belong to any social media websites.

43. Please list all e-mail accounts that you use or have used since the date of the accident.

ANSWER: dispatch@murraysand.com and bjones@murraysand.com. The answering Defendant reserves the right to supplement this response on a later date.

SUPPLEMENTAL ANSWER: In addition the previously listed e-mail addresses, Arthur@MurraySand.com.

44. Please state all websites that you have commented on since the date of the accident. Please state the website and the URL (web address).

ANSWER: None.

REQUESTS TO PRODUCE

1. Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.

RESPONSE: See attached photos.

SUPPLEMENTAL RESPONSE: All photographs in Murray Sand's possession have been produced. Upon information and belief, the photographs provided were taken by Defendant Smoak on the accident scene. Should any additional information become known or more photographs discovered, they will be supplemented.

2. Produce a copy of your ten-year driving record or, in the alternative, a color copy of your Driver's License.

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report. Subject to and without waiving the stated objection, please see Defendant's Smoak's drivers license which contains his CDL.

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3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

RESPONSE: This answering Defendant is not in possession of any recorded statements. The parties are expected to testify as to the facts and circumstances surrounding the incident.

SUPPLEMENTAL RESPONSE: Murray Sand is not in possession of any recorded statements. Should any additional information become known or statements discovered, they will be supplemented.

4. Any and all diagrams, sketches, drawings, prints, negatives and layouts that relate in any manner to the allegations of the Complaint, the defenses of the Defendant, and the accident scene.

RESPONSE: See attached police report.

5. Any and all reports, studies, analyses, or other documentation of any accident reconstructionist, investigator, adjuster, expert, consultant, independent contractor, or engineer that relate in any manner to the allegations of the Complaint or the defenses of the Defendant.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

6. Any and all insurance policies which may provide liability insurance coverage to any and all claims set forth in the Complaint.

RESPONSE: See attached insurance policy.

7. Any and all procedural manuals, directives, written memoranda or documents regarding store maintenance procedures pertaining to floors, common areas in the store and parking lots,

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and entrance ways into the store in effect on the date of Plaintiff's injury and the five-year period immediately preceding.

RESPONSE: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

8. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: Any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

9. Please produce your individual Federal and State income tax returns with all schedules for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

10. Please produce any and all audited and/or unaudited annual and interim financial statements for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

11. A copy of all tachometer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached tachometer records documented on maintenance reports.

12. A copy of all on-board computer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: The tractor involved in the collision is not equipped with an on-board computer system.

13. A copy of all dispatch records related to the trip of the tractor and/or trailer involved in the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the dispatch records related to the trip on February 9, 2017. Upon information and belief, drivers who use the

short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

14. A copy of all fax transmissions to any entity concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

15. A copy of all telephone records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

16. A copy of all mobile radio records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The Defendant is not in possession of any said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

17. A copy of all pro-rate records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant lacks sufficient knowledge to ascertain what documents are sought in this request for production. The answering Defendant reserves the right to supplement this response on a later date.

18. A copy of all tow truck records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such documents.

19. A copy of the tractor license and the trailer license of the vehicles involved in the collision of February 9, 2017.

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RESPONSE: See attached licenses plates for both tractor and trailer. This answering Defendant reserves the right to supplement this response at a later date.

20. A copy of all pickup and delivery records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

21. A copy of all trip summaries pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

22. A copy of all credit card receipts, toll tickets, fuel receipts, weight tickets, fuel tax records, state entry and departure records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the requested records from the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

23. A copy of the registration and title to the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached registration and title to the tractor involved in the collision on February 9, 2017.

24. A copy of all expense sheets, all trailer interchange records, and bills of lading pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

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25. A copy of all manifests and weigh bills pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket and trip summary.

26. A copy of all rental contracts concerning the tractor involved in the collision of February 9, 2017.

RESPONSE: Objection. This request is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and is not reasonably limited in time or scope. Subject to and without waiving the stated objections: Defendant is not in possession of any such documents.

27. A copy of all the written response from each state agency contracted with reference to the driver's driving record (49CFR391.23).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

28. A copy of all written records with respect to each past employer who was contracted about the truck driver's qualifications.

RESPONSE: See attached inquiry to past employer(s).

29. A copy of the driver's qualification file (49CFR391.51).

RESPONSE: See attached CDL, Medical Card, Record of Road Test, and Certification of Compliance.

30. A copy of the driver's list of violations of motor vehicle traffic laws (49CFR391.27).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

31. A copy of the driver's personnel files.

RESPONSE: See attached employment application, addendum to employment application, and e-verification.

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32. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such records. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

33. A copy of any and all insurance policies, liability insurance policies, excess liability policies or any other insurance policies providing coverage to the truck and the trailer involved in the collision of February 9, 2017, even if the vehicles are not specifically designated therein.

RESPONSE: See response to request for production number 6.

34. A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

RESPONSE: See response to request for production number 1.

35. All records pertaining to annual reviews of the driver's record with him for each year of employment with your company (49CFR391.25).

RESPONSE: See attached annual review(s).

36. A copy of a certificate of road test pertaining to the driver of the tractor involved in the collision on February 9, 2017.

RESPONSE: See attached certificate of road test.

37. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017 (49CFR391.31(e)).

RESPONSE: See response to request number 32.

38. All copy of all out of service orders for the tractor involved in the collision of February 9, 2017, for the three (3) years prior to the accident.

RESPONSE: See attached service orders.

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39. A copy of the driver's logs for the six (6) months prior to February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the driver's logs for the six (6) months prior to the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

40. A copy of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six (6) months prior to February 9, 2017.

RESPONSE: See attached maintenance records.

41. A copy of the accident register (49CFR391.3).

RESPONSE: See attached FR10.

42. A copy of any and all accident reports prepared by your company or any other company or individual at your request.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

SUPPLEMENTAL RESPONSE: Murray Sand states that it is not in possession of any accident report prepared by Defendant Smoak or any other employee. At this time, this Defendant cannot confirm or deny that an accident report was prepared by Defendant Smoak. Defendant reserves the right to supplement this response on a later date.

As to the above privilege objections, the language of the request is overly broad and therefore contemplates the production of all correspondence between counsel and representatives of Murray Sand reporting their knowledge of the incident, as well as any notes or lists regarding the same. These documents, prepared in anticipation of litigation and well after Plaintiff filed suit, are attorney-client and work product privileged and therefore are not subject to discovery.

45. A copy of all repair invoices during the period that the tractor has been operated in your behalf.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not

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reasonably limited in time or scope. Subject to and without waiving the stated objection, see previously attached maintenance and service records.

46. A copy of all permanent lease and trip lease contracts between you and the tractor and/or trailer owner and operator.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objections, this answering Defendant is not in possession of any such documents.

47. A copy of all trip reports pertaining to the trip in which the tractor trailer was engaged on February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

48. All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any drug or alcohol tests administered to the driver. The answering Defendant reserves the right to supplement this answer on a later date.

SUPPLENTAL RESPONSE: In addition to the above, Murray Sand states again that it has no documentation to confirm whether a drug or alcohol test was administered following the subject accident. To the extent a test may have been administered, it likely would have been conducted by Lowcountry Drug Screening or Carolina Center for Occupational Health. With this information, Plaintiff may subpoena the records.

Further answering, Murray Sand, in accordance with federal law, required drivers involved in accidents to submit to testing in limited scenarios: 1) where a fatality was involved, or 2) where the driver received a citation and any party required immediate treatment for an injury away from the accident scene or the vehicle incurred "disabling damage". Please see attached employee handbook and its supplements outlining the drug and alcohol policy in effect at the time of the subject accident. Based on the policy and federal law, Murray Sand was not required to test Mr. Smoak for drugs or alcohol. However, it is entirely possible a company representative chose to exercise the company's right to require Mr. Smoak to submit to testing. The answering Defendant reserves the right to supplement this answer on a later date.

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49. All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years.

RESPONSE: The answering Defendant is not in possession of the requested documents.

SUPPLEMENTAL RESPONSE: In addition to the above, Murray Sand states again that it has no documentation for results of drug or alcohol tests administered to Defendant Smoak. To the extent a test may have been administered, it likely would have been conducted by Lowcountry Drug Screening or Carolina Center for Occupational Health. With this information, Plaintiff may subpoena the records.

This Defendant additionally refers Plaintiff to the previously produced inquiries to past employers and employee's file indicating an absence of drug or alcohol related problems and a positive annual review.

50. A copy of all company manuals covering truck safety, maintenance, fleet safety programs and driver's standards.

RESPONSE: See attached employee handbook.

SUPPLEMENTAL RESPONSE: In addition to the previously produced handbook, please see attached prior version and supplements.

51. A copy of all records generated by on-board recording devices with which the tractor was equipped as of February 9, 2017.

RESPONSE: See response to request for production 12.

52. A copy of all records generated through the use of the QUALCOMM OMNI TRAX SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the QUALCOMM OMNI TRAX SYSTEM.

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53. A copy of all records generated through the use of the EATON VORAD COLLISION AVOIDANEC SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

54. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: See response to request number 8.

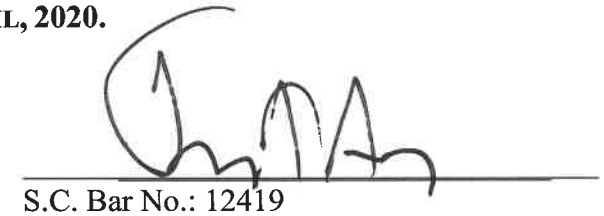
55. Copy of Defendant's cell phone records for the month preceding the accident and one month after the accident.

RESPONSE: The answering Defendant is not in possession of any such records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

56. Please permit counsel for Plaintiff to access, inspect, and copy all of Defendants' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Defendants. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, emails, photographs, and other material contained in the accounts or profiles so identified. (Please Note: No written material, information, correspondence, writings, internet posts, updates, emails, photographs, etc., should be deleted from any account or profile identified by Defendants without prior written consent from counsel for the Plaintiff. All accounts, websites, and profiles should be preserved in their present condition. Failure to preserve all such information and records may constitute spoliation of evidence.)

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objection, the answering Defendant does not maintain accounts to any social networking websites,

THIS THE 30TH DAY OF APRIL, 2020.



S.C. Bar No.: 12419
Sarah Rand- McDaniel
S.C. Bar No.: 101340
Attorneys for the Defendants
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, DEFENDANT MURRAY SAND CO., INC.'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUESTS TO ADMIT, AND DEFENDANT SMOAK'S RESPONSES TO PLAINTIFF'S INTERROGATIRES AND REQUEST FOR PRODUCTION OF DOCUMENTS was served upon all counsel of Record:

☒ as an attachment to an electronic correspondence

☒ by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope

☐ via facsimile, or

☐ by hand delivery

addressed as follows:

E. HOOD TEMPLE
ALEC HOGSETTE
HATFIELD TEMPLE, LLP
170 COURTHOUSE SQUARE
PO BOX 1770
FLORENCE, SC 29503
PHONE: (843) 662-5000
EHTEMPLE@HTLAWSC.COM
ASHOGSETTE@HTLAWSC.COM

THIS THE 30TH DAY OF APRIL, 2020.

s/Sarah Rand- McDaniel

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STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NO.: 2019-CP-43-01021
JUDY HASELDEN, Plaintiff, v. MICHAEL D. SMOAK and MURRAY SAND CO., INC., Defendants.	**DEFENDANT SMOAK'S ANSWERS TO PLAINTIFF'S INTERROGATORIES AND RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION**

INTERROGATORIES

1. Is Defendant, Murray Sand Co., Inc., owned by or a subsidiary of another company? If so, state the full name, address and telephone number of such company?

ANSWER: Please see discovery responses of Defendant Murray Sand.

2. Is Defendant, Murray Sand Co., Inc., a common carrier, a contract carrier or a private carrier?

ANSWER: Please see discovery responses of Defendant Murray Sand.

3. Does, Defendant, Murray Sand Co., Inc., hold a certificate of authority, a license or a permit issued by the Department of Transportation or the Interstate Commerce Commission? If so, state which?

ANSWER: Please see discovery responses of Defendant Murray Sand.

4. State what type of authority, license or permit to engage in Interstate Commerce is held by Defendant, Murray Sand Co., Inc.

ANSWER: Please see discovery responses of Defendant Murray Sand.

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5. State the name, address and telephone number of the owner of the truck/tractor involved in the February 9, 2017, accident made subject of this litigation.

ANSWER: Please see discovery responses of Defendant Murray Sand.

6. Describe the truck/tractor involved in the February 9, 2017, accident by stating the year of manufacture, manufacturer, model and configuration.

ANSWER: Please see discovery responses of Defendant Murray Sand.

7. State the name, address and telephone number of the owner of the trailer being pulled by the tractor involved in the accident of February 9, 2017.

ANSWER: Please see discovery responses of Defendant Murray Sand.

8. State the year of manufacture, manufacturer, model and configuration of the trailer which was involved in the accident of February 9, 2017.

ANSWER: Please see discovery responses of Defendant Murray Sand.

9. If Defendant, Murray Sand Co., Inc., was not the owner of the truck/tractor or trailer involved in the accident of February 9, 2017, state whether these vehicles were being operated by your company under lease and provide the name, address and telephone number of the lessor of each and state whether the lease was a permanent lease or a trip lease.

ANSWER: Please see discovery responses of Defendant Murray Sand.

10. State the name, address and telephone number of the driver of the truck/tractor trailer involved in the accident of February 9, 2017, and whether he is your regular employee. If so, state the date that employment began and whether he is still in your employ.

ANSWER: Please see discovery responses of Defendant Murray Sand.

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11. State whether you have retained a driver qualification file for the driver of the truck/tractor trailer involved in the accident of February 9, 2017. If so, list each of the documents in that file.

ANSWER: Please see discovery responses of Defendant Murray Sand.

12. State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: Please see discovery responses of Defendant Murray Sand.

13. State whether Defendant, Murray Sand Co., Inc., has knowledge of any hours of service violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: Please see discovery responses of Defendant Murray Sand.

14. State whether any disciplinary action was taken either by Defendant, Murray Sand Co., Inc., or a company union against the driver as a result of his driving that resulted in the accident of February 9, 2017. If so, state whether any action was considered and whether his actions were reviewed by any persons.

ANSWER: Upon current information and belief, no. Defendant reserves the right to supplement this answer at a later date.

15. State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

ANSWER: Please see discovery responses of Defendant Murray Sand.

16. State whether Defendant, Murray Sand Co., Inc., has written driving standards and/or instructions for its drivers.

ANSWER: Yes.

17. State the method by which compensation was determined for the payment of the driver and/or the lessor for the trip during which the accident of February 9, 2017, occurred.

ANSWER: The driver was paid a commission-based salary which is calculated based upon the total gross cost per load transported.

18. State the place of origin and place of destination of the truck/tractor involved in the accident.

ANSWER: Place of Origin – Willow Oak Quarry, LLC in Kershaw County, South Carolina. Destination – Crowder Construction Company in Edisto Beach, South Carolina

19. State the exact time and date when the truck/tractor left its place of origin and the scheduled arrival time at the place of destination.

ANSWER: This Defendant is without knowledge of the exact time and date. Please see discovery responses of Murray Sand. This answering Defendant reserves the right to supplement this response on a later date.

20. State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.

ANSWER: Please see discovery responses of Defendant Murray Sand.

21. State whether Defendant, Murray Sand Co., Inc., is in possession of the bill of lading, freight bill and expense invoices generated during the course of the trip and also whether the truck/tractor trailer was transporting a load of cargo at the time of the accident of February 9, 2017.

ANSWER: Please see discovery responses of Defendant Murray Sand.

22. If No. 21 above is yes, describe as follows:

(a) describe the load;
(b) state the names, addresses and telephone numbers of the shippers
(c) state the names, addresses and telephone numbers of the consignees.

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ANSWER: Please see discovery responses of Defendant Murray Sand.

23. State whether the trailer was loaded by the shipper or by the driver and, if by neither, then state by whom and their address and telephone number.

ANSWER: Upon current information and belief, the shipper loaded the trailer. Please see Defendant's deposition transcript.

24. State whether the driver was required to secure the load by any means or devices.

ANSWER: Yes.

25. State whether the truck/tractor and/or trailer underwent any repairs during the trip and, if so, state the nature of the repairs and the names, addresses and telephone numbers of the repair facilities.

ANSWER: Upon current information and belief, the truck and/or trailer did not require any repairs during the trip. This answering Defendant reserves the right to supplement this response on a later date.

26. Does your company retain possession of repair and warranty invoices and bills covering the history of the truck/tractor and/or trailer involved in the accident of February 9, 2017? If not, state the name, address and telephone number of the individual or company who does.

ANSWER: Please see discovery responses of Defendant Murray Sand.

27. State whether the truck involved in the accident of February 9, 2017, has an on-board computer and, if so, identify all discs, computer tapes and other written materials generated by the use of the on-board computer during the trip.

ANSWER: Please see Defendant's deposition transcript and discovery responses of Defendant Murray Sand.

28. State whether these items are in the possession of Defendant, Murray Sand Co., Inc., or any individual, representative or company under your control or direction.

ANSWER: See response to interrogatory number 27.

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29. Have you ever been notified by the driver of the truck in question of a conviction or suspension for violating a state or local law relating to motor vehicle traffic control in accordance with 49CFR383.31.

ANSWER: This request is not directed toward this answering Defendant.

30. With regard to the accident of February 9, 2017, please state the following:

(a) Was a drug test administered to the truck driver within thirty-two (32) hours of the accident?
(b) Who administered the test?
(c) What was the result?
(d) Was an alcohol test administered to the truck driver after the accident?
(e) How long after?
(f) If not done within two (2) hours, what was the reason for the delay?

ANSWER: Please see Defendant's deposition transcript. Defendant believes he was sent to a facility for drug and alcohol testing in Charleston upon arrival at Murray Sand following the accident. Upon current information and belief, the test would have been administered within 2-3 hours of the accident. Defendant has not seen the final results of the tests, but states he was not under the influence of drugs or alcohol, which is also indicated on the police report. Defendant reserves the right to supplement this Answer at a later date.

31. Do you know whether the truck driver has ever reported to duty while having an alcohol concentration of 0.04% or greater in contravention of 49CFR382.201.

ANSWER: Upon information and belief, no. The answering Defendant reserves the right to supplement this response on a later date.

32. Has the truck driver involved in the accident of February 9, 2017, ever refused to submit to the following:

(a) post-accident alcohol or controlled substances test required under 49CFR382.303;
(b) a random alcohol or controlled substance test required under 49CFR382.305;
(c) a reasonable suspicion alcohol or controlled substance test required under 49CFR382.307; or
(d) a follow-up alcohol or controlled substance test required under 49CFR382.3211.

ANSWER: Upon current information and belief, no. This answering Defendant reserves the right to supplement this response on a later date.

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33. Has the truck driver involved in the accident of February 9, 2017, ever been disqualified from driving a truck when in your employ? If so, when and under what circumstances?

ANSWER: This discovery request is not directed toward this answering defendant. Please see discovery responses of Murray Sand.

34. Has your company ever undergone an FHWA compliance review? If so, what was your rating?

ANSWER: This discovery request is not directed toward this answering defendant. Please see discovery responses of Murray Sand.

35. Was a Certificate of Insurance filed with the Interstate Commerce Commission and/or the Public Utilities and/or Commerce Commission in the state in which the accident occurred?

ANSWER: Please see discovery responses of Murray Sand.

36. State whether your insurance policies contain the MCS-90 endorsement or the equivalent endorsement required under state law.

ANSWER: This discovery request is not directed toward this answering defendant. Please see discovery responses of Murray Sand.

37. State whether the truck/tractor trailer rig involved in the collision of February 9, 2017, was equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM? If so, state whether the system includes an accident reconstruction option which allows the last ten (10) minutes of recorded activity on the system to be store in a buffer memory and retrieved in the event of the accident.

ANSWER: No. Please see Defendant's deposition transcript.

38. State whether the truck/tractor trailer involved in the accident was equipped with the QUALCOMM OMNI TRAX SYSTEM or any other type of satellite tracking system. If so, list

the records other type of satellite tracking system. If so, list the records in your possession of the tractor's activities which were generated by the QUALCOMM SYSTEM.

ANSWER: This Defendant is without knowledge. Please see Defendant's deposition transcript and discovery responses of Murray Sand.

39. If you contend that Defendant, Murray Sand Co., Inc., is not liable for the collision of February 9, 2017, state in exact details the reasons for that contention.

ANSWER: Objection. This request seeks to discover the trial strategies and mental impressions of defense counsel. Subject to and without waiving the stated objection, see Answer.

40. Identify each person you expect to call as an expert witness at trial and with respect to each person, state:

(a) The name, current address and phone number;
(b) The subject matter on which the expert is expected to testify;
(c) The substance of the facts to which the expert is expected to testify;
(d) The substance of the opinions to which the expert is expected to testify;
(e) A summary of the grounds for each opinion;
(f) The expert's professional title and qualifications;
(g) A list of all publications to which the expert has contributed which relate in any way to the subject area, facts or opinions to which the expert is expected to testify at trial;
(h) Identify each expert, by name, address and phone number, that has been retained, consulted with or specifically employed in anticipation of this action or in preparation for trial;
(i) Identify each and every occasion where said expert has been retained, consulted with or specifically employed by this defendant, its attorneys or insurance carrier in other matters for the period of the last five years.
(j) State the expert's compensation rate in U.S. dollars for any work performed in anticipation of this action or in preparation for trial.

ANSWER: Objection. This interrogatory seeks to obtain information protected by the work product doctrine and/or the attorney client privilege. Subject to and without waiving the stated objection: The Defendant does not yet know who, if anyone, will be consulted or called to testify as an expert witness at the trial of this matter. If and when any such experts are identified, this response will be supplemented in accordance with the South Carolina Rules of Civil Procedure and any applicable scheduling order.

