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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-002478

Randle Jackson as the Personal Representative of the
Estate of Dashaun Simmons.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

MOTION TO DISMISS APPEAL
Date Certain Trial Set for January 26, 2026

This motion to dismiss is submitted by Respondent, pursuant to Rule 203(b), SCACR. Respondent respectfully submits the appeal is interlocutory, expressly non-final, and not immediately appealable. The appeal challenges the grant of summary judgment by the Honorable Daniel Coble as to some of South Carolina Department of Correction’s (“SCDC”) affirmative defenses.

The continued viability of the other defenses and the fact that this trial is number one on the docket and set to begin on January 26, 2026, confirms that the appeal is interlocutory in both form and effect. The events giving rise to this case transpired in 2017, and Respondent has been trying to get this case tried for years. The case has been set for a date certain twice before the date for which it is currently set to be tried, and Appellant has now filed an interlocutory appeal little

more than a month before trial is set to finally begin, as yet another form of delay.¹ Appellant should not be allowed to delay trial forever. Respondent respectfully requests that the appeal be dismissed so that this case may be tried on January 26, 2026, as scheduled.

STATEMENT OF FACTS

Dashaun Simmons was an inmate in the Marion Unit of the Broad River Correctional Institute in July of 2017. The unit was known for its dangerous conditions, and it has now been conclusively established that SCDC staff repeatedly violated policies designed to ensure inmate safety. On the evening of July 17, 2017, Marion Unit was under lockdown, and SCDC staff violated lockdown and inmate count procedures. It is uncontested that SCDC staff allowed dozens of inmates to roam the unit freely during lockdown, that SCDC placed a solo guard in the area where policy required two, and that an SCDC guard unlocked a cell door during lockdown, which enabled inmates roaming freely to enter that cell and stab Dashaun Simmons. It is also uncontested that Simmons remained in his cell injured for such a period of time that other inmates called Marion Unit's control room from illegal contraband phones, and that in spite of that, SCDC staff did not find Simmons and provide emergency care until almost 4:00 a.m. the next morning.

SCDC has had years to adduce evidence supporting its affirmative defenses. In multiple SCRCP 30(b)(6) depositions, SCDC's designated witnesses admitted to having no knowledge of the defenses or the facts underlying them. One witness admitted he did not know what the defense was and that he had never seen the answer. SCDC repeatedly violated discovery obligations, failing to produce relevant documents and knowledgeable witnesses despite multiple court orders. Efforts

¹ The case was continued after being set for a date certain September 11, 2024, due to Appellant's failure to provide information and documents which were repeatedly requested and which it had been ordered to produce. The case was then set as a back-up date certain for August 11, 2025 and was continued when the first case on the docket went forward.

to complete the SCRCP 30(b)(6) deposition included no less than seven attempts and multiple hearings/conferences with the court. SCDC has still not provided witnesses knowledgeable about all the topics, but at this point, Respondent wishes simply to try the case.

Respondent filed a motion for summary judgment or in the alternative to strike the answer for discovery misconduct. The court did not strike SCDC's answer, and instead granted summary judgment as to SCDC's affirmative defenses and as to gross negligence. The court also determined that the assault on Simmons was a foreseeable consequence of SCDC's gross negligence.

Trial has been delayed because of SCDC's refusal to follow discovery rules, refusal to produce documents germane to litigation, and refusal to follow the most basic rules of civil procedure. Now, on the eve of trial, with Respondent spending time and energy again preparing for a trial that seems as if it will never come, SCDC has filed an interlocutory appeal. For the following reasons, Respondent respectfully requests that SCDC's appeal be dismissed so this matter may proceed to trial.

I. SCDC's appeal is interlocutory and not immediately appealable.

Under South Carolina law, interlocutory orders are generally not appealable unless they meet specific exceptions outlined in *S.C. Code Ann.* § 14-3-330. An order is interlocutory if further action is required by the trial court to determine the rights of the parties. *Richardson v. Halcyon Real Estate Servs.*, 439 S.C. 419, 887 S.E.2d 153 (Ct. App. 2023).

Appellant appeals an order granting summary judgment only as to certain affirmative defenses, all of which are either legally impossible or for which SCDC has not adduced any evidence to support. The circuit court's Form 4 order expressly states that the order "does not end the case," and if this interlocutory appeal is dismissed, trial remains scheduled for January 26,

2026. Where a trial court expressly confirms that further proceedings are required, the order cannot be final for appellate purposes. *Mid-State Distribs.*, 310 S.C. 330, 332, 426 S.E.2d 777, 778 (1993).