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41. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: The Defendant is properly identified.

42. What social media sites do you belong to? (i.e. Facebook, MySpace, etc.) Please state the media site, your user name, and the URL (web address) of your homepage.

ANSWER: Upon current information and belief, Defendant has a facebook account. Defendant reserves the right to supplement this answer at a later date.

43. Please list all e-mail accounts that you use or have used since the date of the accident.

ANSWER: To be supplemented.

44. Please state all websites that you have commented on since the date of the accident. Please state the website and the URL (web address).

ANSWER: Upon current information and belief, none. Defendant reserves the right to supplement this answer at a later date.

REQUESTS TO PRODUCE

1. Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.

RESPONSE: This Defendant is not in possession of requested documents.

2. Produce a copy of your ten-year driving record or, in the alternative, a color copy of your Driver's License.

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report. Subject to and without waiving the stated objection, upon current information and belief,

Plaintiff is in possession of the requested documents or can obtain them using the information previously provided by Murray Sand.

3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

RESPONSE: This answering Defendant is not in possession of any statements. Upon current information and belief, Plaintiff is in possession of Defendant's deposition transcript and the accident report.

4. Any and all diagrams, sketches, drawings, prints, negatives and layouts that relate in any manner to the allegations of the Complaint, the defenses of the Defendant, and the accident scene.

RESPONSE: This answering Defendant is not in possession of any requested documents. Upon current information and belief, Plaintiff is in possession of the accident report.

5. Any and all reports, studies, analyses, or other documentation of any accident reconstructionist, investigator, adjuster, expert, consultant, independent contractor, or engineer that relate in any manner to the allegations of the Complaint or the defenses of the Defendant.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

6. Any and all insurance policies which may provide liability insurance coverage to any and all claims set forth in the Complaint.

RESPONSE: Upon current information and belief, Plaintiff is in possession of the insurance policy.

7. Any and all procedural manuals, directives, written memoranda or documents regarding store maintenance procedures pertaining to floors, common areas in the store and parking lots,

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and entrance ways into the store in effect on the date of Plaintiff's injury and the five-year period immediately preceding.

RESPONSE: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

8. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: Any subpoenaed documents will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

9. Please produce your individual Federal and State income tax returns with all schedules for the past five (5) years inclusive.

RESPONSE: Objection. This request is irrelevant to Plaintiff's claims and therefore, is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Defendant is not currently in possession of the requested documents. This answering Defendant reserves the right to supplement this response on a later date.

10. Please produce any and all audited and/or unaudited annual and interim financial statements for the past five (5) years inclusive.

RESPONSE: This Defendant is not in possession of any requested documents.

11. A copy of all tachometer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

12. A copy of all on-board computer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: The tractor involved in the collision is not equipped with an on-board computer system.

13. A copy of all dispatch records related to the trip of the tractor and/or trailer involved in the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any requested records.

14. A copy of all fax transmissions to any entity concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any requested records.

15. A copy of all telephone records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

16. A copy of all mobile radio records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

17. A copy of all pro-rate records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

18. A copy of all tow truck records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

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19. A copy of the tractor license and the trailer license of the vehicles involved in the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

20. A copy of all pickup and delivery records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

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21. A copy of all trip summaries pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

22. A copy of all credit card receipts, toll tickets, fuel receipts, weight tickets, fuel tax records, state entry and departure records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

23. A copy of the registration and title to the tractor involved in the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

24. A copy of all expense sheets, all trailer interchange records, and bills of lading pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

25. A copy of all manifests and weigh bills pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

26. A copy of all rental contracts concerning the tractor involved in the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

27. A copy of all the written response from each state agency contracted with reference to the driver's driving record (49CFR391.23).

RESPONSE: This Defendant is not in possession of any requested documents.

28. A copy of all written records with respect to each past employer who was contacted about the truck driver's qualifications.

RESPONSE: This Defendant is not in possession of any requested documents.

29. A copy of the driver's qualification file (49CFR391.51).

RESPONSE: This Defendant is not in possession of any requested documents.

30. A copy of the driver's list of violations of motor vehicle traffic laws (49CFR391.27).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report. Additionally, upon current information and belief, Plaintiff is in possession of Defendant's driving record.

31. A copy of the driver's personnel files.

RESPONSE: This Defendant is not in possession of any requested documents.

32. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

33. A copy of any and all insurance policies, liability insurance policies, excess liability policies or any other insurance policies providing coverage to the truck and the trailer involved in the collision of February 9, 2017, even if the vehicles are not specifically designated therein.

RESPONSE: This Defendant is not in possession of any requested documents. Please see discovery responses of Murray Sand.

34. A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

RESPONSE: This Defendant is not in possession of any requested documents.

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35. All records pertaining to annual reviews of the driver's record with him for each year of employment with your company (49CFR391.25).

RESPONSE: This Defendant is not in possession of any requested documents.

36. A copy of a certificate of road test pertaining to the driver of the tractor involved in the collision on February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

37. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017 (49CFR391.31(e)).

RESPONSE: This Defendant is not in possession of any requested documents.

38. All copy of all out of service orders for the tractor involved in the collision of February 9, 2017, for the three (3) years prior to the accident.

RESPONSE: This Defendant is not in possession of any requested documents.

39. A copy of the driver's logs for the six (6) months prior to February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

40. A copy of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six (6) months prior to February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

41. A copy of the accident register (49CFR391.3).

RESPONSE: This Defendant is not in possession of any requested documents.

42. A copy of any and all accident reports prepared by your company or any other company or individual at your request.

RESPONSE: This request is not directed towards this answering Defendant. Please see discovery responses provided by Murray Sand.

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45. A copy of all repair invoices during the period that the tractor has been operated in your behalf.

RESPONSE: This Defendant is not in possession of the requested documents.

46. A copy of all permanent lease and trip lease contracts between you and the tractor and/or trailer owner and operator.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objections, this answering Defendant is not in possession of any such documents.

47. A copy of all trip reports pertaining to the trip in which the tractor trailer was engaged on February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

48. All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

RESPONSE: This Defendant is not in possession of any requested documents.

49. All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years.

RESPONSE: The Defendant is not in possession of any requested documents.

50. A copy of all company manuals covering truck safety, maintenance, fleet safety programs and driver's standards.

RESPONSE: This Defendant is not in possession of any requested documents. Please see discovery provided by Murray Sand.

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51. A copy of all records generated by on-board recording devices with which the tractor was equipped as of February 9, 2017.

RESPONSE: See response to request for production 12.

52. A copy of all records generated through the use of the QUALCOMM OMNI TRAX SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: This Defendant is not in possession of any requested documents.

53. A copy of all records generated through the use of the EATON VORAD COLLISION AVOIDANEC SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: This Defendant is not in possession of any requested records.

54. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: See response to request number 8.

55. Copy of Defendant's cell phone records for the month preceding the accident and one month after the accident.

RESPONSE: Objection. This request is overly broad in requesting an entire month's records prior to the subject accident and is unduly burdensome. Without waiving these objections, Defendant is not in possession of the requested documents at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

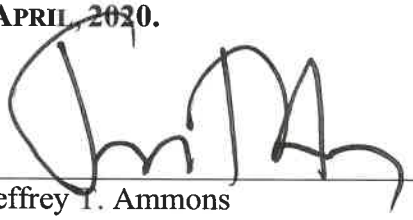
56. Please permit counsel for Plaintiff to access, inspect, and copy all of Defendants' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Defendants. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, emails, photographs, and other material contained in the accounts or profiles so identified. (Please Note: No written material, information, correspondence, writings, internet posts, updates, emails, photographs,

etc., should be deleted from any account or profile identified by Defendants without prior written consent from counsel for the Plaintiff. All accounts, websites, and profiles should be preserved in their present condition. Failure to preserve all such information and records may constitute spoliation of evidence.)

RESPONSE: Objection. This request is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. The request to access "all materials, information, correspondence, writings, internet posts, updates, emails, photographs, and other material" amounts to fishing expedition and exceeds the needs of this case.

Defendants reserve the right to supplement these discovery requests at any point prior to trial.

THIS THE 30TH DAY OF APRIL, 2020.



Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand- McDaniel
S.C. Bar No.: 101340
Attorneys for the Defendants
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, DEFENDANT SMOAK'S RESPONSES TO PLAINTIFF'S INTERROGATIRES AND REQUEST FOR PRODUCTION OF DOCUMENTS was served upon all counsel of Record:

☒ as an attachment to an electronic correspondence

☒ by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope

☐ via facsimile, or

☐ by hand delivery

addressed as follows:

E. HOOD TEMPLE
ALEC HOGSETTE
HATFIELD TEMPLE, LLP
170 COURTHOUSE SQUARE
PO BOX 1770
FLORENCE, SC 29503
PHONE: (843) 662-5000
EHTEMPLE@HTLAWSC.COM
ASHOGSETTE@HTLAWSC.COM

THIS THE 30TH DAY OF APRIL, 2020.

s/Sarah Rand- McDaniel
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
sarah@walkerallenlaw.com

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2019-CP-43-01021

JUDY HASELDEN,

Plaintiff,

v.

MICHAEL D. SMOAK and
MURRAY SAND CO., INC.,

Defendants.

CERTIFICATE OF SERVICE FOR DEFENDANTS' ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS, DEFENDANT MURRAY SAND'S FIRST SUPPLEMENTAL ANSWER TO PLAINTIFF'S INTERROGATORIES AND REQUESTS FOR PRODUCTION, AND DEFENDANT SMOAK'S ANSWERS TO PLAINTIFF'S INTERROGATORIES AND RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION

I hereby certify that the original of Defendants' Answers to Plaintiff's Request for Admissions, Defendant Murray Sand's First Supplemental Answers to Plaintiff's Interrogatories and Requests for Production, and Defendant Smoak's Answers to Plaintiff's Interrogatories and Responses to Plaintiff's Requests for Production which were dated April 30, 2020, were served upon the plaintiff on April 30, 2020 via email and by depositing same in the U.S. Mail, postage prepaid, addressed to:

E. Hood Temple, Esquire
Hatfield Temple, L.L.P.
Post Office Box 1770
Florence, SC 29503-1770
Attorney for the Plaintiff

THIS the 30th day of April, 2020.

Cass Lambert

Cass Lambert
Legal Assistant for Jeffrey T. Ammons
WALKER, ALLEN, GRICE, AMMONS,
FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
cass@walkerallenlaw.com

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STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NO.: 2019-CP-43-01021
JUDY HASELDEN, Plaintiff, v. MICHAEL D. SMOAK and MURRAY SAND CO., INC., Defendants.	**NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANT MURRAY SAND or in the alternative MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE THAT pursuant to the provisions of Rules 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendant Murray Sand Company, Inc., shall move the Court for an Order dismissing Plaintiff's Complaint at a time and date determined by the Court. Should the court determine it necessary to consider facts outside of the pleadings to determine these matters, Defendant alternatively moves for summary judgment against Plaintiff pursuant to Rule 56, SCRCP.

In support of the Motion, Defendant reserves the right to submit and incorporate by reference all materials that may be filed with the Court in advance of a hearing, including, but not limited to, memoranda of law citing authority for Defendant's arguments, statutes, pleadings, discovery, affidavits, and any other materials deemed appropriate or requested by the Court.

WHEREFORE, in accordance with the foregoing, Defendant respectfully requests that this Court hear its motion, and enter an Order granting Defendant's Motion to Dismiss or in the alternative, Motion for Summary Judgment, together with any such further relief as the Court may deem appropriate.

THIS the 27th day of May, 2020.

s/Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand-McDaniel
S.C. Bar No.: 101340
WALKER, ALLEN, GRICE, AMMONS & FOY, L.L.P.
P.O. Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com
Attorneys for Defendants

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STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NO.: 2019-CP-43-01021
JUDY HASELDEN, Plaintiff, v. MICHAEL D. SMOAK and MURRAY SAND CO., INC., Defendants.	**NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER AND FOR A STAY OF DISCOVERY BY DEFENDANT MURRAY SAND COMPANY, INC.**

TO: PLAINTIFF AND HER COUNSEL:

PLEASE TAKE NOTICE that in ten (10) days, or as soon thereafter as the Court may provide, in the Court of Common Pleas for Sumter County, the Defendant, Murray Sand Company, Inc., by and through its undersigned counsel, will, and hereby does, respectfully move the Court for an Order Pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, protecting it from answering Plaintiff's First Supplemental Interrogatories and Requests for Production attached hereto as **Exhibit A**.

Protection is sought on grounds that Defendant Murray Sand Company, Inc. has a pending Motion to Dismiss and because the discovery requests exceed the number of interrogatories allowed by rule, are oppressive, unduly burdensome, disproportionate to the needs of this case, irrelevant and serve no other purpose than to harass and annoy Murray Sand. Defendant further requests that all discovery directly related to Defendant Murray Sand be stayed pending resolution of this Motion and Defendant's Motion to Dismiss.

In support of the Motion, Defendant reserves the right to submit and incorporate by reference all materials that may be filed with the Court in advance of a hearing, including, but not limited to, memoranda of law citing authority for Defendant's arguments, statutes, pleadings,

discovery, affidavits, and any other materials deemed appropriate or requested by the Court.

WHEREFORE, in accordance with the foregoing, Defendant respectfully requests that this Court hear its motion, and enter an Order protecting Murray Sand from serving responses to Plaintiff's supplemental discovery requests, together with any such further relief as the Court may deem appropriate.

THIS the 27th day of May, 2020.

s/Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand-McDaniel
S.C. Bar No.: 101340
WALKER, ALLEN, GRICE, AMMONS & FOY, L.L.P.
P.O. Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com
Attorneys for Defendants

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HATFIELD TEMPLE LLP
ATTORNEYS

WILLIAM P. HATFIELD*
E. HOOD TEMPLE
ALEXANDER S. HOGSETTE
*Board Certified Civil Trial Specialist by the Nation Board of Trial Advocacy

170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
Telephone: (843) 662-5000
Fax: (843) 678-9273

Web: www.htlawsc.com

April 30, 2020

Mr. Jeffrey T. Ammons
Walker Allen Grice Ammons & Foy, LLP
Post Office Box 1068
Mount Pleasant, SC 29465

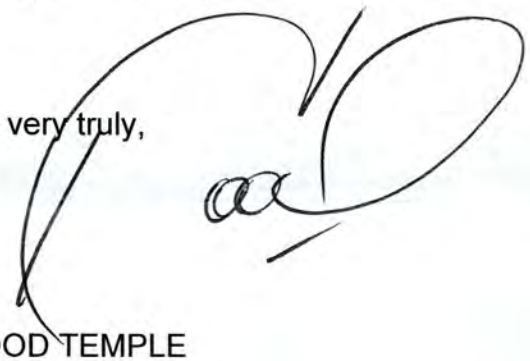
Re: Judy Haselden vs. Micheal D. Smoak & Murray Sand Co., Inc.
C/A # 2019-CP-43-01021
Our File # 2017017 T

Dear Mr. Ammons:

Enclosed you will find a copy of the Plaintiff's Fist Supplemental Interrogatories to Defendant Murray Sand Co., Inc. and Plaintiff's First Supplemental Requests for Production of Documents to Defendant Murray Sand Co., Inc. dated April 30, 2020 in the above captioned matter. Also enclosed is an applicable Certificate of Mailing.

With kindest regards, I am

Yours very truly,



E. HOOD TEMPLE

EHT:tls
Enclosures
cc: Mrs. Judy Ann Haselden

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, Vs. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **CERTIFICATE OF MAILING**

The undersigned, a Paralegal for Hatfield Temple, LLP, attorneys for the Plaintiff, does hereby certify that she deposited in the United States Mail a copy of the Plaintiff's Fist Supplemental Interrogatories to Defendant Murray Sand Co., Inc. and Plaintiff's First Supplemental Requests for Production of Documents to Defendant Murray Sand Co., Inc. dated April 30, 2020, the same being addressed to those persons whose names and addresses appear below, this being done on April 30, 2020, and that sufficient postage was affixed thereto:

Mr. Jeffrey T. Ammons
Walker Allen Grice Ammons & Foy, LLP
Post Office Box 1068
Mount Pleasant, SC 29465

Florence, SC

April 30, 2020

Terra L. Stokes
TERRA L. STOKES

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S FIRST SUPPLEMENTAL INTERROGATORIES TO DEFENDANT MURRAY SAND CO., INC.**

TO: THE DEFENDANT MURRAY SAND CO., INC. AND ITS ATTORNEYS:

The Plaintiff submits the following supplemental Interrogatories pursuant to Rules 26, 33 and 37 of the South Carolina Rules of Civil Procedure:

GENERAL INSTRUCTIONS

1. All information is to be divulged which is in the possession of the individual or corporate party, your attorney, investigators, agents, employees, or other representatives of the named party and your attorney.

2. These interrogatories are intended as continuing interrogatories, requiring you to answer by supplemental answer, setting forth any information within the scope of the interrogatories as may be acquired by you, your agents, attorneys, or representatives following your original answers.

DEFINITIONS

1. The term "document" shall mean the original or drafts of any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, and all copies thereof which are different in any way from the original, and including, without limitation, any paper, book, account, photograph, agreement, contract, correspondence, memorandum, advertising material, letters, telegrams, objects, reports, records, transcripts, studies, notes, notations, working papers, intra-office communication, charts, minutes, index sheets, deeds of trust, notes, partnership agreements, certificates of limited partnership, computer software, check, check stubs, plans, specifications, delivery ticket, invoice, and other writings and papers of every kind nature, recordings of telephone or other conversations, or of interviews, or of

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conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, to which you have or have had access or of which you have knowledge.

2. The term "concerning" shall mean referred to, alluded to, related to, connected with, commencing on, in respect of, about, regarding, discussing, showing, describing, in support of, in substitution of, reflecting, and analyzing.

3. The terms "identify," "identification," or "identity" shall have the following meanings:

   (a) When used in reference to a natural person, it means to state the person's full name, title, employer, and job description, if applicable, and the person's residence and business address, or if the present addresses are unknown, the last known residence and business address;

   (b) When used in reference to a corporation, it means to state the full name, its date of incorporation, and the address of its principal office;

   (c) When used in reference to an unincorporated association or any other business entity, it means to state the full name of the entity and the address of its principal office;

   (d) When used in reference to a document, it means to state the name, business address, and business affiliation of each person who made or signed the document; the name, business address, and business affiliation of each person to whom the document was addressed or sent; the date of the document; and a concise statement of the subject of the document.

4. The term "person" includes all natural persons, all partnerships and joint ventures, all corporate organizations, all private and governmental organizations, associations, and trusts, and the representatives of any such organizations.

5. The terms "and" and "or" shall be both conjunctive and disjunctive.

6. The term "incident" shall mean the incident described in the plaintiff's complaint.

7. The term "You" and any synonym thereof, whether singular or plural, is intended to and shall embrace and include for defendant, all agents, servants, employees, representatives, and others who are in possession of or may have obtained information for or on behalf of defendant, and shall include all present and former subsidiaries, divisions, including any of its affiliates, and/or predecessor entities.

8. "Electronic Data" includes, but is not limited to, originals and all copies of electronic mail ("e-mail"); activity listings of electronic mail receipts and/or transmittals; voice-mail; audio or video recordings of any kind; computer programs (whether private, commercial or a work-in-progress); programming notes or instructions; output

resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines; operating systems, source code of all types; PIP file, batch files, ASII files; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file or file fragment. Electronic data includes any and all information stored in hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds and computer chips (including but not limited to EPROM, PROM, RAM, and ROM). Electronic data also includes the file, folder tabs, containers or labels appended to any storage device containing electronic data.

SUPPLEMENTAL INTERROGATORIES

1. Describe in detail any and all policies and procedures that Defendant had in force and effect at the time during the period beginning three (3) years prior to February 9, 2017, to the present, to inspect, repair, maintain, or otherwise monitor the condition of tractor trailers, tractor trailer cabs, or vehicles owned by Defendant.

2. Identify by full name, current address, phone number, job title, and current place of employment for any person(s) who had primary overall responsibility for the following during the period beginning three (3) years prior to February 9, 2017, to the present:

(a) Operational safety of vehicles;

(b) Driver training;

(c) Safety Director;

(d) Mechanical condition of vehicles owned by Defendant;

(e) Enforcement of the policies and procedures identified in response to the preceding interrogatory.

3. Identify by full name, current address, phone number, and job title of any insurance loss control expert who has inspected your operations.

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4. As to both the tractor and trailer involved in the subject wreck, which your driver, Defendant Smoak was operating, state:

(a) Manufacturer, make, model number and year of manufacture of the tractor;

(b) Manufacturer, make, model number and year of manufacture of the engine;

(c) Trailer's length and width thereof at the longest and widest portions, respectively;

(d) The weight of the trailer when empty, its carrying capacity, and the gross vehicle weight; and

(e) The combination weight rating of the tractor-trailer at the time of the subject wreck.

5. Set forth the number of times in the period beginning three (3) years prior to February 9, 2017, and up to February 9, 2017, that an employee or third party inspected the brakes for the tractor-trailer involved in the subject wreck. For each, state the persons name, job title, reason for inspection, any repairs or replacements that were performed as a result of the inspection.

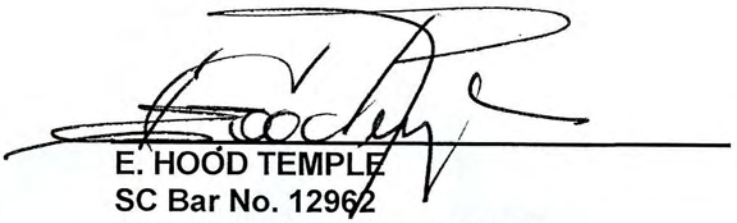
6. Set forth the manufacturer, model number, installation date, and any inspection date(s), for the brakes installed on the subject tractor-trailer on February 9, 2017.

7. Set forth the manufacturer, model number, installation date, any inspection(s) date(s), and number of total miles for each of the tires equipped on the subject tractor trailer on February 9, 2017.

These Interrogatories shall be deemed continuing so as to require supplemental answers if the parties or any representative or counsel obtains further information between the time the answers are served and the time of trial.

Florence, SC

April 30, 2020



E. HOOD TEMPLE
SC Bar No. 12962
ALEXANDER S. HOGSETTE
SC Bar No. 101244
Attorneys for Plaintiff

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S FIRST SUPPLEMENTAL REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT MURRAY SAND CO., INC.**

TO: THE DEFENDANT MURRAY SAND CO., INC. AND ITS ATTORNEYS:

YOU ARE HEREBY requested under the provisions of SCRCP 34 to produce and permit the plaintiff herein, or persons acting on their behalf, to inspect, measure, photograph and copy the documents and tangible things designated hereinafter. Unless otherwise noted or agreed to between counsel, the production, inspection, copying and all acts necessarily related thereto shall take place at the offices of the plaintiff's counsel, E. Hood Temple, 170 Courthouse Square, Florence, South Carolina, commencing at 10:00 a.m., and in thirty (30) days from date, and continue from day to day thereafter until said inspection, copying and related acts are completed.

NOTE: These requests shall be deemed continuing so as to require supplemental production pursuant to SCRCP 26(e).

PRIVILEGE

If any document is withheld under claim of privilege, furnish a list identifying each document for which the privilege is claimed, together with the following information: date, sender, recipient, subject matter of the document, the basis on which privilege is claimed, and the paragraph or paragraphs of this request to which the document responds.

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DOCUMENTS NO LONGER IN POSSESSION, CUSTODY OR CONTROL

If any document described in this request was, but no longer is in your possession, or subject to your custody or control, or in existence, state whether: (a) it is missing or lost; (b) it has been destroyed; or (c) it has been transferred, voluntarily or involuntarily, to others; or (d) it has been disposed otherwise. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing same, and the date(s) thereof. Identify each document by listing its author, his address, type, e.g. letter, memorandum, telegram, chart, photograph, etc.; date, subject matter, present location and custodian(s), and state whether the document (or copies) are still in existence.

COMPUTER RECORDS

In any case where documents or records requested by Plaintiff are not currently in existence in the form of "hard copy" or computer printout, but the raw data necessary for generating a request made by the Plaintiff indicate the following: (a) who is in possession of the computer tape or disk; (b) whether a program currently exists for generating the information in the form requested by Plaintiff; and (c) what person or persons within Defendant's organization has the present ability to write a program to retrieve the requested information.

DEFINITIONS

1. A document that "relates to" or "concerns" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

2. When used in these requests, the term "Defendant", or "you" or "your" or any synonym thereof, whether singular or plural, is intended to and shall embrace and include counsel for defendant, all agents, servants, employees, representatives, and others who are in possession of or may have obtained information for or on behalf of Defendant, and shall include all present and former subsidiaries, divisions, affiliates, and predecessor entities.

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3. "Electronic Data" includes, but is not limited to, originals and all copies of electronic mail ("e-mail"); activity listings of electronic mail receipts and/or transmittals; voice-mail; audio or video recordings of any kind; computer programs (whether private, commercial or a work-in-progress); programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines; operating systems, source code of all types; PIP file, batch files, ASII files; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file or file fragment. Electronic data includes any and all information stored in hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds and computer chips (including but not limited to EPROM, PROM, RAM, and ROM). Electronic data also includes the file, folder tabs, containers or labels appended to any storage device containing electronic data.

ORDER OF DOCUMENTS TO BE PRODUCED

Plaintiff requests that Defendant segregate the requested documents by the request and subsection of each request set forth herein.

REQUESTS

1. Copies of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six months prior to the subject wreck.

2. A copy of each out of service report or violation concerning the tractor or trailer or any findings as to the condition of the tractor-trailer from the year prior to the collision through the day of the wreck, to include copies of any supplements, responses, or amendments to the same.

3. Produce all documents in your possession, or in the possession of your insurers, representatives, agents, or investigators, regarding any property damage to any vehicle, the contents of any vehicle, any stationary object, or any other real or personal property damage resulting from the incident complained of, including but not limited to repair estimates, appraisals, purchase invoices, repair bills, and checks or drafts reflecting payment for repair or replacement, and any other documents concerning or establishing the value of any item of

property before or after the incident complained of.

4. Produce any documents given to any person or entity, including any insurance company in return for payment in whole or in part for property damage, e.g., loan receipt*(s)*, release*(s)*, assignment*(s)*, etc.

5. Produce all the Driver Vehicle Inspection Reports (DVIR) from the week after the collision, the day of the collision, and the six months prior to the collision.

6. Copies of all e-mails, electronic correspondence, or text messages between any of the Defendant's agents, servants, and employees and Defendant Smoak for the period beginning the seven days prior to the wreck and ending three days after the wreck.

7. Produce all pre-trip inspection reports for the trip in question and six months prior to the date of the collision for the tractor.

8. A copy of each memorandum, letter, document, e-mail, or report sent by Defendant, its agents, servants, or employees to any person or entity regarding the Plaintiff, the defendant driver, or the incident made the basis of this suit.

9. All documents, phone call logs, or correspondence reflecting complaints or criticisms of any kind received by you from any source, including your personnel, concerning your driver, your company's jobs, the operation of, or failure to repair or maintain any power unit or trailer.

10. Copies of the organizational charts and lists identifying the divisions and management structure for your company, from the year of the collision and three years prior.

11. Any and all documents consulted in preparation for answering Plaintiff's Supplemental Interrogatories.

ELECTRONICALLY FILED - 2020 May 27 3:24 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

Florence, SC

April 30, 2020

E. HOOD TEMPLE
SC Bar No. 12962
ALEXANDER S. HOGSETTE
SC Bar No. 101244
Attorneys for Plaintiff

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com

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ELECTRONICALLY FILED - 2020 Jun 04 11:38 AM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA COUNTY OF SUMTER Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc., Defendants.	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT C/A # 2019-CP-43-01021 PLAINTIFF'S RESPONSE IN OPPOSTION TO MOTION TO STAY DISCOVERY

TO: MR. JEFFREY T. AMMONS, ATTORNEY FOR THE DEFENDANT:

Plaintiff Judy Haselden, by and through the undersigned, hereby responds in opposition to Defendant Murray Sand Co., Inc.'s (hereinafter, "Murray Sand") Motion for Protective Order and to Stay Discovery. Haselden requests the Court deny Murray Sand's Motion for the reasons stated herein, and in accordance with South Carolina law and arguments advanced at the hearing on this Motion.

BACKGROUND

On November 5, 2019, Plaintiff Haselden filed a Motion to Compel against Defendants Smoak and Murray Sand pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure. The hearing was initially scheduled for March 3, 2020 but was postponed due to the Covid-19 outbreak. On April 23, 2020, Plaintiff filed a memorandum in support of her Motion to Compel. On April 30th, Defendants filed their memorandum in opposition. On May 19th, a hearing was held via a web-conferencing service. Plaintiff moved to compel Defendant Murray Sand to produce

documents responsive to Plaintiff's Requests for Production, served on May 30, 2019. The Honorable George McFaddin held his ruling in abeyance to consider the arguments advanced by the parties at the hearing.

ARGUMENT

Defendant Murray Sand now seeks to stay *all* discovery pending a resolution of a Motion to Dismiss/Motion for Summary Judgment, which it filed *after* the Motion to Compel hearing. In support of its Motion, Defendant avers that production at this point is unduly burdensome, disproportionate to the needs of the case, irrelevant, oppressive, and serves no purpose but to harass and annoy Defendant Murry Sand. Notably, none of those concerns were raised in Defendant's response in opposition to Plaintiff's motion to compel or during oral arguments.

I. THE COURT SHOULD DENY DEFENDANT'S MOTION FOR A PROTECTIVE ORDER/STAY AS TO ALL DISCOVERY

Recognizing that it lacks a valid objection to Plaintiff's Motion to Compel, Defendant has instead refused to fulfill its obligations under the South Carolina Rules of Civil Procedure on two insufficient grounds. First, Defendant's Motion is insufficient as a matter of law because it fails to set forth a particularized harm as required under Rule 26(e) and only vaguely claimed through boilerplate language that all discovery in this case is oppressive, unduly burdensome, and irrelevant. Rule 26(e); *Hollman v. Woolfson*, 384 S.C. 571, 578, 683 Se.2d 495, 498 (2009). Moreover, South Carolina's discovery standards are liberal and allow a party to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Rule 26(b)(1), SCRCP. Defendant

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has not satisfied their burden under Rule 26(e), and therefore, its Motion should be denied.

Second, it contends that it should not have to provide *any* discovery while its motion to dismiss/summary judgment is pending. This position is unjustified. Stays of discovery may not be self-imposed and used to circumvent the ruling of a trial court judge when a party is worried about the outcome of a motion to compel hearing. Further, Defendant's position is in conflict with the South Carolina Rules of Civil Procedure regarding discovery and summary judgment. Defendant cannot be permitted to vaguely and ambiguously claim that summary judgment is appropriate and then use that claim as yet another attempt to deny Plaintiff a full and fair opportunity to conduct discovery. *See* Defendant Murray Sand's Motion to Dismiss/Motion for Summary Judgment.

II. PLAINTIFF SHOULD BE ALLOWED TO CONTINUE DISCOVERY AND SERVE ADDITIONAL INTERROGATORIES TO DEFENDANTS BECAUSE THE REQUESTED INFORMATION IS RELEVANT AND NECESSARY

Plaintiff requests that the Court permit her to continue discovery in this matter because the discovery requests are germane to the claims set forth in her Complaint.

Defendant Smoak unequivocally testified that he provided written statements, completed a post-accident interview with a safety director named Suzanne, and submitted to a blood and urine test. Despite all of this, Murray Sand has not identified an employee by the name of Suzanne and submits that while Smoak may have provided vital evidence, like statements and drug tests, they don't

have any of those records, save for two photos allegedly taken by Smoak. Notably, Murray Sand does not deny that Defendant Smoak provided statements or submitted to a drug test following this accident or that the evidence exists.

It is axiomatic that in a tractor-trailer vs. car accident evidence regarding recorded statements, drug testing results, driving logs, names of potential witnesses, and trucking company records are relevant and necessary. A plaintiff asserting a claim of negligence must be permitted to make reasonable inquiries into pre- and post-accident records or evidence that the trucking company possesses or was required to maintain in accordance with Federal Motor Carrier Safety Act, 49 C.F.R. §§300 – 399.

Defendant's Motion asserts for the first time that all of Plaintiff's discovery requests in this case amount to annoyance, embarrassment, oppression, undue burden, are irrelevant, and harassment. However, Plaintiff is merely continuing to seek discovery of vital evidence as a result of Murray Sand's questionable record retention. Plaintiff has a right to discover what information was known to the carrier both prior to and following the accident, and the statements given by the truck driver immediately following the accident. This is especially significant given the multiple contradictory positions taken by the co-defendants regarding crucial evidence. Further, Defendant has waived any objection or request for protection as to Plaintiff's first Interrogatories and Requests for Production by not raising same until after the hearing on Plaintiff's Motion to Compel.

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Additionally, even assuming Plaintiff has served more than fifty (50) interrogatories upon Defendant, Plaintiff requests the Court permit her to conduct additional discovery in this matter. Since the outset of litigation, Plaintiff's attempts to conduct discovery have been met with delay and remarkably inconsistent positions from an employer and employee. Plaintiff has been forced to file multiple motions to compel to get complete responses from Defendant Murray Sand and any responses from Defendant Smoak. The supplemental interrogatories directed at Murry Sand involve requests for information regarding pre-trip inspections, the tractor-trailer's brakes, and to identify key employees within the company. It cannot be gainsaid that these issues are irrelevant when a trucking company's employee wrecks a company tractor-trailer into the back of a vehicle stopped for a traffic light.

CONCLUSION

Defendant Murray Sand's Motion for a Protective Order and Motion to Stay discovery should be denied. This Motion fails as a matter of law because it fails to set forth a particularized harm as required by Rule 26(e), improperly seeks a ruling from another trial court judge while The Honorable George McFaddin maintains jurisdiction over this matter, and is nothing more than an attempt to prevent Plaintiff Haselden from having a full and fair opportunity to conduct discovery. The relevancy and necessity of this evidence is self-evident to the specific issues of this case and greatly outweighs any purported inconvenience to Defendant Murray Sand. Additionally, even assuming Plaintiff's supplemental interrogatories exceed

the number permitted under Rule 33, SCRCP, Plaintiff requests the Court allow Plaintiff to conduct additional discovery for the good cause shown herein.

Florence, South Carolina

June 4, 2020

s/E. Hood Temple

E. HOOD TEMPLE, SC Bar No. 12962
Alexander S. Hogsette, SC Bar No. 101244

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com

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ELECTRONICALLY FILED - 2020 Jul 22 4:56 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019- CP-43-01021

Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc., Defendants.	**DEFENDANT MURRAY SAND'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER**

Defendant Murray Sand Co., Inc. ("Murray Sand"), by and through undersigned counsel, hereby submits this memorandum of law in support of its Motion For Protective Order pursuant to Rule 26(c), SCRCP.

On May 24, 2019, Plaintiff filed a Summons and Complaint against Murray Sand and co-Defendant Smoak seeking damages for alleged injuries she sustained as a result of a motor vehicle accident that occurred on February 9, 2017. *See* Exhibit A. Plaintiff alleges Defendant Smoak rear-ended her at a stop light while driving a dump truck owned by Murray Sand. Murray Sand filed an Answer on July 25, 2019, admitting it owned the vehicle that its employee, Defendant Smoak, was driving. The single allegation against Murray Sand, it presumes, is one of vicarious liability.[1]

[1] In reading the Complaint, Plaintiff alleged that Murray Sand owned the vehicle Defendant Smoak was driving and that Defendant Smoak was an employee. The Complaint is devoid of any allegation of negligence against Murray Sand, and therefore fails to fulfill the plainly stated pleading requirements of Rule 8, SCRCP. Moreover, it fails to state a cause of action and should be dismissed pursuant to Rule 12(h), SCRCP.

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On January 23, 2020, Murray Sand responded to Plaintiff's voluminous First Set of Interrogatories and Requests for Production. *See* Exhibit B. On April 23, 2020, Plaintiff filed her Memorandum in Support of her Motion to Compel, which had been filed in November of 2019 (prior to current counsels' involvement in this matter). *See* Exhibit C. On April 30, 2020, after reviewing the memorandum, Murray Sand served its First Supplemental Answers to Plaintiff's Interrogatories and Requests for Production. *See* Exhibit D. On May 6, 2020, counsel for Murray Sand were served with Plaintiff's First Supplemental Interrogatories and Requests for Production to Murray Sand, dated April 30. *See* Exhibit E. On May, 15, 2020, Plaintiff's counsel sent an e-mail explaining his continued concerns of the alleged deficiencies in Murray Sand's discovery responses. *See* Exhibit F. The correspondence stated that the majority of the deficiencies Plaintiff's counsel previously criticized had been resolved, but he had continuing concerns about Request for Production 5 and 42. Counsel stated multiple times that the production of a privilege log would likely quell any remaining concerns. Murray Sand, therefore, produced a detailed privilege log and again assured counsel that it was not in possession of any further documents. *See* Exhibit G.

At a hearing before this Court conducted on May 19, 2020, Plaintiff's counsel condemned Murray Sand, as a mere "mom and pop operation," as either being unorganized in its record keeping or concealing the documents RFP 42 sought. Counsel further argued that Murray Sand had failed to properly answer RFP 3, specifically stating that he was entitled to the insurance company's claim file. It should be noted that in Paragraph E of Plaintiff's Memorandum in Support of her Motion to Compel, Plaintiff argued, again, that Murray Sand was being "evasive" in not producing a written statement Defendant Smoak testified he gave **to Murray Sand**. *See* Exhibit C. At no point prior to the hearing had Plaintiff's counsel ever mentioned the carrier's

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claim file, and counsel for Murray Sand verbally notified counsel on April 29, 2020, that to her knowledge, no statements existed.

During the hearing, counsel for Murray Sand confirmed, again, that after numerous exhaustive searches on behalf of Murray Sand, she had produced everything in her possession that was not privileged. She further argued that even if she possessed additional carrier documents, that because the insurance company was not a party to the suit and not her client, it was more appropriate for Plaintiff to pursue such documents by way of subpoena pursuant to Rule 26(c). The parties submitted proposed orders to this Court.

Murray Sand now argues that Plaintiff's additional discovery demands are outside of the scope of discovery intended by the Rules of Civil Procedure and have been frivolously served for no other purpose than to harass Murray Sand.

LAW

Rule 26(b)(1), SCRCP, provides, unless otherwise limited by order of the court, "[p]arties may obtain discovery regarding any matter, not privileged, which is **relevant** to the subject matter involved in the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (emphasis added).

Rule 26(a), SCRCP, provides that:

> The frequency or intent of use of discovery methods . . . shall be limited by the court it if determines that: (i) the discovery sought is unreasonably cumulative or duplicative, . . . or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, the limitations on the parties' resources, and the importance of the issues at stake in the litigation.

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Notes the Rule 26(a) indicate that this portion of the Rule was added "to address the problem of duplicative, redundant, and excessive discovery by encouraging judges to identify instances of needless discovery and to limit the uses of the various discovery devices accordingly."

"If the discovery process threatens to become abusive *or* create a particularized harm to a litigant or third party, the trial judge may issue an order 'to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.'" *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (*citing Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994)) (emphasis added). If a party seeking a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is "relevant and necessary" to the case. *Id.* (*citing Laffitte v. Bridgestone Corp*., 381 S.C. 460, 674 S.E.2d 154 (2009).

In determining whether a protective order is necessary, the trial judge is required to weigh the factors of whether the information sought is "relevant and necessary" evidence against any particularized harm the opposing party may suffer. *Id*. The trial court must determine whether there are reasonable alternatives available to discover the information. *Id*.

ANALYSIS

Based on the timeline as set forth above, Murray Sand contends the barrage of voluminous and irrelevant discovery requests and deficiency notices is abusive and oppressive. The breadth of information sought by the discovery requests, and their timing, evidences the abusive nature of the discovery requests.

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Plaintiff has alleged (arguably) a single cause of action against Murray Sand: vicarious liability. Murray Sand admitted in its Answer that Defendant Smoak was an employee, and it admitted the truck Smoak was driving belonged the company.

The plaintiff has requested, and continues to request information and documentation regarding maintenance of its fleet, employees past and present, prior inspections by "insurance loss experts" of its operations, unreasonably minute details of the truck and trailer parts, and documentation of property damage (which is duplicative of Plaintiff's first set of discovery). The scope of materials and information Plaintiff has requested in discovery is disproportionate to the needs of this case and amounts to no more than a fishing expedition.

Though Plaintiff's counsel has chosen to litigate this case as if it were a multimillion-dollar products liability and failure to supervise matter, the simple fact is that the underlying accident was relatively minor and the Complaint sounds in simple negligence. *See* Exhibits H and I. Fortunately, the catastrophic damages and injuries typical of trucking accidents were not present. There was very little property damage to the Plaintiff's vehicle, and no property damage occurred to Murray Sand's rig. Plaintiff's airbags did not deploy and, thankfully, parties were able to independently exit their vehicles and chat while police and medical personnel traveled to the scene. Further, neither party sought medical assistance on the day of the accident. Thus, the lengths to which Plaintiff has tried to obtain irrelevant additional discovery in this case is unnecessary and harassing.

There would be a number of harmful effects to Murray Sand should it be required to answer Plaintiff's additional discovery requests. As stated at the May 19, 2020 hearing, Murray Sand has already expended numerous hours in producing almost 600 pages of documents, most of which are completely irrelevant to this vicarious liability and simple negligence case that will not have

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any bearing at trial. It should not be required to give out personal contact information or documents pertaining to personnel in a vicarious liability suit. Such discovery publicizes the private information of persons not parties and not relevant to this litigation. Nor should Murray Sand be required to painstakingly research the model number, manufacturer, and the like on its fleet of trucks, trailer, tires, engines, etc. Such a task would require Murray Sand to direct employees away from their everyday duties to spend a multitude of additional hours on unnecessary discovery, costing the company undue time, money, and the efficiency of its operation. Plaintiff also seeks additional discovery regarding any prior "complaints" or "criticisms" of "any kind" received by Murray Sand. Not only is such a request overly broad, such evidence is irrelevant to any negligence alleged. It is also unreasonably oppressive and embarrassing to the company. Requiring production of irrelevant criticisms needlessly jeopardizes Murray Sand's business.

Murray Sand is entitled to a protective order pursuant to Rule 26(c), SCRCP, because the discovery sought by Plaintiff's second set of discovery is abusive in nature, not relevant to a vicarious liability cause of action, is overly burdensome, oppressive, and requires Murray Sand to bear undue expense. The documents and information sought by the requests serve little or no benefit for the Plaintiff in a case of simple negligence. A protective order under these facts fulfills the purpose of Rule 26(a) "to address the problem of duplicative, redundant, and excessive discovery by encouraging judges to identify instances of needless discovery and to limit the uses of the various discovery devices accordingly."

WHEREFORE, for good cause shown, Murray Sand respectfully asks the Court to grant a Protective Order against answering all, or part, of Plaintiff's second set of discovery requests. Murray Sand reserves the right to argue any additional points of law or fact at a hearing on this matter.