The South Carolina Supreme Court in *Hagood v. Sommerville*, noted that “An order which does not finally end a case or prevent final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Id.*, 362 S.C. 191, 196, 607 S.E.2d 707, 710 (2005).

The circuit court’s order granting summary judgment on some of SCDC’s affirmative defenses and denying reconsideration does not resolve the entire case, prevent SCDC from defending the case, or prevent a final judgment. The order is a preliminary ruling that does not meet the statutory criteria for immediate appealability.

Even after entry of the order from which Appellant appeals, the case was not resolved and Appellant retained multiple affirmative defenses for trial. Specifically, the circuit court’s order did not dispose of Appellant’s defenses of fault apportionment, that necessary and indispensable parties were not joined, Appellant’s statutory right to apportionment of fault among other tortfeasors, or Appellant’s defense that punitive damages are not recoverable under the South Carolina Tort Claims Act.

The remaining defenses allow SCDC to defend the claims against it with the evidence actually adduced by the parties at trial. The order appealed from did not finally determine a cause of action, did not finally determine a defense within the meaning of *S.C. Code Ann.* § 14-3-330, and did not affect a substantial right by discontinuing the action or preventing judgment. The case will necessarily proceed to trial if this Court grants the motion to dismiss the appeal, and at the end of that trial, if SCDC wishes, it may file an appeal. It will work no prejudice on SCDC to try the case as scheduled because it will have the right to appeal after trial, and in fact, Respondent will

be prejudiced if the appeal goes forward because the case will be stayed and the trial delayed, yet again.

Our Supreme Court has held that, “[p]iecemeal appeals should be avoided, and most errors can be corrected by the remedy of a new trial.” *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E. 2d 707 (2005). Allowing this appeal to proceed would contravene the policy against piecemeal litigation and delay the resolution of the underlying claims.

II. The appeal is a tactic to delay the trial set for January 26, 2026.

SCDC has demonstrated a pattern of discovery abuse and noncompliance with court orders, which supports the conclusion that its appeal is a delay tactic. The conduct of SCDC in this case mirrors the misconduct condemned in *Innovative Waste*. In *Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC*, in which the South Carolina Supreme Court held that appellants waived appellate review of interlocutory discovery orders by engaging in a pattern of discovery abuse, including incomplete responses, delay tactics, failure to comply with court orders, and misrepresentations regarding compliance. *Id.*, 445 S.C. 19, 27–28, 911 S.E.2d 406, 410–11 (2025). The Court reaffirmed that when a party elects to feign compliance rather than properly preserve objections, appellate review is forfeited as a matter of law. *Id.*

In *Innovative Waste*, the appellants repeatedly provided partial, deficient, or unusable discovery, including document dumps without indexes, failure to answer interrogatories, and refusal to provide relevant financial information despite court orders. 445 S.C. at 22–26, 911 S.E.2d at 407–10. Here, SCDC likewise failed to provide substantive discovery supporting its own affirmative defenses, despite bearing the burden of proof on those defenses. SCDC had chance after chance to offer testimony at the SCRCP 30(b)(6) deposition to support its defenses, and it failed to do so, as shown by Respondent’s Memorandum in Support of Summary Judgment, attached as “Exhibit A”. As detailed in Exhibit A, SCDC repeatedly refused to articulate any

factual basis for its defenses, asserting instead that such information constituted attorney work product. (*See* Ex. A at 8–10.) The circuit court correctly rejected that position and ordered SCDC to comply.

Despite those rulings, SCDC produced SCRCP 30(b)(6) witnesses who admitted they had never read the Answer, did not know what defenses were pled, and could not identify “a single shred of evidence” supporting those defenses. (*See* Miller Dep. excerpts quoted Ex. A at 9–10.) As in *Innovative Waste*, this constitutes incomplete and evasive discovery, masquerading as compliance. In *Innovative Waste*, the Supreme Court emphasized that the appellants’ repeated failure to comply with motions to compel and discovery orders, despite assurances they would do so, demonstrated willfulness and bad faith. *Id.*, 445 S.C. at 25–28, 911 S.E.2d at 409–11.