Respectfully submitted,

THIS THE 22ND DAY OF JULY, 2020.

s/Jeffrey T. Ammons
Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand- McDaniel
S.C. Bar No.: 101340
Attorneys for the Defendants
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, Vs. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A #** **SUMMONS FOR RELIEF** **(Complaint, Interrogatories and Request for Production of Documents Served)** **(Jury Trial Requested)**

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 170 Courthouse Square, Post Office Box 1770, Florence, South Carolina, 29503-1770 within thirty (30) days from the service hereof, exclusive of the date of such service, and in case of the failure to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

Florence, SC

May 21, 2019

/s/ E. Hood Temple

E. HOOD TEMPLE,
Attorney for Plaintiff
SC Bar No. 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, Vs. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A #** **COMPLAINT** **(Jury Trial Requested)**

The plaintiff, complaining of the defendant herein, alleges:

1. That the plaintiff is a resident and citizen of the County of Sumter, State of South Carolina.

2. That the plaintiff is informed and believes that the defendant, Micheal Daniel Smoak, is a resident and citizen of the County of Colleton, State of South Carolina.

3. That the plaintiff is informed and believes that the defendant, Murray Sand Co., Inc., is a corporation organized and existing under the laws of one of the states of the United States and owns property, employs agents and transacts business in Sumter County, South Carolina.

4. That at all times hereinafter mentioned, the defendant, Micheal Daniel Smoak, was acting in his individual capacity or as the agent, servant and employee of the defendant, Murray Sand Co., Inc.

5. That heretofore, on or about February 9, 2017, the plaintiff was stopped in traffic on US 15 when she was rear-ended by a tractor trailer driven by the defendant, Micheal Daniel Smoak which was owned by the defendant, Murray Sand Co., Inc.;

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that as a result of the collision the plaintiff was injured and damaged as more specifically hereinafter set forth.

6. That the injuries and damages sustained by the plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent and unlawful conduct on the part of the defendant, Micheal Daniel Smoak, in one or more of the following particulars, to-wit:

(a) In failing to have the vehicle equipped with adequate brakes or if the said automobile was equipped with adequate brakes, in failing to properly apply the same;

(b) In driving a vehicle in an unsafe condition upon the roadways of the State of South Carolina;

(c) In driving a vehicle at an excessive rate of speed, too fast for the conditions then and there existing;

(d) In failing to yield the right of way to the plaintiff;

(e) In failing to keep a proper lookout;

(f) In failing to maintain proper control over the vehicle which the defendant was driving;

(g) In driving a motor vehicle in a dangerous and improper manner without regard for the rights of others on said road;

(h) In failing to avoid colliding with plaintiff's vehicle after having ample opportunity to do so, thus failing to exercise the doctrine of last clear chance;

(i) In driving said vehicle into and against the plaintiff's vehicle;

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(j) In failing to give any warning or signal to the plaintiff that defendant was about to collide with the vehicle of the plaintiff;

(k) In following too closely.

All of the above being in violation of the laws of the State of South Carolina.

7. That as a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the defendant, Micheal Daniel Smoak, the plaintiff was thrown violently in and about plaintiff's automobile; that the plaintiff was greatly and severely injured in and about plaintiff's head, neck, arms, body, back, limbs and other parts of the plaintiff's body; that plaintiff was rendered sick, sore, lame, disabled, bruised and shocked thereby and continues so to be; that all of such injuries have caused plaintiff extreme and excruciating pain continuously to this date and the plaintiff will suffer such pain in the future; that as a direct and proximate result of the negligence of the defendant as aforementioned the plaintiff suffered severe bruises, lacerations and contusions and great pain and suffering.

8. That as a direct and proximate cause of said negligence, wantonness, recklessness, and unlawfulness on the part of the defendant, Micheal Daniel Smoak:

(a) The plaintiff was committed to the hospital and will be required to enter the hospital in the future for long and extensive periods of time;

(b) The plaintiff was confined to the care and treatment of skilled physicians and nurses; that plaintiff is presently being treated by such persons and will continue to receive treatment from them in the future; that plaintiff has

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expended large sums of money for such treatment and will be obligated to expend even more money in the future for such care and treatment;

(c) The plaintiff was hindered and prevented, and in the future will be hindered and prevented from transacting and attending to plaintiff's necessary and lawful affairs since the date of the collision and loss and was deprived of divers gains, profits, salaries, pleasures, advantages, and earning capacity and ability which plaintiff would have otherwise derived and acquired;

(d) The plaintiff was in the past, present and will continue in the future to be put to great expense for medicine and drugs;

(e) The plaintiff has expended large sums of money in the past and present for transportation to and from the doctor's office and hospitals and will continue to have such expenses in the future for consultations and treatment;

(f) The plaintiff's previous good health has been permanently impaired.

(g) The plaintiff has suffered a loss of wages and in the future will suffer a loss of wages due to the injuries received.

9. That as a result of the Defendant's negligence set forth, the Plaintiff has suffered actual damages.

10. That the Plaintiff is informed and believes that (s)he is entitled to an award of punitive damages.

WHEREFORE, Plaintiff asks judgment against the defendants for actual damages and punitive damages, the cost of this action, and for such other and further relief as this court may deem just and proper.

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Florence, SC

May 21, 2019

/s/ E. Hood Temple

E. HOOD TEMPLE,
Attorney for Plaintiff
SC Bar No. 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SUMTER	)	
	)	**Civil Action No.: 2019-CP-43-01021**
	)	
Judy Haselden	)	
Plaintiff,	)	**DEFENDANT MURRAY SAND CO, INC.'S RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**
	)	
vs.	)	
	)	
Micheal D. Smoak and Murray Sand Co., Inc.,	)	
Defendants.	)	
	)	

INTERROGATORIES

1. Is Defendant, Murray Sand Co., Inc., owned by or a subsidiary of another company? If so, state the full name, address and telephone number of such company?

ANSWER: No.

2. Is Defendant, Murray Sand Co., Inc., a common carrier, a contract carrier or a private carrier?

ANSWER: Murray Sand Co., Inc. is a common carrier.

3. Does, Defendant, Murray Sand Co., Inc., hold a certificate of authority, a license or a permit issued by the Department of Transportation or the Interstate Commerce Commission? If so, state which?

ANSWER: Yes. Murray Sand Co., Inc. holds a certificate of compliance (#4387) with the S.C. Department of Motor Vehicles.

4. State what type of authority, license or permit to engage in Interstate Commerce is held by Defendant, Murray Sand Co., Inc.

ANSWER: See this answering Defendant's response to interrogatory number 3 above.

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5. State the name, address and telephone number of the owner of the truck/tractor involved in the February 9, 2017, accident made subject of this litigation.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

6. Describe the truck/tractor involved in the February 9, 2017, accident by stating the year of manufacture, manufacturer, model and configuration.

ANSWER: 2007 Tk Kenworth T800.

7. State the name, address and telephone number of the owner of the trailer being pulled by the tractor involved in the accident of February 9, 2017.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

8. State the year of manufacture, manufacturer, model and configuration of the trailer which was involved in the accident of February 9, 2017.

ANSWER: 2009 TRST DS2SD2 TL.

9. If, Defendant, Murray Sand Co., Inc., was not the owner of the truck/tractor or trailer involved in the accident of February 9, 2017, state whether these vehicles were being operated by your company under lease and provide the name, address and telephone number of the lessor of each and state whether the lease was a permanent lease or a trip lease.

ANSWER: Not applicable. Murray Sand Co., Inc. owns the truck and trailer involved in the accident at the center of this dispute.

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10. State the name, address and telephone number of the driver of the truck/tractor trailer involved in the accident of February 9, 2017, and whether he is your regular employee. If so, state the date that employment began and whether he is still in your employ.

ANSWER:

Michael Daniel Smoak;
9147 Augusta Hwy, Smoaks, SC 29418 (former) – Mr. Smoak currently is an inmate in a federal correctional facility;
No current telephone number;
Michael Smoak is no longer employed by Murray Sand Co., Inc.

11. State whether you have retained a driver qualification file for the driver of the truck/tractor trailer involved in the accident of February 9, 2017. If so, list each of the documents in that file.

ANSWER: Yes. The driver qualification file includes an application for employment, CDL & Medical Card, certificate of compliance, addendum to employment application, record of road test, & E-Verify verification.

12. State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

13. State whether Defendant, Murray Sand Co., Inc., has knowledge of any hours of service violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: This answering Defendant does not recall being made aware of any hours of service violations committed by the driver. This answering Defendant reserves the right to supplement this answer on a later date.

14. State whether any disciplinary action was taken either by Defendant, Murray Sand Co., Inc., or a company union against the driver as a result of his driving that resulted in the accident of February 9, 2017. If so, state whether any action was considered and whether his actions were reviewed by any persons.

ANSWER: To the best of this answering Defendant's knowledge, no disciplinary action was taken against the driver after the accident at the center of this dispute occurred. This answering Defendant reserves the right to supplement this response on a later date.

15. State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

ANSWER: Defendant Murray Sand Co., Inc. does not have a safety director at this time.

16. State whether Defendant, Murray Sand Co., Inc., has written driving standards and/or instructions for its drivers.

ANSWER: Yes.

17. State the method by which compensation was determined for the payment of the driver and/or the lessor for the trip during which the accident of February 9, 2017, occurred.

ANSWER: The driver was paid a commission-based salary which is calculated based upon the total gross cost per load transported. Specifically, this driver was compensated with a monetary value equivalent to twenty-two percent (22%) of the gross cost of the load transported.

18. State the place of origin and place of destination of the truck/tractor involved in the accident.

ANSWER:

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Place of Origin – Willow Oak Quarry, LLC in Kershaw County, South Carolina. Destination – Crowder Construction Company in Edisto Beach, South Carolina.

19. State the exact time and date when the truck/tractor left its place of origin and the scheduled arrival time at the place of destination.

ANSWER: Upon information and belief, the truck tractor left its place of origin at 5:46 AM and 12:13 PM on February 9, 2017. The answering Defendant lacks sufficient knowledge to provide the scheduled time of arrival. See attached scale ticket for said information. This answering Defendant reserves the right to supplement this response on a later date.

20. State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.

ANSWER: Upon information and belief, no. Drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

21. State whether Defendant, Murray Sand Co., Inc., is in possession of the bill of lading, freight bill and expense invoices generated during the course of the trip and also whether the truck/tractor trailer was transporting a load of cargo at the time of the accident of February 9, 2017.

ANSWER: Yes. Defendant Murray Sand Co., Inc is in possession of the records in question. Upon information and belief, the truck was transporting cargo at the time of the accident.

22. If No. 21 above is yes, describe as follows:

(a) describe the load;
(b) state the names, addresses and telephone numbers of the shippers
(c) state the names, addresses and telephone numbers of the consignees.

ANSWER:

(a) Class F Rip Rap

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(b) Willow Oak Quarry, LLC - (803) 475-2328 – 168 Quarry Road, Kershaw, SC 29067
(c) Crowder Construction Co. – (800) 849-2966 - 6425 Brookshire Blvd. Charlotte, NC 28216

The remaining information requested will be supplemented on a later date.

23. State whether the trailer was loaded by the shipper or by the driver and, if by neither, then state by whom and their address and telephone number.

ANSWER: This answering Defendant believes that the trailer was loaded by the shipper. The answering Defendant reserves the right to supplement this response on a later date.

24. State whether the driver was required to secure the load by any means or devices.

ANSWER: The driver is required to deploy a mechanical tarp to cover the contents placed in the truck's bed or trailer to prevent loose material from becoming airborne.

25. State whether the truck/tractor and/or trailer underwent any repairs during the trip and, if so, state the nature of the repairs and the names, addresses and telephone numbers of the repair facilities.

ANSWER: Upon information and belief, this answering Defendant does not believe the truck and/or trailer underwent any repairs during the trip. This answering Defendant reserves the right to supplement this response on a later date.

26. Does your company retain possession of repair and warranty invoices and bills covering the history of the truck/tractor and/or trailer involved in the accident of February 9, 2017? If not, state the name, address and telephone number of the individual or company who does.

ANSWER: Yes. Murray Sand Co., Inc. retains possession of repair invoices.

27. State whether the truck involved in the accident of February 9, 2017, has an on-board computer and, if so, identify all discs, computer tapes and other written materials generated by the use of the on-board computer during the trip.

ANSWER: The truck involved in the accident of February 9, 2017 does not have an on-board computer.

28. State whether these items are in the possession of Defendant, Murray Sand Co., Inc., or any individual, representative or company under your control or direction.

ANSWER: See response to interrogatory number 27.

29. Have you ever been notified by the driver of the truck in question of a conviction or suspension for violating a state or local law relating to motor vehicle traffic control in accordance with 49CFR383.31.

ANSWER: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waving the stated objection, this answering Defendant is not aware of any reported violations.

30. With regard to the accident of February 9, 2017, please state the following:

(a) Was a drug test administered to the truck driver within thirty-two (32) hours of the accident? **To the best of this answering Defendant's recollection – no.**
(b) Who administered the test? **N/A**
(c) What was the result? **N/A**
(d) Was an alcohol test administered to the truck driver after the accident? **To the best of this answering Defendant's recollection – no.**
(e) How long after? **N/A**
(f) If not done within two (2) hours, what was the reason for the delay? **To the best of this answering Defendant's recollection, a test was not administered.**

ANSWER: See responses above.

31. Do you know whether the truck driver has ever reported to duty while having an alcohol concentration of 0.04% or greater in contravention of 49CFR382.201.

ANSWER: Upon information and belief, no. The answering Defendant reserves the right to supplement this response on a later date.

32. Has the truck driver involved in the accident of February 9, 2017, ever refused to submit to the following:

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(a) post-accident alcohol or controlled substances test required under 49CFR382.303;
(b) a random alcohol or controlled substance test required under 49CFR382.305;
(c) a reasonable suspicion alcohol or controlled substance test required under 49CFR382.307; or
(d) a follow-up alcohol or controlled substance test required under 49CFR382.3211.

ANSWER: To the best of his knowledge, this answering Defendant does not believe that the truck driver refused to submit to any of the testing scenarios outlined in subsections (a) through (d) above. This answering Defendant reserves the right to supplement this response on a later date.

33. Has the truck driver involved in the accident of February 9, 2017, ever been disqualified from driving a truck when in your employ? If so, when and under what circumstances?

ANSWER: No, not to the knowledge of this answering Defendant. This answering Defendant reserves the right to supplement this answer on a later date.

34. Has your company ever undergone an FHWA compliance review? If so, what was your rating?

ANSWER: To the best of this answering Defendant's knowledge, no. The answering Defendant reserves the right to supplement this response on a later date.

35. Was a Certificate of Insurance filed with the Interstate Commerce Commission and/or the Public Utilities and/or Commerce Commission in the state in which the accident occurred?

ANSWER: Upon information and belief, yes. This is a requirement under the Certificate of Compliance issued by the South Carolina DMV described in interrogatory number 3. The answering Defendant reserves the right to supplement this response on a later date.

36. State whether your insurance policies contain the MCS-90 endorsement or the equivalent endorsement required under state law.

ANSWER: Yes.

37. State whether the truck/tractor trailer rig involved in the collision of February 9, 2017, was equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM? If so, state whether the system includes an accident reconstruction option which allows the last ten (10)

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minutes of recorded activity on the system to be store in a buffer memory and retrieved in the event of the accident.

ANSWER: The truck involved in this incident is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

38. State whether the truck/tractor trailer involved in the accident was equipped with the QUALCOMM OMNI TRAX SYSTEM or any other type of satellite tracking system. If so, list the records other type of satellite tracking system. If so, list the records in your possession of the tractor's activities which were generated by the QUALCOMM SYSTEM.

ANSWER: The truck involved in the accident was not equipped with the QUALCOMM OMNI TRAX SYSTEM.

39. If you contend that Defendant, Murray Sand Co., Inc., is not liable for the collision of February 9, 2017, state in exact details the reasons for that contention.

ANSWER: Objection. This request seeks to discover the trial strategies and mental impressions of defense counsel. Subject to and without waiving the stated objection, see Answer.

40. Identify each person you expect to call as an expert witness at trial and with respect to each person, state:

(a) The name, current address and phone number;
(b) The subject matter on which the expert is expected to testify;
(c) The substance of the facts to which the expert is expected to testify;
(d) The substance of the opinions to which the expert is expected to testify;
(e) A summary of the grounds for each opinion;
(f) The expert's professional title and qualifications;
(g) A list of all publications to which the expert has contributed which relate in any way to the subject area, facts or opinions to which the expert is expected to testify at trial;
(h) Identify each expert, by name, address and phone number, that has been retained, consulted with or specifically employed in anticipation of this action or in preparation for trial;
(i) Identify each and every occasion where said expert has been retained, consulted with or specifically employed by this defendant, its attorneys or insurance carrier in other matters for the period of the last five years.
(j) State the expert's compensation rate in U.S. dollars for any work performed in anticipation of this action or in preparation for trial.

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ANSWER: Objection. This interrogatory seeks to obtain information protected by the work product doctrine and/or the attorney client privilege. Subject to and without waiving the stated objection: The Defendant does not yet know who, if anyone, will be consulted or called to testify as an expert witness at the trial of this matter. If and when any such experts are identified, this response will be supplemented in accordance with the South Carolina Rules of Civil Procedure and any applicable scheduling order.

41. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: Not Applicable. The Defendant is properly identified.

42. What social media sites do you belong to? (i.e. Facebook, MySpace, etc.) Please state the media site, your user name, and the URL (web address) of your homepage.

ANSWER: This answering Defendant does not belong to any social media websites.

43. Please list all e-mail accounts that you use or have used since the date of the accident.

ANSWER: dispatch@murraysand.com and bjones@murraysand.com. The answering Defendant reserves the right to supplement this response on a later date.

44. Please state all websites that you have commented on since the date of the accident. Please state the website and the URL (web address).

ANSWER: None.

REQUESTS TO PRODUCE

1. Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.

RESPONSE: See attached photos.

2. Produce a copy of your ten-year driving record or, in the alternative, a color copy of your Driver's License.

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report. Subject to and without waiving the stated objection, please see Defendant's Smoak's drivers license which contains his CDL.

3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

RESPONSE: This answering Defendant is not in possession of any recorded statements. The parties are expected to testify as to the facts and circumstances surrounding the incident.

4. Any and all diagrams, sketches, drawings, prints, negatives and layouts that relate in any manner to the allegations of the Complaint, the defenses of the Defendant, and the accident scene.

RESPONSE: See attached police report.

5. Any and all reports, studies, analyses, or other documentation of any accident reconstructionist, investigator, adjuster, expert, consultant, independent contractor, or engineer that relate in any manner to the allegations of the Complaint or the defenses of the Defendant.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

6. Any and all insurance policies which may provide liability insurance coverage to any and all claims set forth in the Complaint.

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RESPONSE: See attached insurance policy.

7. Any and all procedural manuals, directives, written memoranda or documents regarding store maintenance procedures pertaining to floors, common areas in the store and parking lots, and entrance ways into the store in effect on the date of Plaintiff's injury and the five-year period immediately preceding.

RESPONSE: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

8. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: Any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

9. Please produce your individual Federal and State income tax returns with all schedules for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

10. Please produce any and all audited and/or unaudited annual and interim financial statements for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

11. A copy of all tachometer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached tachometer records documented on maintenance reports.

12. A copy of all on-board computer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: The tractor involved in the collision is not equipped with an on-board computer system.

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13. A copy of all dispatch records related to the trip of the tractor and/or trailer involved in the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the dispatch records related to the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

14. A copy of all fax transmissions to any entity concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

15. A copy of all telephone records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

16. A copy of all mobile radio records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The Defendant is not in possession of any said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

17. A copy of all pro-rate records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant lacks sufficient knowledge to ascertain what documents are sought in this request for production. The answering Defendant reserves the right to supplement this response on a later date.

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18. A copy of all tow truck records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such documents.

19. A copy of the tractor license and the trailer license of the vehicles involved in the collision of February 9, 2017.

RESPONSE: See attached licenses plates for both tractor and trailer. This answering Defendant reserves the right to supplement this response at a later date.

20. A copy of all pickup and delivery records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

21. A copy of all trip summaries pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

22. A copy of all credit card receipts, toll tickets, fuel receipts, weight tickets, fuel tax records, state entry and departure records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the requested records from the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

23. A copy of the registration and title to the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached registration and title to the tractor involved in the collision on February 9, 2017.

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24. A copy of all expense sheets, all trailer interchange records, and bills of lading pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

25. A copy of all manifests and weigh bills pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket and trip summary.

26. A copy of all rental contracts concerning the tractor involved in the collision of February 9, 2017.

RESPONSE: Objection. This request is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and is not reasonably limited in time or scope. Subject to and without waiving the stated objections: Defendant is not in possession of any such documents.

27. A copy of all the written response from each state agency contracted with reference to the driver's driving record (49CFR391.23).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

28. A copy of all written records with respect to each past employer who was contracted about the truck driver's qualifications.

RESPONSE: See attached inquiry to past employer(s).

29. A copy of the driver's qualification file (49CFR391.51).

RESPONSE: See attached CDL, Medical Card, Record of Road Test, and Certification of Compliance.

30. A copy of the driver's list of violations of motor vehicle traffic laws (49CFR391.27).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

31. A copy of the driver's personnel files.

RESPONSE: See attached employment application, addendum to employment application, and e-verification.

32. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such records. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

33. A copy of any and all insurance policies, liability insurance policies, excess liability policies or any other insurance policies providing coverage to the truck and the trailer involved in the collision of February 9, 2017, even if the vehicles are not specifically designated therein.

RESPONSE: See response to request for production number 6.

34. A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

RESPONSE: See response to request for production number 1.

35. All records pertaining to annual reviews of the driver's record with him for each year of employment with your company (49CFR391.25).

RESPONSE: See attached annual review(s).

36. A copy of a certificate of road test pertaining to the driver of the tractor involved in the collision on February 9, 2017.

RESPONSE: See attached certificate of road test.

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37. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017 (49CFR391.31(e)).

RESPONSE: See response to request number 32.

38. All copy of all out of service orders for the tractor involved in the collision of February 9, 2017, for the three (3) years prior to the accident.

RESPONSE: See attached service orders.

39. A copy of the driver's logs for the six (6) months prior to February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the driver's logs for the six (6) months prior to the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

40. A copy of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six (6) months prior to February 9, 2017.

RESPONSE: See attached maintenance records.

41. A copy of the accident register (49CFR391.3).

RESPONSE: See attached FR10.

42. A copy of any and all accident reports prepared by your company or any other company or individual at your request.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

45. A copy of all repair invoices during the period that the tractor has been operated in your behalf.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome

and not reasonably limited in time or scope. Subject to and without waiving the stated objection, see previously attached maintenance and service records.

46. A copy of all permanent lease and trip lease contracts between you and the tractor and/or trailer owner and operator.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objections, this answering Defendant is not in possession of any such documents.

47. A copy of all trip reports pertaining to the trip in which the tractor trailer was engaged on February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

48. All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any drug or alcohol tests administered to the driver. The answering Defendant reserves the right to supplement this answer on a later date.

49. All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years.

RESPONSE: See response to request for production number 49.

50. A copy of all company manuals covering truck safety, maintenance, fleet safety programs and driver's standards.

RESPONSE: See attached employee handbook.

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51. A copy of all records generated by on-board recording devices with which the tractor was equipped as of February 9, 2017.

RESPONSE: See response to request for production 12.

52. A copy of all records generated through the use of the QUALCOMM OMNI TRAX SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the QUALCOMM OMNI TRAX SYSTEM.

53. A copy of all records generated through the use of the EATON VORAD COLLISION AVOIDANEC SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

54. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: See response to request number 8.

55. Copy of Defendant's cell phone records for the month preceding the accident and one month after the accident.

RESPONSE: The answering Defendant is not in possession of any such records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

56. Please permit counsel for Plaintiff to access, inspect, and copy all of Defendants' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Defendants. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, emails, photographs, and other material contained in the accounts or profiles so identified. (Please Note: No written

material, information, correspondence, writings, internet posts, updates, emails, photographs, etc., should be deleted from any account or profile identified by Defendants without prior written consent from counsel for the Plaintiff. All accounts, websites, and profiles should be preserved in their present condition. Failure to preserve all such information and records may constitute spoliation of evidence.)

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objection, the answering Defendant does not maintain accounts to any social networking websites, internet groups, forums, organizations, or other entities. See this answering Defendant's answers to interrogatories numbered 42 and 44.

THIS THE 23TH DAY OF JANUARY, 2020.

WALKER ALLEN GRICE AMMONS FOY & KLICK, LLP.

/s Carrie Hailman O'Brien
Carrie Hailman O'Brien
S.C. Bar No.: 68540
Email: carrie@walkerallen.com
225 E. Worthington Avenue
Suite 200
Charlotte, NC 28203
(704) 264-0775 (phone) / (980) 819-6780 (fax)
ATTORNEY FOR DEFENDANT MURRAY SAND CO.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, DEFENDANT MURRASY SAND CO, INC.'S RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, was served upon all counsel of Record:

☒ as an attachment to an electronic correspondence

☒ by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope

☐ via facsimile, or

☐ by hand delivery

addressed as follows:

E. HOOD TEMPLE
HATFIELD TEMPLE, LLP
170 COURTHOUSE SQUARE
PO BOX 1770
FLORENCE, SC 29503
PHONE: (843) 662-5000
EHTEMPLE@HTLAWSC.COM

THIS THE 23RD DAY OF JANUARY, 2020.

/s Carrie Hailman O'Brien
Carrie Hailman O'Brien

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc. Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL**

TO: THE DEFENDANTS MICHAEL D. SMOAK AND MURRAY SAND CO., INC., AND THEIR ATTORNEYS:

The Plaintiff, Judy Haselden, hereby submits the following memorandum in support of her Motion to Compel, filed on November 5, 2019.

BACKGROUND

The above-captioned matter arises from a motor vehicle v. 18-wheeler accident that occurred on February 9, 2017, at or around 1:10 pm, near Sumter, South Carolina (hereinafter, the "Accident"). Plaintiff Judge Haselden was stopped in traffic when Defendant Michael D. Smoak (hereinafter, "Smoak"), driving an 18-wheeler owned by Defendant Murray Sand Co., Inc. (hereinafter, "Murray Sand") loaded with riprap during the course and scope of his employment with Murray Sand, collided with the rear of Plaintiff's vehicle. The Complaint, filed on May 21, 2019, asserted claims against Murray Sand and Smoak for injuries she sustained in the Accident.

Murray Sand filed an Answer on July 25, 2019. Smoak filed his Answer on August 26, 2019. Murray Sand and Smoak have at all times been represented by attorneys with the Walker Allen Grice Ammons & Foy, LLP law firm. Plaintiff's Interrogatories and

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Requests for Production as to both Murray Sand and Smoak were served with the Summons and Complaint on Murry Sand (attached as Exhibit A).

Murray Sand responded to Plaintiff's discovery requests on January 23, 2020 (attached as Exhibit B). Smoak has yet to respond to Plaintiff's discovery requests. On February 3, 2020, the undersigned wrote defense counsel regarding deficiencies with Murray Sand's responses/answers and the lack of any responses from Smoak (attached as Exhibit C).[1] Subsequently, on April 16, 2020, the undersigned wrote defense counsel again requesting a response to the February 3rd letter. To date, Smoak has yet to respond to any discovery in this case and Murray Sand's responses/answers remain deficient.

STANDARD OF LAW

Rule 37(a), SCRCP, provides that a party, after reasonable notice to the opposing party has been given, may file a motion requesting an order compelling a party to respond to discovery. A party may file such a motion when a party fails to answer an interrogatory submitted under Rule 33, fails to answer a request for production of documents under Rule 34, or provides an evasive or incomplete answer. Rule 37(a)(2)–(3), SCRCP. Disclosure of evidence before trial is designed to avoid surprise and promote decisions on the merits after a full and fair hearing. *Reed v. Clark*, 277 S.C. 310, 286 S.E.2d 384 (1982).

[1] Plaintiff acknowledges that counsel for Defendants, while remaining within the same firm, has been transferred among different attorneys. Plaintiff has provided/consented to extensions for discovery responses and for her Motion to Compel on multiple occasions.

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ARGUMENT

I. DEFENDANT MURRAY SAND'S RESPONSES ARE EVASIVE OR INCOMPLETE

Several of Defendant Murray Sand's responses to interrogatories and requests for production of documents are evasive or incomplete. Plaintiff will address each discovery response it believes to be evasive or incomplete and the reasons for each separately below.

A. Interrogatory #12: State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

Murray Sand responses that this request was unduly burdensome because Smoak's driving record is a public record.

This response by Murray Sand is evasive. The Interrogatory did not ask for Smoak's public record; rather, it was specifically tailored to discovery the knowledge Murray Sand had about Smoak's record both prior to and during his employment with Murray Sand. Plaintiff requests Murray Sand amend their answer to provide the information requested.

B. Interrogatory #15: State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

Murray Sand's response stated that it does not currently have an employee with the title of safety director.

This response by Murray Sand is evasive or incomplete. Defendant Smoak testified at this deposition that there was a safety director named Suzanne at the time of the collision. Ex. D, pg. 56, lns. 15–24; pg 57, lns. 2–21; pg. 88, ln 1. It is clear from this testimony that Murray Sand does have a safety director position. While this position may have been vacant the day Murray Sand answered these Interrogatories, this is still

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an evasive and incomplete answer. Plaintiff requests that Murray Sand supplement their response to provide the requested information regarding a safety director at the time of the collision.

C. **Interrogatory #20: State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.**

Murray Sand responded that "upon information and belief" they did not have any such logs or records. This response appears incomplete.

Defendant Smoak testified at his deposition that he had a recollection of the accident. Deposition of Smoak, Exhibit D, pg. 14, lns. 3–9. Defendant Smoak further testified that on the day of the accident he completed a "driving log", which he subsequently provided to Murray Sand. Ex. D pg 36, ln. 18 – pg. 37, ln. 15; pg. 42, lns. 8–14; pg. 44, ln. 16 – pg.46, ln. 1. Based upon the testimony of Smoak, Plaintiff requests Murray Sand supplement their response and provide a complete answer to this interrogatory.

D. **Request for Production #1: Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.**

Request for Production #34: A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

Murray Sand's response included only two photos that were arguably taken at the accident scene. It appears that this response is incomplete.

Defendant Smoak testified at this deposition that not only did he take pictures with a camera provided by Murray Sand that he subsequently turned this camera over to Murray Sand later in that same day. Ex D, pg. 98, ln 5–9. The Employee Handbook provided by Murray Sand states that it is their "post-accident policy" to require that drivers involved in accidents take pictures of not only the damage to the vehicles

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involved but also of the accident scene itself. Murray Sand did not provide any photographs of the accident scene nor did they specify if the two photographs in question were taken by Smoak with the camera provided by Murray Sand. Plaintiff requests that Murray Sand supplement this response to provide clarification on the identification issue and provide any other photographs in their possession.

E. Request for Production #3: Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

Murray Sand responded to this request by stating that "the answering Defendant" did not have any statements in its possession. Again, this response appears to be evasive or incomplete.

Defendant Smoak testified that he prepared written statements regarding this accident and that this/these statement(s) were given to Murray Sand. Ex. D, pg.14, ln. 13 – pg. 16, ln. 10. Not only does Smoak remember providing a written statement to Murray Sand, he remembers signing this/these statement(s). Ex. D, pg. 16, ln. 21 – pg. 17, ln. 2; pg. 57, lns. 15–21; pg. 87, lns. 3–24. Plaintiff requests Murray Sand supplement their response and provide the statement(s) given by Smoak to his employer at or around the time of the accident.

F. RPD 42: A copy of any and all accident reports prepared by your company or any other company or individual at your request. objection without privilege log.

Murray Sand responded to this request by asserting the attorney-client privilege and the work product doctrine were applicable to this request but did not provide a privilege log.

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Simply put, based on this objection, it is impossible to know what, if anything, is being withheld on the basis of privilege / work product. Plaintiff requests that Murray Sand remove all objections related to privilege or the work product doctrine from your responses to our interrogatories and requests for production unless you are actually withholding materials or other information on those bases.

If Murray Sand is withholding any materials or information on the basis of privilege or work product, please comply with Rule 26(b)(5)(A), S.C. Rules of Civil Procedure, and provide a privilege log setting forth:

a) The identity of all communications by stating the participants in the communication, the date of the communication, and the general subject matter;

b) The identity of all documents by setting forth the type of document (letter, memo, email, etc..); the general subject matter; the date of the document; and the author(s), addressee(s), and recipient(s);

c) The nature of the privilege / protection asserted; and

d) The detailed factual and legal basis for the claim of privilege.

G. Request for Production #48: All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

Request for Production #49: All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years:

Murray Sand responded to these requests by stating that it was not in possession of any drug or alcohol tests administered to the driver but reserved the right to supplement this response.

Defendant Smoak, however, testified several times during his deposition that he took a drug test the day of the accident. Ex. D, pg 45 ln 15–18; pg 87, lns. 10–22; pg

88, lns 1–3. Furthermore, the employee handbook produced by Murray Sand sets forth that all drivers for Murray Sand are required to submit to a drug and alcohol test anytime a "driver receives a citation for a moving violation arising from the accident. . .". Defendant Smoak received a citation for a moving violation for this accident.

Moreover, the employee handbook also states that all drivers must submit to a pre-employment drug test and random drug testing. Further, the handbook states that Murray Sand was required by "DOT regulations . . . to obtain certain drug and alcohol testing records from the driver's previous employers for the previous (2) years." As such, the testimony of Smoak and the evidence produced indicate that Smoak would have been required to submit to at least two drug tests through his employment and Murray Sand would have obtained testing records from his previous employer. Therefore, Plaintiff requests that Murray Sand supplement their response to include the records requested or set forth the reason why they do not have any records responsive to this request.

II. DEFENDANT SMOAK HAS YET TO RESPOND TO PLAINTIFF'S DISCOVERY REQUESTS

It is anticipated that Defendant Smoak will contend that he was not "properly" served with any discovery requests, and therefore, cannot be compelled to respond. Defendant Smoak and Murray Sand are represented by the same law firm. This law firm has not only filed an Answer and accepted service on behalf of both Defendants but has also provided a defense for Smoak at his deposition. *See* Ex. D, pg. 2. Murray Sand's discovery responses admit that he was an employee on the subject accident date. The discovery that was served on Murray Sand was not separately addressed to each Defendant but did request responses from each Defendant. Exhibit A. Counsel for Defendants was served with Plaintiff's discovery almost one year ago. As such,

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Plaintiff requests the Court issue an order compelling them to respond on behalf of their client, Defendant Smoak.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court issue an order compelling Defendants Murray Sand and Michael Smoke to provide complete responses to Plaintiff's discovery requests.

Florence, South Carolina

April 23, 2020

s/Alexander S. Hogsette

Alexander S. Hogsette, SC Bar No. 101244
E. Hood Temple, SC Bar No. 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com
ATTORNEYS FOR PLAINTIFF

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	CASE NO.: 2019-CP-43-01021
JUDY HASELDEN, Plaintiff, v. MICHAEL D. SMOAK and MURRAY SAND CO., INC., Defendants.	**DEFENDANT MURRAY SAND'S FIRST SUPPLEMENTAL ANSWERS TO PLAINTIFF'S INTERROGATORIES AND REQUESTS FOR PRODUCTION**

INTERROGATORIES

1. Is Defendant, Murray Sand Co., Inc., owned by or a subsidiary of another company? If so, state the full name, address and telephone number of such company?

ANSWER: No.

2. Is Defendant, Murray Sand Co., Inc., a common carrier, a contract carrier or a private carrier?

ANSWER: Murray Sand Co., Inc. is a common carrier.

3. Does, Defendant, Murray Sand Co., Inc., hold a certificate of authority, a license or a permit issued by the Department of Transportation or the Interstate Commerce Commission? If so, state which?

ANSWER: Yes. Murray Sand Co., Inc. holds a certificate of compliance (#4387) with the S.C. Department of Motor Vehicles.

4. State what type of authority, license or permit to engage in Interstate Commerce is held by Defendant, Murray Sand Co., Inc.

ANSWER: See this answering Defendant's response to interrogatory number 3 above.

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5. State the name, address and telephone number of the owner of the truck/tractor involved in the February 9, 2017, accident made subject of this litigation.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

6. Describe the truck/tractor involved in the February 9, 2017, accident by stating the year of manufacture, manufacturer, model and configuration.

ANSWER: 2007 Tk Kenworth T800.

7. State the name, address and telephone number of the owner of the trailer being pulled by the tractor involved in the accident of February 9, 2017.

ANSWER:

Murray Sand Co., Inc.
156 Checkerboard Road
Summerville, South Carolina 28483
Phone: 843.873.0416

8. State the year of manufacture, manufacturer, model and configuration of the trailer which was involved in the accident of February 9, 2017.

ANSWER: 2009 TRST DS2SD2 TL.

9. If Defendant, Murray Sand Co., Inc., was not the owner of the truck/tractor or trailer involved in the accident of February 9, 2017, state whether these vehicles were being operated by your company under lease and provide the name, address and telephone number of the lessor of each and state whether the lease was a permanent lease or a trip lease.

ANSWER: Not applicable. Murray Sand Co., Inc. owns the truck and trailer involved in the accident at the center of this dispute.

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10. State the name, address and telephone number of the driver of the truck/tractor trailer involved in the accident of February 9, 2017, and whether he is your regular employee. If so, state the date that employment began and whether he is still in your employ.

ANSWER:

Michael Daniel Smoak;
9147 Augusta Hwy, Smoaks, SC 29418 (former) – Mr. Smoak currently is an inmate in a federal correctional facility;
No current telephone number;
Michael Smoak is no longer employed by Murray Sand Co., Inc.

11. State whether you have retained a driver qualification file for the driver of the truck/tractor trailer involved in the accident of February 9, 2017. If so, list each of the documents in that file.

ANSWER: Yes. The driver qualification file includes an application for employment, CDL & Medical Card, certificate of compliance, addendum to employment application, record of road test, & E-Verify verification.

12. State whether Defendant, Murray Sand Co., Inc., has knowledge of any traffic violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

SUPPLEMENTAL ANSWER: Defendant objects to the interrogatory on grounds that is vague and ambiguous. To the extent this interrogatory seeks to learn what knowledge Murray Sand has about traffic violations Smoak committed while driving in the course and scope of his employment, Murray Sand states it verified with Smoak's prior employer, Three Gen, that he had not committed any traffic violations while driving in their employ. Please see previously produced inquiries to past employers. Other than the subject accident, Defendant is unaware of any driving violations Smoak committed while driving for Murray Sand. Any knowledge this answering Defendant had regarding Smoak's driving record prior to his employment with Murray Sand is included in the previously produced employment application and employee file.

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13. State whether Defendant, Murray Sand Co., Inc., has knowledge of any hours of service violations committed by the driver, either while in your employ or in previous employment and, if so, state what information you have in that regard.

ANSWER: This answering Defendant does not recall being made aware of any hours of service violations committed by the driver. This answering Defendant reserves the right to supplement this answer on a later date.

14. State whether any disciplinary action was taken either by Defendant, Murray Sand Co., Inc., or a company union against the driver as a result of his driving that resulted in the accident of February 9, 2017. If so, state whether any action was considered and whether his actions were reviewed by any persons.

ANSWER: To the best of this answering Defendant's knowledge, no disciplinary action was taken against the driver after the accident at the center of this dispute occurred. This answering Defendant reserves the right to supplement this response on a later date.

15. State whether Defendant, Murray Sand Co., Inc., has a safety director and, if so, state his name, full title, address and telephone number.

ANSWER: Defendant Murray Sand Co., Inc. does not have a safety director at this time.

SUPPLEMENTAL ANSWER: Defendant objects to this interrogatory on grounds that it is vague and ambiguous. To the extent this interrogatory seeks information about the company's safety director at the time of the accident, Murray Sand states that it did not employ anyone with the title "safety director". However, Heather Williams was employed at the time of the accident as an administrator. Her duties included record keeping, human resources, handling safety, and other clerical tasks. Upon current information and belief, her phone number is 843-609-7876. Her address is unknown at this time. Should this Defendant come to learn the address, it will be supplemented.

16. State whether Defendant, Murray Sand Co., Inc., has written driving standards and/or instructions for its drivers.

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ANSWER: Yes.

17. State the method by which compensation was determined for the payment of the driver and/or the lessor for the trip during which the accident of February 9, 2017, occurred.

ANSWER: The driver was paid a commission-based salary which is calculated based upon the total gross cost per load transported. Specifically, this driver was compensated with a monetary value equivalent to twenty-two percent (22%) of the gross cost of the load transported.

18. State the place of origin and place of destination of the truck/tractor involved in the accident.

ANSWER**:**
Place of Origin – Willow Oak Quarry, LLC in Kershaw County, South Carolina.
Destination – Crowder Construction Company in Edisto Beach, South Carolina.

19. State the exact time and date when the truck/tractor left its place of origin and the scheduled arrival time at the place of destination.

ANSWER: Upon information and belief, the truck tractor left its place of origin at 5:46 AM and 12:13 PM on February 9, 2017. The answering Defendant lacks sufficient knowledge to provide the scheduled time of arrival. See attached scale ticket for said information. This answering Defendant reserves the right to supplement this response on a later date.

20. State whether your company or any of its representatives or individuals under its control are in possession of the driver's logs for the trip.

ANSWER: Upon information and belief, no. Drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

SUPPLEMENTAL ANSWER: No. Drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

21. State whether Defendant, Murray Sand Co., Inc., is in possession of the bill of lading, freight bill and expense invoices generated during the course of the trip and also whether the

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truck/tractor trailer was transporting a load of cargo at the time of the accident of February 9, 2017.

ANSWER: Yes. Defendant Murray Sand Co., Inc is in possession of the records in question. Upon information and belief, the truck was transporting cargo at the time of the accident.

22. If No. 21 above is yes, describe as follows:

(a) describe the load;
(b) state the names, addresses and telephone numbers of the shippers
(c) state the names, addresses and telephone numbers of the consignees.

ANSWER:

(a) Class F Rip Rap
(b) Willow Oak Quarry, LLC - (803) 475-2328 – 168 Quarry Road, Kershaw, SC 29067
(c) Crowder Construction Co. – (800) 849-2966 - 6425 Brookshire Blvd. Charlotte, NC 28216

The remaining information requested will be supplemented on a later date.

23. State whether the trailer was loaded by the shipper or by the driver and, if by neither, then state by whom and their address and telephone number.

ANSWER: This answering Defendant believes that the trailer was loaded by the shipper. The answering Defendant reserves the right to supplement this response on a later date.

24. State whether the driver was required to secure the load by any means or devices.

ANSWER: The driver is required to deploy a mechanical tarp to cover the contents placed in the truck's bed or trailer to prevent loose material from becoming airborne.

25. State whether the truck/tractor and/or trailer underwent any repairs during the trip and, if so, state the nature of the repairs and the names, addresses and telephone numbers of the repair facilities.

ANSWER: Upon information and belief, this answering Defendant does not believe the truck and/or trailer underwent any repairs during the trip. This answering Defendant reserves the right to supplement this response on a later date.

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26. Does your company retain possession of repair and warranty invoices and bills covering the history of the truck/tractor and/or trailer involved in the accident of February 9, 2017? If not, state the name, address and telephone number of the individual or company who does.

ANSWER: Yes. Murray Sand Co., Inc. retains possession of repair invoices.