SCDC has likewise failed to produce clearly discoverable materials despite multiple requests and court intervention, including control room logbooks required by SCDC policy to record incidents and inmate activity, shift lieutenant logbooks, identification of the inmate housed with Plaintiff at the time of the assault, and photographs of the crime scene that must exist under SCDC policy. SCDC’s misconduct is partially the reason summary judgment was granted because had SCDC followed discovery rules and court orders, perhaps it would have set forth some evidence for its affirmative defenses, if any exists. As it is, SCDC did not set forth that evidence and to this day has failed to produce certain pieces of evidence, such as the name of the person in the cell with Simmons when he was attacked (obviously a central witness) and portions of the logbook for the night in question. That conduct should not be rewarded with another delay of this trial.

A central holding of *Innovative Waste* is that appellate review is waived when a party “provid[es] incomplete responses and caus[es] delay through other tactics” rather than properly

preserving objections. 445 S.C. at 27–28, 911 S.E.2d at 410–11. That principle applies squarely here. This case has been pending since 2018, and trial has been set multiple times. Yet, on the eve of trial, SCDC still cannot identify evidence supporting its own defenses and has withheld basic discovery materials. (See Ex. A at 10–11, 20–21.) Just as in *Innovative Waste*, SCDC’s conduct reflects a deliberate strategy to delay resolution, rather than a good-faith effort to litigate the case on the merits.

The Supreme Court in *Innovative Waste* held that when a party chooses delay, partial compliance, and posturing over proper preservation, “time does eventually run out on bad behavior.” *Id.*, 445 S.C. at 22, 911 S.E.2d at 407. Here, SCDC did not preserve objections by refusing compliance and appealing from contempt. Instead, it feigned compliance, produced unprepared witnesses, withheld discoverable materials, and waited until trial was imminent to seek appellate intervention. The timing of the appeal further indicates an intent to delay. By filing the appeal shortly before the scheduled trial date, SCDC seeks to prolong the litigation process without a legitimate basis for immediate appellate review. This tactic not only wastes judicial resources, but also prejudices the Respondent by delaying the enforcement of the trial court’s rulings.

III. SCDC’s appeal lacks merit.

The trial court’s order was based on clear and uncontested evidence. The court found that SCDC’s actions constituted gross negligence and a failure to comply with safety policies. These findings were supported by the absence of any genuine issues of material fact, as SCDC failed to present sufficient evidence to dispute the claims. Under Rule 56 of the *South Carolina Rules of Civil Procedure*, the trial court was well within its authority to grant summary judgment.

SCDC’s motion for reconsideration was also properly denied. Such motions are not a vehicle for rearguing issues already decided or introducing evidence that could have been

presented earlier. *Baird v. Charleston Cty.*, 333 S.C. 519, 511 S.E.2d 69 (1999). The appeal does not introduce any new evidence or legal arguments that would alter the trial court's findings. Instead, it seeks to re-argue issues that have already been decided based on the evidence presented.

SCDC seemed to hang its hat on its assertion that the SCDC corrections officer on duty in Marion Unit at the time of the attack acted purposefully and acted outside his official duties. It is undisputed that the officer was working for SCDC when the attack happened, that he wore an SCDC uniform, that he used SCDC-issued keys to lock and unlock cell doors, and that he was working a shift when the attack took place. The circuit court found the gross negligence could be determined as a matter of law, and clearly *S.C. Code* § 15-78-60 (25) allows recovery where an SCDC employee is grossly negligent.

Because the gross negligence exception applies, it must be read into the other exceptions to the waiver of immunity, including *S.C. Code* 15-78-60 (17), the defense SCDC hangs its hat on. *Repko v. County of Georgetown*, 818 S.E.2d 743 (2018) (“When an exception that contains the gross negligence standard applies to a case, the gross negligence standard is read into any of the other applicable exceptions.”); *Chakrabarti v. City of Orangeburg* 403 S.C. 308, 319, 743 S.E.2d 109, 115 (Ct. App. 2013) see also, *Steinke v. S.C. Dep't of Lab., Licensing & Regul.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999) (“when a governmental entity asserts various exceptions to the waiver of immunity, is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard.”).

SCDC's appeal therefore has no merit, and in any event, SCDC can try to change this well-established case law by arguing against precedent after a verdict is returned, if the plaintiff wins.

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Respectfully submitted,

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their activities and movement highly restricted.”¹ During the times relevant to this action, Simmons was housed at the Marion unit within BRCI. The Marion unit is one of a handful of housing units at the BRCI facility, however Marion was known to be a particularly rough unit within the already high security BRCI prison. **Exhibit A**, Deposition of Brittney Livingston pp.19–20, 60.