27. State whether the truck involved in the accident of February 9, 2017, has an on-board computer and, if so, identify all discs, computer tapes and other written materials generated by the use of the on-board computer during the trip.

ANSWER: The truck involved in the accident of February 9, 2017 does not have an on-board computer.

28. State whether these items are in the possession of Defendant, Murray Sand Co., Inc., or any individual, representative or company under your control or direction.

ANSWER: See response to interrogatory number 27.

29. Have you ever been notified by the driver of the truck in question of a conviction or suspension for violating a state or local law relating to motor vehicle traffic control in accordance with 49CFR383.31.

ANSWER: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waving the stated objection, this answering Defendant is not aware of any reported violations.

30. With regard to the accident of February 9, 2017, please state the following:

(a) Was a drug test administered to the truck driver within thirty-two (32) hours of the accident? **To the best of this answering Defendant's recollection – no.**
(b) Who administered the test? **N/A**
(c) What was the result? **N/A**
(d) Was an alcohol test administered to the truck driver after the accident? **To the best of this answering Defendant's recollection – no.**
(e) How long after? **N/A**

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(f) If not done within two (2) hours, what was the reason for the delay? **To the best of this answering Defendant's recollection, a test was not administered.**

ANSWER: See responses above.

SUPPLEMENTAL ANSWER: In addition to the above, Murray Sand states that it has no documentation to confirm whether a drug or alcohol test was administered following the subject accident. To the extent a test may have been administered, it likely would have been conducted by Lowcountry Drug Screening or Carolina Center for Occupational Health.

31. Do you know whether the truck driver has ever reported to duty while having an alcohol concentration of 0.04% or greater in contravention of 49CFR382.201.

ANSWER: Upon information and belief, no. The answering Defendant reserves the right to supplement this response on a later date.

32. Has the truck driver involved in the accident of February 9, 2017, ever refused to submit to the following:

(a) post-accident alcohol or controlled substances test required under 49CFR382.303;
(b) a random alcohol or controlled substance test required under 49CFR382.305;
(c) a reasonable suspicion alcohol or controlled substance test required under 49CFR382.307; or
(d) a follow-up alcohol or controlled substance test required under 49CFR382.3211.

ANSWER: To the best of its knowledge, this answering Defendant does not believe that the truck driver refused to submit to any of the testing scenarios outlined in subsections (a) through (d) above. This answering Defendant reserves the right to supplement this response on a later date.

33. Has the truck driver involved in the accident of February 9, 2017, ever been disqualified from driving a truck when in your employ? If so, when and under what circumstances?

ANSWER: No, not to the knowledge of this answering Defendant. This answering Defendant reserves the right to supplement this answer on a later date.

34. Has your company ever undergone an FHWA compliance review? If so, what was your rating?

ANSWER: To the best of this answering Defendant's knowledge, no. The answering Defendant reserves the right to supplement this response on a later date.

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35. Was a Certificate of Insurance filed with the Interstate Commerce Commission and/or the Public Utilities and/or Commerce Commission in the state in which the accident occurred?

ANSWER: Upon information and belief, yes. This is a requirement under the Certificate of Compliance issued by the South Carolina DMV described in interrogatory number 3. The answering Defendant reserves the right to supplement this response on a later date.

36. State whether your insurance policies contain the MCS-90 endorsement or the equivalent endorsement required under state law.

ANSWER: Yes.

37. State whether the truck/tractor trailer rig involved in the collision of February 9, 2017, was equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM? If so, state whether the system includes an accident reconstruction option which allows the last ten (10) minutes of recorded activity on the system to be store in a buffer memory and retrieved in the event of the accident.

ANSWER: The truck involved in this incident is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

38. State whether the truck/tractor trailer involved in the accident was equipped with the QUALCOMM OMNI TRAX SYSTEM or any other type of satellite tracking system. If so, list the records other type of satellite tracking system. If so, list the records in your possession of the tractor's activities which were generated by the QUALCOMM SYSTEM.

ANSWER: The truck involved in the accident was not equipped with the QUALCOMM OMNI TRAX SYSTEM.

39. If you contend that Defendant, Murray Sand Co., Inc., is not liable for the collision of February 9, 2017, state in exact details the reasons for that contention.

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ANSWER: Objection. This request seeks to discover the trial strategies and mental impressions of defense counsel. Subject to and without waiving the stated objection, see Answer.

40. Identify each person you expect to call as an expert witness at trial and with respect to each person, state:

(a) The name, current address and phone number;
(b) The subject matter on which the expert is expected to testify;
(c) The substance of the facts to which the expert is expected to testify;
(d) The substance of the opinions to which the expert is expected to testify;
(e) A summary of the grounds for each opinion;
(f) The expert's professional title and qualifications;
(g) A list of all publications to which the expert has contributed which relate in any way to the subject area, facts or opinions to which the expert is expected to testify at trial;
(h) Identify each expert, by name, address and phone number, that has been retained, consulted with or specifically employed in anticipation of this action or in preparation for trial;
(i) Identify each and every occasion where said expert has been retained, consulted with or specifically employed by this defendant, its attorneys or insurance carrier in other matters for the period of the last five years.
(j) State the expert's compensation rate in U.S. dollars for any work performed in anticipation of this action or in preparation for trial.

ANSWER: Objection. This interrogatory seeks to obtain information protected by the work product doctrine and/or the attorney client privilege. Subject to and without waiving the stated objection: The Defendant does not yet know who, if anyone, will be consulted or called to testify as an expert witness at the trial of this matter. If and when any such experts are identified, this response will be supplemented in accordance with the South Carolina Rules of Civil Procedure and any applicable scheduling order.

41. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: Not Applicable. The Defendant is properly identified.

42. What social media sites do you belong to? (i.e. Facebook, MySpace, etc.) Please state the media site, your user name, and the URL (web address) of your homepage.

ANSWER: This answering Defendant does not belong to any social media websites.

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43. Please list all e-mail accounts that you use or have used since the date of the accident.

ANSWER: dispatch@murraysand.com and bjones@murraysand.com. The answering Defendant reserves the right to supplement this response on a later date.

SUPPLEMENTAL ANSWER: In addition the previously listed e-mail addresses, Arthur@MurraySand.com.

44. Please state all websites that you have commented on since the date of the accident. Please state the website and the URL (web address).

ANSWER: None.

REQUESTS TO PRODUCE

1. Any and all photographs taken by the Defendant, any police officials, any investigators, any adjusters, or any individuals, which photographs relate in any manner to the allegations in the Complaint or any defenses of the Defendant.

RESPONSE: See attached photos.

SUPPLEMENTAL RESPONSE: All photographs in Murray Sand's possession have been produced. Upon information and belief, the photographs provided were taken by Defendant Smoak on the accident scene. Should any additional information become known or more photographs discovered, they will be supplemented.

2. Produce a copy of your ten-year driving record or, in the alternative, a color copy of your Driver's License.

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report. Subject to and without waiving the stated objection, please see Defendant's Smoak's drivers license which contains his CDL.

3. Any and all statements, whether written, oral or transcribed, of any individual which relate in any manner to the allegations of the Complaint and/or the defenses of the Defendant, whether said statements have been taken by the Plaintiff, any and all police officers, investigators, adjusters or any individuals acting on behalf of the Defendant.

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RESPONSE: This answering Defendant is not in possession of any recorded statements. The parties are expected to testify as to the facts and circumstances surrounding the incident.

SUPPLEMENTAL RESPONSE: Murray Sand is not in possession of any recorded statements. Should any additional information become known or statements discovered, they will be supplemented.

4. Any and all diagrams, sketches, drawings, prints, negatives and layouts that relate in any manner to the allegations of the Complaint, the defenses of the Defendant, and the accident scene.

RESPONSE: See attached police report.

5. Any and all reports, studies, analyses, or other documentation of any accident reconstructionist, investigator, adjuster, expert, consultant, independent contractor, or engineer that relate in any manner to the allegations of the Complaint or the defenses of the Defendant.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

6. Any and all insurance policies which may provide liability insurance coverage to any and all claims set forth in the Complaint.

RESPONSE: See attached insurance policy.

7. Any and all procedural manuals, directives, written memoranda or documents regarding store maintenance procedures pertaining to floors, common areas in the store and parking lots, and entrance ways into the store in effect on the date of Plaintiff's injury and the five-year period immediately preceding.

RESPONSE: Objection. This interrogatory is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

8. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: Any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

9. Please produce your individual Federal and State income tax returns with all schedules for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

10. Please produce any and all audited and/or unaudited annual and interim financial statements for the past five (5) years inclusive.

RESPONSE: See attached financial records. This answering Defendant reserves the right to supplement this response on a later date.

11. A copy of all tachometer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached tachometer records documented on maintenance reports.

12. A copy of all on-board computer records of the tractor involved in the collision of February 9, 2017.

RESPONSE: The tractor involved in the collision is not equipped with an on-board computer system.

13. A copy of all dispatch records related to the trip of the tractor and/or trailer involved in the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the dispatch records related to the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

14. A copy of all fax transmissions to any entity concerning the trip surrounding the collision of February 9, 2017.

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RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

15. A copy of all telephone records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

16. A copy of all mobile radio records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The Defendant is not in possession of any said records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

17. A copy of all pro-rate records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant lacks sufficient knowledge to ascertain what documents are sought in this request for production. The answering Defendant reserves the right to supplement this response on a later date.

18. A copy of all tow truck records concerning the trip surrounding the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any such documents.

19. A copy of the tractor license and the trailer license of the vehicles involved in the collision of February 9, 2017.

RESPONSE: See attached licenses plates for both tractor and trailer. This answering Defendant reserves the right to supplement this response at a later date.

20. A copy of all pickup and delivery records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

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RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

21. A copy of all trip summaries pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

22. A copy of all credit card receipts, toll tickets, fuel receipts, weight tickets, fuel tax records, state entry and departure records pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the requested records from the trip on February 9, 2017. Upon information and belief, drivers who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

23. A copy of the registration and title to the tractor involved in the collision of February 9, 2017.

RESPONSE: See attached registration and title to the tractor involved in the collision on February 9, 2017.

24. A copy of all expense sheets, all trailer interchange records, and bills of lading pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket. This answering Defendant reserves the right to supplement this response on a later date.

25. A copy of all manifests and weigh bills pertaining to the trip in which the tractor and/or trailer were engaged at the time of the collision of February 9, 2017.

RESPONSE: See attached scale ticket and trip summary.

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26. A copy of all rental contracts concerning the tractor involved in the collision of February 9, 2017.

RESPONSE: Objection. This request is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and is not reasonably limited in time or scope. Subject to and without waiving the stated objections: Defendant is not in possession of any such documents.

27. A copy of all the written response from each state agency contracted with reference to the driver's driving record (49CFR391.23).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

28. A copy of all written records with respect to each past employer who was contracted about the truck driver's qualifications.

RESPONSE: See attached inquiry to past employer(s).

29. A copy of the driver's qualification file (49CFR391.51).

RESPONSE: See attached CDL, Medical Card, Record of Road Test, and Certification of Compliance.

30. A copy of the driver's list of violations of motor vehicle traffic laws (49CFR391.27).

RESPONSE: Objection. Defendant objects on grounds that this request is unduly burdensome in light of the fact that the information sought is a matter of public record easily and equally accessible to Plaintiff using the information contained in the accident report.

31. A copy of the driver's personnel files.

RESPONSE: See attached employment application, addendum to employment application, and e-verification.

32. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017.

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RESPONSE: The answering Defendant is not in possession of any such records. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

33. A copy of any and all insurance policies, liability insurance policies, excess liability policies or any other insurance policies providing coverage to the truck and the trailer involved in the collision of February 9, 2017, even if the vehicles are not specifically designated therein.

RESPONSE: See response to request for production number 6.

34. A copy of all photographs of the accident scene, the tractor and/or trailer involved in the accident.

RESPONSE: See response to request for production number 1.

35. All records pertaining to annual reviews of the driver's record with him for each year of employment with your company (49CFR391.25).

RESPONSE: See attached annual review(s).

36. A copy of a certificate of road test pertaining to the driver of the tractor involved in the collision on February 9, 2017.

RESPONSE: See attached certificate of road test.

37. A copy of all National Transportation Safety Board's investigative reports involving the collision of February 9, 2017 (49CFR391.31(e)).

RESPONSE: See response to request number 32.

38. All copy of all out of service orders for the tractor involved in the collision of February 9, 2017, for the three (3) years prior to the accident.

RESPONSE: See attached service orders.

39. A copy of the driver's logs for the six (6) months prior to February 9, 2017.

RESPONSE: The answering Defendant is not in possession of the driver's logs for the six (6) months prior to the trip on February 9, 2017. Upon information and belief, drivers

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who use the short-haul, timecard exceptions are not required to keep records of duty status (RODS) or use ELDs (100 air-mile radius (short-haul) exception). This answering Defendant reserves the right to supplement this response on a later date.

40. A copy of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six (6) months prior to February 9, 2017.

RESPONSE: See attached maintenance records**.**

41. A copy of the accident register (49CFR391.3).

RESPONSE: See attached FR10.

42. A copy of any and all accident reports prepared by your company or any other company or individual at your request.

RESPONSE: Objection. This request seeks the production of documents that are protected by the attorney client privilege and the work product doctrine. Subject to and without waiving the stated objections: None.

SUPPLEMENTAL RESPONSE: Murray Sand states that it is not in possession of any accident report prepared by Defendant Smoak or any other employee. At this time, this Defendant cannot confirm or deny that an accident report was prepared by Defendant Smoak. Defendant reserves the right to supplement this response on a later date.

As to the above privilege objections, the language of the request is overly broad and therefore contemplates the production of all correspondence between counsel and representatives of Murray Sand reporting their knowledge of the incident, as well as any notes or lists regarding the same. These documents, prepared in anticipation of litigation and well after Plaintiff filed suit, are attorney-client and work product privileged and therefore are not subject to discovery.

45. A copy of all repair invoices during the period that the tractor has been operated in your behalf.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objection, see previously attached maintenance and service records.

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46. A copy of all permanent lease and trip lease contracts between you and the tractor and/or trailer owner and operator.

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objections, this answering Defendant is not in possession of any such documents.

47. A copy of all trip reports pertaining to the trip in which the tractor trailer was engaged on February 9, 2017.

RESPONSE: See attached trip summary. This answering Defendant reserves the right to supplement this response on a later date.

48. All documents containing the results of any drug or alcohol tests that were administered to the driver after the accident of February 9, 2017.

RESPONSE: The answering Defendant is not in possession of any drug or alcohol tests administered to the driver. The answering Defendant reserves the right to supplement this answer on a later date.

SUPPLENTAL RESPONSE: In addition to the above, Murray Sand states again that it has no documentation to confirm whether a drug or alcohol test was administered following the subject accident. To the extent a test may have been administered, it likely would have been conducted by Lowcountry Drug Screening or Carolina Center for Occupational Health. With this information, Plaintiff may subpoena the records.

Further answering, Murray Sand, in accordance with federal law, required drivers involved in accidents to submit to testing in limited scenarios: 1) where a fatality was involved, or 2) where the driver received a citation and any party required immediate treatment for an injury away from the accident scene or the vehicle incurred "disabling damage". Please see attached employee handbook and its supplements outlining the drug and alcohol policy in effect at the time of the subject accident. Based on the policy and federal law, Murray Sand was not required to test Mr. Smoak for drugs or alcohol. However, it is entirely possible a company representative chose to exercise the company's right to require Mr. Smoak to submit to testing. The answering Defendant reserves the right to supplement this answer on a later date.

49. All records of driver alcohol tests with a confirmed reading of 0.92 or greater, confirmed positive test results, documentation of refusals to take alcohol and/or drug tests, instrument

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calibration documentation, driver evaluation by a substance abuse professional and calendar year, summaries for the last five (5) years.

RESPONSE: The answering Defendant is not in possession of the requested documents.

SUPPLEMENTAL RESPONSE: In addition to the above, Murray Sand states again that it has no documentation for results of drug or alcohol tests administered to Defendant Smoak. To the extent a test may have been administered, it likely would have been conducted by Lowcountry Drug Screening or Carolina Center for Occupational Health. With this information, Plaintiff may subpoena the records.

This Defendant additionally refers Plaintiff to the previously produced inquiries to past employers and employee's file indicating an absence of drug or alcohol related problems and a positive annual review.

50. A copy of all company manuals covering truck safety, maintenance, fleet safety programs and driver's standards.

RESPONSE: See attached employee handbook.

SUPPLEMENTAL RESPONSE: In addition to the previously produced handbook, please see attached prior version and supplements.

51. A copy of all records generated by on-board recording devices with which the tractor was equipped as of February 9, 2017.

RESPONSE: See response to request for production 12.

52. A copy of all records generated through the use of the QUALCOMM OMNI TRAX SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the QUALCOMM OMNI TRAX SYSTEM.

53. A copy of all records generated through the use of the EATON VORAD COLLISION AVOIDANEC SYSTEM with which the tractor was equipped at the time of the accident.

RESPONSE: The answering Defendant is not in possession of any such records. The tractor involved in the collision is not equipped with the EATON VORAD COLLISION AVOIDANCE SYSTEM.

54. Any and all copies of records subpoenaed by the Defendant pursuant to Rule 45.

RESPONSE: See response to request number 8.

55. Copy of Defendant's cell phone records for the month preceding the accident and one month after the accident.

RESPONSE: The answering Defendant is not in possession of any such records at this time. However, any documents which may be subpoenaed will be provided to counsel upon receipt of the payment of costs or can be viewed at the undersigned office.

56. Please permit counsel for Plaintiff to access, inspect, and copy all of Defendants' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Defendants. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, emails, photographs, and other material contained in the accounts or profiles so identified. (Please Note: No written material, information, correspondence, writings, internet posts, updates, emails, photographs, etc., should be deleted from any account or profile identified by Defendants without prior written consent from counsel for the Plaintiff. All accounts, websites, and profiles should be preserved in their present condition. Failure to preserve all such information and records may constitute spoliation of evidence.)

RESPONSE: Objection. This interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and not reasonably limited in time or scope. Subject to and without waiving the stated objection, the answering Defendant does not maintain accounts to any social networking websites, internet groups, forums, organizations, or other entities. See this answering Defendant's answers to interrogatories numbered 42 and 44.

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THIS THE 30TH DAY OF APRIL, 2020.

s/Jeffrey T. Ammons
S.C. Bar No.: 12419
Sarah Rand- McDaniel
S.C. Bar No.: 101340
Attorneys for the Defendants
WALKER, ALLEN, GRICE, AMMONS, FOY & KLICK, L.L.P.
Post Office Box 1068
Mount Pleasant, SC 29465
854-529-0595 (phone)
843-637-3463 (fax)
jeff@walkerallenlaw.com
sarah@walkerallenlaw.com

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, DEFENDANT MURRAY SAND CO., INC.'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUESTS TO ADMIT, AND DEFENDANT SMOAK'S RESPONSES TO PLAINTIFF'S INTERROGATIRES AND REQUEST FOR PRODUCTION OF DOCUMENTS was served upon all counsel of Record:

☒ as an attachment to an electronic correspondence

☒ by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope

☐ via facsimile, or

☐ by hand delivery

addressed as follows:

E. HOOD TEMPLE
ALEC HOGSETTE
HATFIELD TEMPLE, LLP
170 COURTHOUSE SQUARE
PO BOX 1770
FLORENCE, SC 29503
PHONE: (843) 662-5000
EHTEMPLE@HTLAWSC.COM
ASHOGSETTE@HTLAWSC.COM

THIS THE 30TH DAY OF APRIL, 2020.

s/Sarah Rand- McDaniel

HATFIELD TEMPLE LLP
ATTORNEYS

WILLIAM P. HATFIELD*
E. HOOD TEMPLE
ALEXANDER S. HOGSETTE
*Board Certified Civil Trial Specialist by the Nation Board of Trial Advocacy

170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
Telephone: (843) 662-5000
Fax: (843) 678-9273

Web: www.htlawsc.com

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April 30, 2020

Mr. Jeffrey T. Ammons
Walker Allen Grice Ammons & Foy, LLP
Post Office Box 1068
Mount Pleasant, SC 29465

Re: Judy Haselden vs. Micheal D. Smoak & Murray Sand Co., Inc.
C/A # 2019-CP-43-01021
Our File # 2017017 T

Dear Mr. Ammons:

Enclosed you will find a copy of the Plaintiff's Fist Supplemental Interrogatories to Defendant Murray Sand Co., Inc. and Plaintiff's First Supplemental Requests for Production of Documents to Defendant Murray Sand Co., Inc. dated April 30, 2020 in the above captioned matter. Also enclosed is an applicable Certificate of Mailing.

With kindest regards, I am

Yours very truly,

E. HOOD TEMPLE

EHT:tls
Enclosures
cc: Mrs. Judy Ann Haselden

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, Vs. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **CERTIFICATE OF MAILING**

The undersigned, a Paralegal for Hatfield Temple, LLP, attorneys for the Plaintiff, does hereby certify that she deposited in the United States Mail a copy of the Plaintiff's Fist Supplemental Interrogatories to Defendant Murray Sand Co., Inc. and Plaintiff's First Supplemental Requests for Production of Documents to Defendant Murray Sand Co., Inc. dated April 30, 2020, the same being addressed to those persons whose names and addresses appear below, this being done on April 30, 2020, and that sufficient postage was affixed thereto:

Mr. Jeffrey T. Ammons
Walker Allen Grice Ammons & Foy, LLP
Post Office Box 1068
Mount Pleasant, SC 29465

Florence, SC

April 30, 2020

Terra L. Stokes
TERRA L. STOKES

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S FIRST SUPPLEMENTAL INTERROGATORIES TO DEFENDANT MURRAY SAND CO., INC.**

TO: THE DEFENDANT MURRAY SAND CO., INC. AND ITS ATTORNEYS:

The Plaintiff submits the following supplemental Interrogatories pursuant to Rules 26, 33 and 37 of the South Carolina Rules of Civil Procedure:

GENERAL INSTRUCTIONS

1. All information is to be divulged which is in the possession of the individual or corporate party, your attorney, investigators, agents, employees, or other representatives of the named party and your attorney.