During the times relevant to this action, BRCI was in a state of “lockdown” or increased security due to events SCDC refuses to disclose. **Exhibit B**, Deposition of Evan Garris at p.146. In fact, the Marion unit at BRCI was so dysfunctional at that time that it was constantly on lockdown for one reason or another. **Ex. B** at p.90. The unit is described as housing around 200 inmates on two separate sides. These two sides are separated by a locked sally-port and are not supposed to interact with each other. **Exhibit C**, Deposition of Matthew Kennedy at p.16. Even though the two sides of the units are not supposed to interact with each other, and even though this is a particularly dangerous unit within a maximum-security prison, and even though BRCI was in an institutional lockdown at the time relevant to this action, the prison staff had little control over the whereabouts of the prisoners. **Exhibit D**, Deposition of Holden Byrd at p.40 (“Q: How often do inmates end up in unassigned cells? How often do inmates end up in cells they’re not assigned to? . . . A: Happens more than I would like to have seen.”); **Ex. B** at p. 141 (“Q: Or why they allowed Simmons to be in a – a non-assigned dorm room. Do you know any of that? A: That was fairly common for the unit at that time. . . . they just kind of went to whichever cell they – they almost assigned themselves cells”) In fact, Police Services Investigator Evan Garris, who was

¹ Department of Corrections Ad Hoc Subcommittee, Feb. 21, 2019, p.7 available at <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/Facilities%20and%20Security%20Levels.pdf>.

assigned to investigate the stabbing at issue in this case admitted, “the inmates essentially ran that unit.” **Ex. B** at p.142. Investigator Garris went on to concede that this created a dangerous situation:

Q: Why did nobody every do anything about that?

A: I don’t know

Q: Should something have been done about that?

A: I would think it would be essential for the security of the institution for inmates to be in their assigned cells.

Ex. B at p.142.

On July 17, 2017 at 7:15 pm, Corrections Officer Anthony Hall began his shift at the Marion unit of Broad River Corrections institute. Officer Hall was relieving Officer Matthew Kennedy, who was the day shift officer that day. Ofc. Kennedy was working by himself in the dangerous Marion dorm and testified that he was responsible for locking down inmates in the evening for the evening shift change. **Ex. C** at p.17. Despite the fact that there was an institutional lockdown taking place, it seems that the inmates in Marion unit were permitted to be out of their cells during the daytime to roam about the unit. Ofc. Kennedy testified that on a typical night he would begin locking down the inmates around 6:00 or 6:30 in the evening. **Ex. C** at p.17.

SCDC policy requires that a level III institution, which includes BRCI, must conduct at least three “formal” counts per day, including one after the inmates are secured for lights out in the evening. **Exhibit E**, SCDC OP 22.06. As a “formal” count, this evening count requires a minimum of two officers to be present and independently confirm that all inmates are accounted for. The inmates are required to remain standing in their count area so that “accurate and current information on the number of inmates assigned to each institution, their names, SCDC numbers, housing assignments, **and bed assignments**” may be maintained. **Ex. E**. So it is obvious that one of the important purposes of doing these formal counts in the evening is to be certain the inmates are in their appropriate cells.

There can be no question that on the evening that Mr. Simmons was attacked, the count procedure described above—which is mandated by SCDC policy—was not followed and SCDC had no control over whether inmates were locked in their cells for the evening or any knowledge of which inmates were in which cells. See **Ex. E**. Ofc. Kennedy testified that normally he would attempt to get inmates into their correct rooms and identify them with their IDs and lock them in their rooms for the night. **Ex. C** at p.17. When the night shift officer relieving him arrives, both officers are required by SCDC policy to confirm the count and ensure the doors are all locked. **Ex. E**. The day shift officer can only leave once the doors are all locked and the count is confirmed. **Ex. C** at p.19. But on the night of July 17, 2017, Ofc. Kennedy testified that he witnessed the relief officer, Ofc. Anthony Hall, opening some of the doors. **Ex. C** pp.20-22; **Exhibit F**, Statement of Kennedy. He reported this to his shift Lieutenant, Clinton Parker, and the superior officer instructed Ofc. Kennedy to go home and that the superior officer would take care of it. **Ex. F**. So the day shift officer knew that all of the prisoners had not been locked down, did not complete the formal count as required, and simply went home for the day. He informed his supervisor of this fact, and his supervisors did not send anybody to the dorm to lock the inmates down. SCDC was on notice that doors were open and inmates were not locked down when the day shift officer left for the day and Ofc. Hall began the night shift.