2. These interrogatories are intended as continuing interrogatories, requiring you to answer by supplemental answer, setting forth any information within the scope of the interrogatories as may be acquired by you, your agents, attorneys, or representatives following your original answers.

DEFINITIONS

1. The term "document" shall mean the original or drafts of any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, and all copies thereof which are different in any way from the original, and including, without limitation, any paper, book, account, photograph, agreement, contract, correspondence, memorandum, advertising material, letters, telegrams, objects, reports, records, transcripts, studies, notes, notations, working papers, intra-office communication, charts, minutes, index sheets, deeds of trust, notes, partnership agreements, certificates of limited partnership, computer software, check, check stubs, plans, specifications, delivery ticket, invoice, and other writings and papers of every kind nature, recordings of telephone or other conversations, or of interviews, or of

conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, to which you have or have had access or of which you have knowledge.

2. The term "concerning" shall mean referred to, alluded to, related to, connected with, commencing on, in respect of, about, regarding, discussing, showing, describing, in support of, in substitution of, reflecting, and analyzing.

3. The terms "identify," "identification," or "identity" shall have the following meanings:

   (a) When used in reference to a natural person, it means to state the person's full name, title, employer, and job description, if applicable, and the person's residence and business address, or if the present addresses are unknown, the last known residence and business address;

   (b) When used in reference to a corporation, it means to state the full name, its date of incorporation, and the address of its principal office;

   (c) When used in reference to an unincorporated association or any other business entity, it means to state the full name of the entity and the address of its principal office;

   (d) When used in reference to a document, it means to state the name, business address, and business affiliation of each person who made or signed the document; the name, business address, and business affiliation of each person to whom the document was addressed or sent; the date of the document; and a concise statement of the subject of the document.

4. The term "person" includes all natural persons, all partnerships and joint ventures, all corporate organizations, all private and governmental organizations, associations, and trusts, and the representatives of any such organizations.

5. The terms "and" and "or" shall be both conjunctive and disjunctive.

6. The term "incident" shall mean the incident described in the plaintiff's complaint.

7. The term "You" and any synonym thereof, whether singular or plural, is intended to and shall embrace and include for defendant, all agents, servants, employees, representatives, and others who are in possession of or may have obtained information for or on behalf of defendant, and shall include all present and former subsidiaries, divisions, including any of its affiliates, and/or predecessor entities.

8. "Electronic Data" includes, but is not limited to, originals and all copies of electronic mail ("e-mail"); activity listings of electronic mail receipts and/or transmittals; voice-mail; audio or video recordings of any kind; computer programs (whether private, commercial or a work-in-progress); programming notes or instructions; output

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resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines; operating systems, source code of all types; PIP file, batch files, ASII files; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file or file fragment. Electronic data includes any and all information stored in hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds and computer chips (including but not limited to EPROM, PROM, RAM, and ROM). Electronic data also includes the file, folder tabs, containers or labels appended to any storage device containing electronic data.

SUPPLEMENTAL INTERROGATORIES

1. Describe in detail any and all policies and procedures that Defendant had in force and effect at the time during the period beginning three (3) years prior to February 9, 2017, to the present, to inspect, repair, maintain, or otherwise monitor the condition of tractor trailers, tractor trailer cabs, or vehicles owned by Defendant.

2. Identify by full name, current address, phone number, job title, and current place of employment for any person(s) who had primary overall responsibility for the following during the period beginning three (3) years prior to February 9, 2017, to the present:

(a) Operational safety of vehicles;

(b) Driver training;

(c) Safety Director;

(d) Mechanical condition of vehicles owned by Defendant;

(e) Enforcement of the policies and procedures identified in response to the preceding interrogatory.

3. Identify by full name, current address, phone number, and job title of any insurance loss control expert who has inspected your operations.

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4. As to both the tractor and trailer involved in the subject wreck, which your driver, Defendant Smoak was operating, state:

(a) Manufacturer, make, model number and year of manufacture of the tractor;

(b) Manufacturer, make, model number and year of manufacture of the engine;

(c) Trailer's length and width thereof at the longest and widest portions, respectively;

(d) The weight of the trailer when empty, its carrying capacity, and the gross vehicle weight; and

(e) The combination weight rating of the tractor-trailer at the time of the subject wreck.

5. Set forth the number of times in the period beginning three (3) years prior to February 9, 2017, and up to February 9, 2017, that an employee or third party inspected the brakes for the tractor-trailer involved in the subject wreck. For each, state the persons name, job title, reason for inspection, any repairs or replacements that were performed as a result of the inspection.

6. Set forth the manufacturer, model number, installation date, and any inspection date(s), for the brakes installed on the subject tractor-trailer on February 9, 2017.

7. Set forth the manufacturer, model number, installation date, any inspection(s) date(s), and number of total miles for each of the tires equipped on the subject tractor trailer on February 9, 2017.

These Interrogatories shall be deemed continuing so as to require supplemental answers if the parties or any representative or counsel obtains further information between the time the answers are served and the time of trial.

Florence, SC

April 30, 2020

E. HOOD TEMPLE
SC Bar No. 12962
ALEXANDER S. HOGSETTE
SC Bar No. 101244
Attorneys for Plaintiff

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com

ELECTRONICALLY FILED - 2020 Jul 22 4:56 PM - SUMTER - COMMON PLEAS - CASE#2019CP4301021

STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Micheal D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S FIRST SUPPLEMENTAL REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT MURRAY SAND CO., INC.**

TO: THE DEFENDANT MURRAY SAND CO., INC. AND ITS ATTORNEYS:

YOU ARE HEREBY requested under the provisions of SCRCP 34 to produce and permit the plaintiff herein, or persons acting on their behalf, to inspect, measure, photograph and copy the documents and tangible things designated hereinafter. Unless otherwise noted or agreed to between counsel, the production, inspection, copying and all acts necessarily related thereto shall take place at the offices of the plaintiff's counsel, E. Hood Temple, 170 Courthouse Square, Florence, South Carolina, commencing at 10:00 a.m., and in thirty (30) days from date, and continue from day to day thereafter until said inspection, copying and related acts are completed.

NOTE: These requests shall be deemed continuing so as to require supplemental production pursuant to SCRCP 26(e).

PRIVILEGE

If any document is withheld under claim of privilege, furnish a list identifying each document for which the privilege is claimed, together with the following information: date, sender, recipient, subject matter of the document, the basis on which privilege is claimed, and the paragraph or paragraphs of this request to which the document responds.

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DOCUMENTS NO LONGER IN POSSESSION, CUSTODY OR CONTROL

If any document described in this request was, but no longer is in your possession, or subject to your custody or control, or in existence, state whether: (a) it is missing or lost; (b) it has been destroyed; or (c) it has been transferred, voluntarily or involuntarily, to others; or (d) it has been disposed otherwise. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing same, and the date(s) thereof. Identify each document by listing its author, his address, type, e.g. letter, memorandum, telegram, chart, photograph, etc.; date, subject matter, present location and custodian(s), and state whether the document (or copies) are still in existence.

COMPUTER RECORDS

In any case where documents or records requested by Plaintiff are not currently in existence in the form of "hard copy" or computer printout, but the raw data necessary for generating a request made by the Plaintiff indicate the following: (a) who is in possession of the computer tape or disk; (b) whether a program currently exists for generating the information in the form requested by Plaintiff; and (c) what person or persons within Defendant's organization has the present ability to write a program to retrieve the requested information.

DEFINITIONS

1. A document that "relates to" or "concerns" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

2. When used in these requests, the term "Defendant", or "you" or "your" or any synonym thereof, whether singular or plural, is intended to and shall embrace and include counsel for defendant, all agents, servants, employees, representatives, and others who are in possession of or may have obtained information for or on behalf of Defendant, and shall include all present and former subsidiaries, divisions, affiliates, and predecessor entities.

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3. "Electronic Data" includes, but is not limited to, originals and all copies of electronic mail ("e-mail"); activity listings of electronic mail receipts and/or transmittals; voice-mail; audio or video recordings of any kind; computer programs (whether private, commercial or a work-in-progress); programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines; operating systems, source code of all types; PIP file, batch files, ASII files; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file or file fragment. Electronic data includes any and all information stored in hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds and computer chips (including but not limited to EPROM, PROM, RAM, and ROM). Electronic data also includes the file, folder tabs, containers or labels appended to any storage device containing electronic data.

ORDER OF DOCUMENTS TO BE PRODUCED

Plaintiff requests that Defendant segregate the requested documents by the request and subsection of each request set forth herein.

REQUESTS

1. Copies of the vehicle maintenance records for the commercial motor vehicle involved in the accident for the six months prior to the subject wreck.

2. A copy of each out of service report or violation concerning the tractor or trailer or any findings as to the condition of the tractor-trailer from the year prior to the collision through the day of the wreck, to include copies of any supplements, responses, or amendments to the same.

3. Produce all documents in your possession, or in the possession of your insurers, representatives, agents, or investigators, regarding any property damage to any vehicle, the contents of any vehicle, any stationary object, or any other real or personal property damage resulting from the incident complained of, including but not limited to repair estimates, appraisals, purchase invoices, repair bills, and checks or drafts reflecting payment for repair or replacement, and any other documents concerning or establishing the value of any item of

property before or after the incident complained of.

4. Produce any documents given to any person or entity, including any insurance company in return for payment in whole or in part for property damage, e.g., loan receipt*(s)*, release*(s)*, assignment*(s)*, etc.

5. Produce all the Driver Vehicle Inspection Reports (DVIR) from the week after the collision, the day of the collision, and the six months prior to the collision.

6. Copies of all e-mails, electronic correspondence, or text messages between any of the Defendant's agents, servants, and employees and Defendant Smoak for the period beginning the seven days prior to the wreck and ending three days after the wreck.

7. Produce all pre-trip inspection reports for the trip in question and six months prior to the date of the collision for the tractor.

8. A copy of each memorandum, letter, document, e-mail, or report sent by Defendant, its agents, servants, or employees to any person or entity regarding the Plaintiff, the defendant driver, or the incident made the basis of this suit.

9. All documents, phone call logs, or correspondence reflecting complaints or criticisms of any kind received by you from any source, including your personnel, concerning your driver, your company's jobs, the operation of, or failure to repair or maintain any power unit or trailer.

10. Copies of the organizational charts and lists identifying the divisions and management structure for your company, from the year of the collision and three years prior.

11. Any and all documents consulted in preparation for answering Plaintiff's Supplemental Interrogatories.

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Florence, SC

April 30, 2020

E. HOOD TEMPLE
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SC Bar No. 101244
Attorneys for Plaintiff

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From: Alexander S. Hogsette
To: Sarah McDaniel
Cc: Jeff Ammons; Samantha Thomas; E. Hood Temple
Subject: RE: Haselden supplemental discovery
Date: Friday, May 15, 2020 11:57:29 AM

Sarah-

I appreciate you getting me the supplemental responses. It looks like most of the issues we had with the discovery responses have been resolved. There are two remaining items I would like to discuss with you. It really boils down to the privilege log issue. RPD #5 and #42 were both objected to, at least in part, through an assertion of attorney-client privilege/work product doctrine. However, no privilege log was attached. I believe #5 can be resolved by simply removing this objection from you response as it appears Defendants aren't in possession of any responsive documents. #42 may be different. The RPD asked for accident reports prepared by Murray Sand or a company or individual at their request. Simply put, based on these objections, it is impossible to know what, if anything, is being withheld on the basis of privilege / work product. We kindly ask that you remove all objections related to privilege or the work product doctrine from your responses to our interrogatories and requests for production unless you are actually withholding materials or other information on those bases.

If Defendant is withholding any materials or information on the basis of privilege or work product, please comply with Rule 26(b)(5)(A), S.C. Rules of Civil Procedure, and provide a privilege log setting forth:

a) The identity of all communications by stating the participants in the communication, the date of the communication, and the general subject matter;

b) The identity of all documents by setting forth the type of document (letter, memo, email, etc..); the general subject matter; the date of the document; and the author(s), addressee(s), and recipient(s);

c) The nature of the privilege / protection asserted; and

d) The detailed factual and legal basis for the claim of privilege.

Again, as we discussed on the phone, I suspect that the privilege log is going to satisfy my concerns. In order for me to do my due diligence though I must insist on receiving a privilege log so I can evaluate whether Defendant is withholding documents or evidence that is protected/confidential.

I hope we can avoid the hearing on this Motion to Compel.

Alec Hogsette

Attorney

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ATTORNEYS
Hatfield Temple, LLP
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170 Courthouse Square
Florence, SC 29503
Phone: (843) 662-5000
Fax: (843) 678-9273
Web: www.htlawsc.com

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From: Sarah McDaniel <sarah@walkerallenlaw.com>
Sent: Thursday, April 30, 2020 12:03 PM
To: Alexander S. Hogsette <ashogsette@htlawsc.com>
Cc: Jeff Ammons <jeff@walkerallenlaw.com>; Samantha Thomas <sam@walkerallenlaw.com>
Subject: Haseldon supplemental discovery
Importance: High

Alec,

Good talking to you yesterday. Attached are Murray Sand's Supplemental responses, Defendant Smoak's responses, and the Defendants' responses to the Requests for Admission.

Let me know if you will be withdrawing your motion.

Thanks!

Regards,

Sarah Rand-McDaniel
Attorney at Law

WALKER ALLEN
TRIAL ATTORNEYS
Walker, Allen, Grice, Ammons & Foy, LLP
880 Whipple Road, Suite 200
P.O. Box 1068
Mt. Pleasant, SC 29465

Phone: 854-529-0595 ext. 102
Fax: 843-657-3463

COVID-19 Statement. Some of our lawyers and staff are working remotely during the current time. Although phones and voicemail are operational, please reach out to us via email, if possible, and do not rely on phone contact, especially for more important or urgent matters. We are currently still sending and processing incoming mail; however, use of digital documentation and links for downloading larger documents is preferable to the extent possible to promote efficiency and allow quicker responses. Thanks, and take care.

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From:	Sarah McDaniel
To:	Alexander S. Hogsette
Cc:	Jeff Ammons; Samantha Thomas; E. Hood Temple
Subject:	RE: Haselden supplemental discovery
Date:	Tuesday, May 19, 2020 10:26:00 AM
Attachments:	Haseldon Privilege Log.pdf

Please see attached privilege log.

As previously indicated, there are no other discoverable documents in our possession at this time.

Regards,

Sarah McDaniel

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From: Sarah McDaniel
Sent: Tuesday, May 19, 2020 8:46 AM
To: Alexander S. Hogsette <ashogsette@htlawsc.com>
Cc: Jeff Ammons <jeff@walkerallenlaw.com>; Samantha Thomas <sam@walkerallenlaw.com>; E. Hood Temple <ehtemple@htlawsc.com>
Subject: Re: Haselden supplemental discovery

Alec,

We are working on completing our privilege log and will provide it shorty.

Regards,

Sarah McDaniel
Attorney at
Walker, Allen, Grice, Ammons, Foy & Klick, LLP
854-529-0595, ext. 102
843-302-2331

> On May 15, 2020, at 11:57 AM, Alexander S. Hogsette <ashogsette@htlawsc.com> wrote:
>
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Sarah Rand-McDaniel
Attorney at Law

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Privilege Log

The following represents an exhuastive list of documents currently in Defendants' possession which may be responsive to Plaintiff's discovery requests but are being withheld for a claim of privilege as described.

Document	Date of Creation	Description	Privilege(s) Invoked
Initial Referral Document	6/3/2019	Document identifying materials produced herein, analysis of suit, and defense litigation strategy	Work Product/Attorney Client
Attorney case summary	7/23/2019	Attorney notes	Work Product
Multiple letters to clients	beginning 6/03/2019	Communications with client	Work Product/Attorney Client
Multiple letters and e-mails to adjuster	beginning 6/03/2019	Attorney created letters discussing case	Work Product
Client communication notes	7/24/2019	Attorney created summaries of discussions with client	Work Product/Attorney Client
Invoices	beginning 2/21/2020	Billing entries and invoicing	Work Product
Expense Summary	10/3/2019	Summary of plaintiff's medical bills	Work Product
Medical Summary	2/11/2020	Summary of plaintiff's medical records	Work Product
Multiple e-mails with client Murray Sand	6/5/19 to present	Communications with client	Work Product/Attorney Client

GMC
CANYON SLE
7236KH
South Carolina
COLUMBIA, SC
JAN

2017017

ORIGINAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY

Page # 1 Of: 1

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)

Of Units: 02

Amended - Attach Copy of Original Report / Corrected

Notified: 1320 Arrived: 1352

2017518484

Date	Time of Collision	County	Collision Location (Rt. # / Name)	Miles:	Dir.	In (Near) City or Town of:
02-09-2017	1310	43	& 15 / S GUIGNARD DR	.14	N E (S) W	SUMTER

1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- PP

0- Main Line 1- Alternate 5- Spur 6- Connection 7- Business

Lane # / Dir.	Distance Offset	Direction	Base Intersection (Rt. # / Name)	GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS
# 1 Of 4 (S) W	.10 Miles Feet	(N) E S W	From 522 / KINGSBURY DR	Latitude 33 53 20.11
R.R. Id.	From: N E S W Ramp Only 1- Entrance 2- Exit To: N E S W	1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other	Toward 1937 / NEAL ST	Longitude 80 21 03.13

0- Main Line 1- Alternate 2- Alternate 5- Spur 6- Connection 7- Business 9- Other

Driver/Pedestrian's Full Name: HASELDEN JUDY ANN

R-048088

Unit #	Sex	Race	Street
01	F	W	5234 CHRISTINE DR

#Occ: 2 | Birth Date: [redacted] | City, State, & Zip: SUMTER SC 291509612

State	Driver's License #	Class	Insurance Company:
SC	1830352	D	OWNERS INSURANCE

Year	Body	Vehicle Make	VIN #
2008	PK	GMC	1GTCS13E088133374

State	Year	License Plate #	Owner's D.L. #
SC	2019	7236KH	1830352

Home Telephone: (803) 4649637 | Owner's Full Name: HASELDEN JUDY ANN

Bus. Telephone: ( ) | Street: 5234 CHRISTINE DR

Contributed To Collision: Yes (No) | City, State, & Zip: SUMTER SC 291509612

Estimated Speed	Speed Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg Info (see back): Yes (No)	Summons #	Code	Summons #	Code	Towed By	Yes (No)
0	45									

Driver/Pedestrian's Full Name: SMOAK MICHEAL DANIEL

R-048089

Unit #	Sex	Race	Street
02	M	B	9147 AUGUSTA HWY

#Occ: 1 | Birth Date: [redacted] | City, State, & Zip: SMOAKS SC 294816326

State	Driver's License #	Class	Insurance Company:
SC	8466666	A	HARLEYSVILLE OF OHIO

Year	Body	Vehicle Make	VIN #
2007	TK	KW	1XKDDU9X07J167433

State	Year	License Plate #	Owner's D.L. #
SC	2017	P770092	NONE

Home Telephone: (843) 5994126 | Owner's Full Name: MURRAY SAND

Bus. Telephone: ( ) | Street: 158 CHECKERBOARD ROAD

Contributed To Collision: (Yes) No | City, State, & Zip: SUMMERVILLE SC 29483

Estimated Speed	Speed Limit	C.D.L. Req: (Yes) No	T/B S Req: Yes (No)	Alc/Drg Info (see back): Yes (No)	Summons #	Code	Summons #	Code	Towed By	Yes (No)
10	45				0567940	21				

Driver/Pedestrian's Full Name:

Unit #	Sex	Race	Street

#Occ | Birth Date | City, State, & Zip

State	Driver's License #	Class	Insurance Company:

Year	Body	Vehicle Make	VIN #

State	Year	License Plate #	Owner's D.L. #

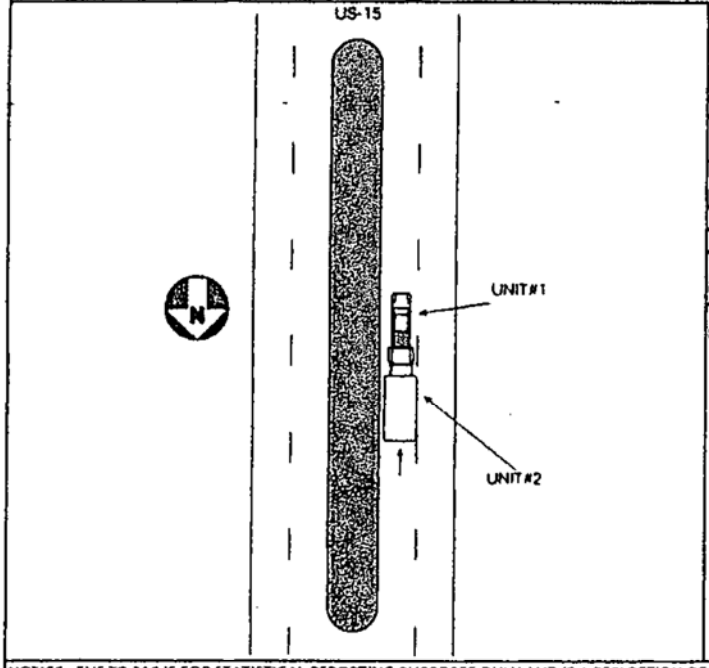
Home Telephone: ( ) | Owner's Full Name:

Bus. Telephone: ( ) | Street:

Contributed To Collision: Yes No | City, State, & Zip:

Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No	Summons #	Code	Summons #	Code	Towed By	Yes No

Dir. of Travel: Unit 1: N (S) E W | Unit 2: N (S) E W | Unit 3: N S E W



Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop.Dam. 1	Prop. Dam. 2
$ 700	$ 200	$	$	$

Property Owner/Witness:	Property Owner/Witness:
Address	Address
State Zip: Phone	State Zip: Phone

Photo: Y (N)

Describe What Happened (Refer to Units by Number)

UNIT#1 AND UNIT#2 WERE TRAVELING SOUTH ON US-15. UNIT#1 WAS STOPPED IN TRAFFIC. UNIT#2 WAS TRAVELING TOO FAST FOR CONDITIONS AND STRUCK UNIT#1 IN THE REAR.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
DICK - P.W.	LCPL	199	HP01	02-23-2017	S S McKenzie	Sgt	17BW027239

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2017518484

Unit:	Date of Birth	Sex:	Race	INJ:	Seat:	R/SD	A.B.D.	Eject	LAI:	Tran:	Name	Street Address			Zip Code
01	[redacted]	F	W	0	01	13	4 3	1	1	2	HASELDEN JUDY ANN	5234 CHRISTINE DR	SUMTER	SC	291509612
02	[redacted]	M	B	0	01	13	4 3	1	1	2	SMOAK MICHEAL DANIE	9147 AUGUSTA HWY	SMOAKS	SC	294816326
01	[redacted]	F	W	0	03	13	4 9	1	1	2					

Race: A - Asian/Pacific Islander; B - African American; H - Hispanic; I - Alaskan Native or American Indian; O - Other; U - Unk.; W - Caucasian

a) Injury Status: 0-Not Injured; 1-Possible Injury; 2-Non-incapacitating; 3-Incapacitating; 4-Fatal

Seating Loc.: 01 02 03 / 04 05 06 / 07 08 09; 20-Pedestrian; 30-Trailing Unit; 40-Bus or Van (4th row or Higher); 50-Other Enclosed Area (nontrailing); 51-Other Unenclosed Area (nontrailing); 60-Sleeper of Cab; 70-Riding on Unit Exterior; 80-Lap; 99-Unk./NA

Restraint/Safety Device: 00-None Used; 11-Shoulder belt; 12-Lap Belt Only; 13-Shoulder & Lap Belt; 21-Child Safety Seat; 88-Other; 99-Unk.

Air Bag Deployment / Switch: a) 1-Deployed Front; 2-Deployed Side; 3-Deployed Both; 4-Not Deployed; 7-Not Applicable; 9-Deployment Unk. b) 1-Switch in On Position; 2-Switch in Off Position; 3-No Switch; 9-Unknown

Ejection: 1-Not Ejected; 2-Part. Ejected; 3-Tot. Ejected; 7-Not App.; 9-Unk.

b) 2 or 3 Wheel Motorized Vehicle: Head Injury 1-Yes 2-No

Location After Impact: 1-Not Trapped; 2-Extricated (Mechanical Means); 3-Freed (non-mech.); 4-Not Applicable; 9-Unknown

a) Transported to Medical Facility: 1-Yes; 2-No; 3-Unknown

b) By: 1-EMS; 2-Police; 8-Other; 9-Unk.

Pedestrian, Motor/Pedalcycle Only: 31-Helmet; 41-Protective Pads; 51-Reflective Clothing; 61-Lighting

Sequence of Events

Event 1	Event 2	Event 3	Event 4	Most Harmful
1 22	1	1	1	1 22
2 23	2	2	2	2 23
3	3	3	3	3

1st Harmful: 23

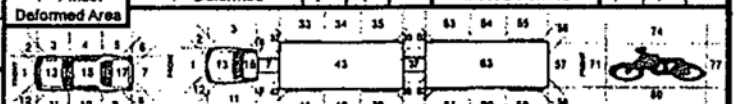
Non-Collision: 01-Cargo/Equip Loss or Shift; 02-Cross Median/Center; 03-Downhill Runaway; 04-Equipment Failure; 05-Fire/Explosion; 06-Immersion; 07-Jackknife; 08-Overturn/Rollover; 09-Ran off Road Left; 10-Ran off Road Right; 11-Separation of Units; 12-Spill (Non-Vehicular Veh.); 16-Other Non-collision; 19-Unk. Non-collision

Collison: Not Fixed: 20-Animal (Deer Only); 21-Animal (All Other); 22-Motor Veh. (In Transport); 23-Motor Veh. (Stopped); 24-Motor Veh. (Other Roadway); 25-Motor Veh. (Parked); 26-Pedalcycle; 27-Pedestrian; 28-Railway Veh.; 29-Work Zone Maint. Equip.; 30-Other Movable Object; 39-Unit, Movable Object

Collison: Fixed Object: 40-Bridge Overhead Structure; 41-Bridge Parapet End; 42-Bridge Pier or Abutment; 43-Bridge Rail; 44-Culvert; 45-Curb; 46-Ditch; 47-Embankment; 48-Equipment; 49-Fence; 50-Guardrail End; 51-Guardrail Face; 52-Highway Traffic Sign Post; 53-Impact Attenuator/Crash Cushion; 54-Light/Luminaire Support; 55-Mail Box; 56-Median Barrier; 57-Overhead Sign Support; 58-Other (Post, Pole, Support, Etc.); 59-Other (Wall, Building, Tunnel, Etc.); 66-Tree; 81-Utility Pole; 82-Work Zone Maint. Equipment; 89-Unk.

Manner of Collision (Struck Veh.): 1st Point of Collision; 00-Not Coll. w/ Motor Veh.; 10-Rear End; 20-Head On; 30-Rear-to-Rear; 41-Angle (↘|↙); 42-Angle (↦|↤); 43-Angle (↗|↖); 50-Sideswipe Same Dir.; 60-Sideswipe Opposite Dir.; 70-Backed Into; 99-Unknown

1st / Most Deformed Area: 1st Deformed 17 21 3; Most Deformed 17 21 3



21-Pedestrian; 81-None; 92-Rollover; 93-Total; 94-Under Carriage; 98-Other; 99-Unk.

Vehicle Type: 01-Automobile; 12-Pickup Truck; 13-Truck Tractor; 14-Other Truck; 15-Full Size Van; 16-Mini Van; 17-Sport Utility; 25-Motorcycle; 26-Other Motorbike; 27-Pedalcycle; 28-Animal Drawn Veh.; 39-Animal (Ridden); 41-Pedestrian; 61-Train; 62-Passenger Bus; 98-Other; 99-Unk. (Hit and Run Only)

Vehicle Use Code: 01-Personal; 02-Driver Training; 03-Construction/Maint.; 04-Ambulance; 05-Military; 06-Transport Passengers; 07-Transport Property; 08-Farm Use; 09-Wrecker or Tow; 10-Police; 11-Government; 12-Fire Fighting; 13-Logging; 18-Other; 41-Pedestrian

Vehicle Attachment: 1-None; 2-Mobile Home; 3-Semi-Trailer; 4-Utility Trailer; 5-Farm Trailer; 6-Trailer w/Boat; 7-Camper Trailer; 8-Towed Motor Vehicle; 9-Petroleum Tanker; A-Lowboy Trailer; B-Autocamer Trailer; C-Other Tanker; D-Flat Bed; E-Twin Trailers; F-Other

Action Prior to Impact: (Vehicle) 01-Backing; 02-Changing lanes; 03-Entering traffic lane; 04-Leaving traffic lane; 05-Making U-turn; 06-Movements Essentially Straight Ahead; 07-Overtaking/passing; 08-Parked; 09-Slowing or Stopped in traffic; 10-Turning left; 11-Turning right; (Non-motorist) 21-Approaching/Leaving Vehicle; 22-Entering/Crossing Location; 23-Playing/Working on Vehicle; 24-Pushing Vehicle; 25-Standing; 26-Walking, Playing, Cycling; 27-Working; 88-Other; 99-Unk.

Alcohol / Drug Test Given: 1-Given - Known Results; 2-Given - Unusable; 3-Given - Pending; 4-None; 5-Refused

Test Type: 1-Breath (Alc Only); 2-Blood; 3-Urine; 4-Serum; 8-Other

Drug Results: 1-Amphetamines; 2-Cocaine; 3-Marijuana; 4-Opiates; 5-PCP; 8-Other

Alc Test Results: A1- A2- A3-

Special Use Only

Underride/Override: 0-None/Minor; 1-Under-Compartment Intrusion; 2-Under-No Intrusion; 3-Under-Unknown; 4-Over-MV in Transport; 5-Over-Other Vehicle; 6-None; 9-Unk.

Extent of Deformity: 0-None/Minor; 1-Functional Damage; 2-Disabling Damage; 4-Severe/Totaled; 8-Not Applicable; 9-Unk.

Trafficway: 1-Two-way, Not Divided; 2-Two-way, Divided, Unprotected Median; 3-Two-way, Divided, Barrier; 4-One-Way; 8-Other

1st Harmful Event Loc.: A. 1-Gore; 2-Inland; 3-Median; 4-Roadside; 5-Roadway; 6-Shoulder; 7-Sidewalk; 8-Outside Trafficway; 9-Unk. B: X-walk; I-Y; 2-N; 8-U

Road Character: 1-Straight - Level; 2-Straight - On grade; 3-Straight - Hillcrest; 4-Curve - Level; 5-Curve - On grade; 6-Curve - Hillcrest

Road Surface Condition: 1-Dry; 2-Wet; 3-Snow; 4-Slush; 5-Ice; 6-Contaminate; 7-Water (Standing, etc.); 8-Other; 9-Unk.

Traffic Control Type: 01-Stop and Go Light; 02-Flashing Traffic Signal; 11-RR (X-bucks, Lights & Gates); 12-RR (X-bucks & Lights); 13-RR (X-bucks Only); 21-Officer or Flagman; 22-Oncoming Emergency Vehicle; 31-Pavement Markings (only); 41-Stop Sign; 42-School zone Sign; 43-Yield Sign; 44-Work Zone; 45-Other Warning Signs; 98-None; 99-Unk.

Weather Condition: 1-Clear (no adverse conditions); 2-Rain; 3-Cloudy; 4-Sleet, Hail; 5-Snow; 6-Fog, Smog, Smoke; 7-Blowing Sand, Oil, Dirt or Snow; 8-Severe Crosswinds; 9-Unk.

Light Condition: 1-Daylight; 2-Dawn; 3-Dusk; 4-Dark (Lighting Unspecified); 5-Dark (Street Lamp Lit); 6-Dark (Street Lamp Not Lit); 7-Dark (No lights)

1-Yes, Directly; 2-Yes, Indirectly; 3-No; 9-Unk.

School Bus Involved: 3

Work Zone: 1-Yes 2-No: 2

Work Zone Location:

Work Zone Type:

Workers Present: 1-Yes 2-No

Junction Type: 01-Crossover; 02-Driveway; 03-Five/More Points; 04-Four-way Intersection; 05-Railway Grade Crossing; 07-Shared Use Paths or Trail; 08-T-Intersection; 09-Traffic Circle; 12-Y-Intersection; 13-Nonjunction; 99-Unk.

1-Before 1st Sign; 2-Advanced Warning Area; 3-Transition Area; 4-Activity Area; 5-Termination Area

1-Shoulder/Median Work; 2-Lane Shift/Crossover; 3-Intermittent/Moving Work; 4-Lane Closure; 8-Other; 9-Unk.

Primary Contributing Factors

Primary: 03

Others:

Driver: 01-Disregarded Signs, Signals, Etc.; 02-Distracted/Inattention; 03-Driving Too Fast for Conditions; 04-Exceeded Authorized Speed Limit; 05-Failed to Yield Right of Way; 06-Ran off Road; 07-Fatigued/Asleep; 08-Followed Too Closely; 09-Made an Improper Turn; 10-Medical Related; 12-Aggressive Operation of Vehicle; 13-Over-correcting/Over-steering; 14-Swerving to Avoiding Object; 15-Wrong Side or Wrong Way; 16-Under the Influence; 17-Vision Obscured (Within Unit); 18-Improper lane Usage/Change; 19-Cell Phone; 20-Texting; 28-Other Improper Action; 29-Unk.

Roadway: 30-Debris; 31-Non-highway Work; 32-Obstruction in Roadway; 33-Road Surface Condition (i.e., Wet); 34-Rut, Holes, Bumps; 35-Shoulders (None, Low, Soft, High); 36-Traffic Control Device (i.e., Missing); 37-Work Zone (Const./Maint./Utility); 38-Worn, Travel-Polished Surface; 46-Other; 49-Unk.

Non-Motorist: 50-Inattentive; 51-Lying &/or Illegally in Roadway; 52-Failure to Yield R. of W.; 53-Not Visible (Dark Clothing); 54-Disregard Signs, Signals, Etc.; 55-Improper Crossing; 56-Darting; 57-Wrong Side of Road; 58-Other; 59-Unk.; 65-Under the Influence; 67-Other Person Under Influence

Environmental: 60-Animal in Road; 61-Glare; 62-Obstruction; 63-Weather Cond.; 68-Other; 69-Unk.

Vehicle Defect: 70-Brakes; 71-Steering; 72-Power Plant; 73-Tires/Wheel; 74-Lights; 75-Signals; 76-Windows/Shield; 77-Restraint System; 78-Truck Coupling; 79-Cargo; 80-Fuel System; 88-Other; 89-Unk.

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STATE OF SOUTH CAROLINA **COUNTY OF SUMTER** Judy Haselden, Plaintiff, v. Michael D. Smoak and Murray Sand Co., Inc., Defendants.	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT** **C/A # 2019-CP-43-01021** **PLAINTIFF'S MEMORANDUM IN SUPPORT OF OPPOSTION TO TO STAY DISCOVERY / PROTECTIVE ORDER**

TO: MR. JEFFREY T. AMMONS, ATTORNEY FOR THE DEFENDANT:

Plaintiff Judy Haselden, by and through the undersigned, hereby responds in opposition to Defendant Murray Sand Co., Inc.'s (hereinafter, "Murray Sand") Memorandum in Support of Protective Order. Haselden requests the Court deny Murray Sand's Motion for the reasons stated herein and in her Response in Opposition, and in accordance with South Carolina law and arguments advanced at the hearing on this Motion.

BACKGROUND

On November 5, 2019, Plaintiff Haselden filed a Motion to Compel against Defendants Smoak and Murray Sand pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure. On January 23, 2020, two hundred thirty-four (234) days after being served with discovery requests, Defendant Murray Sand provided its first responses to written discovery. The hearing was set for March 3, 2020 but was postponed due to the Covid-19 outbreak.

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On April 23, 2020, Plaintiff filed a memorandum in support of her Motion to Compel. On April 30th – three hundred thirty-two (332) days after service – Defendant Smoak responded to discovery requests, Defendant Murry Sand supplemented its discovery responses, and Defendants filed their memorandum in opposition to Plaintiff's Motion to Compel. Defendants' did not provide a privilege log contemporaneously with their discovery responses as required by Rule 26, SCRCP.

On May 19th – approximately three (3) hours before the hearing on Plaintiff's Motion to Compel – Defendants' provided a privilege log. A hearing was held on Plaintiff's Motion to Compel via a web-conferencing service. The Honorable George McFaddin held his ruling in abeyance to consider the arguments advanced by the parties at the hearing.[1]

ARGUMENT

Defendant Murray Sand now argues that the "additional discovery demands are outside of the scope of discovery intended by the Rules of Civil Procedure and have been frivolously served for no other purpose than to harass Murray Sand." Defendant Murray Sand's Memorandum in Support, pg. 3. Specifically, Murray Sand "contends the barrage of voluminous and irrelevant discovery requests and deficiency notices is abusive and oppressive. The breadth of information sought by the discovery requests, and their timing, evidences the abusive nature of the discovery requests." *Id.* at pg. 4.

[1] On June 17, 2020, the Court notified the parties that "[a]fter extensive research, I find the motion to compel is granted." Proposed orders were prepared by the parties and submitted to the Court.

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As an initial matter, any complaints as to deficiency notices or the timing of discovery requests is without merit. Counsel's attempt to resolve discovery disputes prior to filing a motion to compel is required by Rule 11 of the South Carolina Rules of Civil Procedure. All attempts by the parties to resolve discovery issues without involving the court should be applauded, not condemned.

The timing of additional discovery requests is of Murray Sand's own creation. Haselden has provided extensions and given Murray Sand ample time to respond to her discovery requests. Indeed, Haselden did not file her motion to compel until the responses were four months overdue. Even then, it was not until after the second Notice of Motions Roster publication that Murray Sand even responded to discovery.[2] As for the "untimeliness" of Haselden's supplemental discovery requests, they were served April 30th, the day Murray Sand supplemented their discovery responses.

Defendant also contends additionally discovery "amounts to no more than a fishing expedition" because the accident was "relatively minor" and the "injuries typical of trucking accidents were not present." *Id.* at pg. 5. Plaintiff respectfully disagrees that her pain, bilateral radiculopathy, and lumbar laminectomy surgery can be described as "relatively minor" or atypical for a rear-end collision between a 90,000 lb. tractor-trailer and a small-sized pick-up truck. The medical bills alone, which were provided to Defendant Murray Sand in September of 2019, are in excess of Ninety-Four Thousand ($94,000) Dollars. Notably, Murray Sand's arguments in

[2] As previously discussed, current counsel for Murray Sand did not file a notice of appearance until February 4, 2020, which was after Murray Sand's first discover responses were served.

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support of its Motion that these discovery requests amount to a "fishing expedition" in a vicarious liability claim come over a month after Haselden filed a Motion to Amend her Complaint to add additional causes of action against Murry Sand.

Second, Defendant's Motion is insufficient as a matter of law because it fails to set forth a particularized harm as required under Rule 26(e). Rule 26(e); *Hollman v. Woolfson*, 384 S.C. 571, 578, 683 Se.2d 495, 498 (2009). Instead, Murray Sand claims that the supplemental discovery in this case is oppressive, abusive, painstaking, and will require "a multitude of additional hours" to complete. Defendant's Memorandum in Support, pg. 5. However, as noted in the case cited by Defendant, "the [discovery] Rules often allow extensive intrusion into the affairs of both litigants and third parties." *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 240, 439 S.E.2d 852 (1994) (citing *Seattle Times Co. v. Rheinehardt*, 467 U.S. 20, 30, 104 S.Ct. 2199, 2206 (1984)). Defendant has not satisfied their burden under Rule 26(e) by claiming that responding to discovery requests is tedious or will take hours to complete.

As such, Plaintiff requests that the Court permit her to continue discovery in this matter because the discovery requests are germane to the claims set forth in her Complaint and defenses raised in the Answers. As previously raised, Defendant Smoak unequivocally testified that he provided written statements, completed a post-accident interview with a safety director named Suzanne, and submitted to a blood and urine test. Despite all of this, Murray Sand has not identified an employee by the name of Suzanne and submits that while Smoak may have

provided vital evidence, like statements and drug tests, they don't have any of those records. Notably, Murray Sand does not deny that Defendant Smoak provided statements or submitted to a drug test following this accident or that the evidence exists; rather, their response at the hearing indicated a third-party may have that information.

It is axiomatic that in a tractor-trailer vs. car accident evidence regarding maintenance records, identification of employees, truck and trailer parts, property damage, and trucking company records are relevant and necessary. Indeed, Murray Sand has asserted the defense of comparative negligence and denied a recent Request for Admission that Haselden was not at fault for stopping for a traffic light. A plaintiff bringing a claim of negligence and defending against an assertion that she was negligent must be permitted to make reasonable inquiries into pre- and post-accident records and any evidence that the trucking company possesses or was required to maintain in accordance with Federal Motor Carrier Safety Act, 49 C.F.R. §§300 – 399.

Finally, even assuming Plaintiff has served more than fifty (50) interrogatories upon Defendant and this objection has not been waived, Plaintiff requests the Court permit her to conduct additional discovery in this matter. Since the outset of litigation, Plaintiff's attempts to conduct discovery have been met with delay and remarkably inconsistent positions from an employer and employee. Plaintiff has been forced to involve the Court to get complete responses from Defendant Murray Sand and any responses from Defendant Smoak. The

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supplemental interrogatories directed at Murry Sand involve requests for information regarding pre-trip inspections, the tractor-trailer's brakes, maintenance records, and to identify key employees within the company. It cannot be gainsaid that these issues are irrelevant when a trucking company's employee wrecks a company tractor-trailer into the back of a vehicle stopped for a traffic light.

CONCLUSION

Defendant Murray Sand's Motion for a Protective Order and Motion to Stay discovery should be denied. This Motion fails as a matter of law because these discovery requests are not abusive nor does Defendant Murray Sand set forth a particularized harm as required by Rule 26(e). Plaintiff Haselden is entitled to a full and fair opportunity to conduct discovery. The relevancy and necessity of this evidence is self-evident to the issues of this case and greatly outweigh any purported inconvenience to Defendant Murray Sand. As such, Plaintiff Haselden requests the Court deny Defendant Murray Sand's Motion for the reasons stated herein and in its previous response in opposition, South Carolina law, and for the reasons set forth at the hearing on Defendant's Motion.

[Signature page to follow]

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Florence, South Carolina

July 29, 2020

s/Alexander S. Hogsette

Alexander S. Hogsette, SC Bar No.: 101244
E. Hood Temple, SC Bar No.: 12962

HATFIELD TEMPLE, LLP
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000
ehtemple@htlawsc.com
ashogsette@htlawsc.com

SMITH ROBINSON HOLLER DUBOSE AND MORGAN, LLC

G. Murrell Smith, Jr., SC Bar No.: 66263
Post Office Box 580
Sumter, SC 29151-0580
Tel: (803) 778-2471
murrell@smithrobinsonlaw.com

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