Ofc. Kennedy's testimony and his voluntary statement to police services indicates that he witnessed the fact that there were unlocked doors in the Marion unit, that he informed his superior officers, and that he then left his post at the instruction of that officer without a completed count and with the knowledge that all cells had not been locked down. Irrespective of the reason *why* those cells were unlocked and the unit was not locked down, Ofc. Kennedy, Lt. Parker—and thus SCDC—were well aware that the unit had not been locked down and that no formal count had

been completed. So what did Lt. Parker do about it? During his deposition Lt. Clinton Parker denied ever having a conversation with Kennedy and denied knowing anything about it:

Q: It's my understanding, and it may be correct, that [Kennedy] said he reported that to Clinton Parker who I thought was the supervisor. Would you have had any reason for Matthew Kennedy, the Marion unit D1 officer, to tell you anything about [Anthony] Hall?

A: No

Q: Okay.

A: We never had a conversation

Exhibit G, Deposition of Clinton Parker at p.8. Notably, the duty roster for that day does show a Lieutenant Clinton Parker on duty during the D1 shift. **Exhibit H**, Duty Roster. Thus, the evidence in this case demonstrates that SCDC was on notice that the D1 shift officer in Marion unit had left his post without locking down all the doors and that nothing was done to address the situation. It was effectively chaos in the Marion unit, and SCDC chose to do nothing about it and leave the night shift officer to his own devices among the inmates.

The night shift officer, Ofc. Anthony Hall testified that when he arrived at Marion unit for his shift around 7:00 that evening, numerous inmates were already out of their cells. He elaborated that while it was commonplace for inmates to be out of their cells when he arrived for shift change, Kennedy would typically stay around until they were all locked up. However, this night Kennedy left the unit before the inmates were locked up and the count was completed. **Exhibit I**, Deposition of Anthony Hall at pp.23-24. Ofc. Hall was then alone in Marion unit attempting to corral the inmates into their cells using only basic commands and patience—he had no assistance from either Kennedy or any supervisor—so that the evening count can be completed and this was a recurring problem about which he had notified his supervisors and the Warden, yet received no assistance. **Ex. I** at p.110.

As the evening progress, the operations area within the prison started to receive phone calls from prisoners within the prison.² The shift supervisor for the D2 shift (the night shift when the incident occurred) testified that these calls started coming in a couple hours into his shift or around 10:00 pm. **Exhibit J**, Deposition of Ulysses Collins at pp.12-13. The callers told the operations desk that someone had been stabbed and was bleeding out and would not survive to see the morning if somebody did not get him medical attention. **Ex. A** at pp.29-30. The control room supervisor that evening, Brittney Livingston, places these calls at a later time in the evening, however there is much confusion over the precise timeline. Importantly, however, the timing of these calls could easily be confirmed through the operations logbook, which should have been provided in discovery and is required by policy to record matters such as this.³ However, this document has never been produced despite multiple discovery requests seeking its production.

The inmate calls “went on for about an hour or two hours into the shift”, so eventually, after receiving numerous calls informing him that an inmate had been stabbed and was bleeding to death in a cell somewhere in the prison, the shift supervisor, Lt. Ulysses Collins decided that he would look into things. **Ex. J** at p.12. According to his statement, Lt. Collins went to the Marion unit around 12:15 and found about 20 or 30 doors unlocked in the unit. **Exhibit K**, Statement of Collins. Again, it is unclear how the timeline unfolded, because at some point around 3:00-4:00

² Notably, these calls came from contraband cell phones possessed by prisoners, and the call came from units other than the Marion unit where the incident occurred. Thus, prisoners in a maximum security prison that is on lockdown who are locked in cells in an entirely separate building know more about what is taking place inside the Marion unit than the guards who are allegedly in control of the prison. The willful indifference and sheer incompetence of SCDC employees during this time is absolutely staggering.

³ See **Exhibit M**, Post Order 6 – Control Room/Communications (“This officer(s) will maintain a clear, factual, concise and **permanent** log of all events to include all staff assigned, all visitors to this post, all equipment/keys assigned, inmate count, all inmate activities conducted, and any other incidents or emergencies related to the institution.” (emphasis supplied))

am Lt. Collins visited the Monticello unit—an entirely separate building from the Marion unit—to talk with an inmate who had communicated to the officer in the unit that an inmate had been stabbed in Marion unit. The officer in the Monticello unit confirms this interaction somewhere around 3:00-4:00 am in both his written statement the next morning and in his deposition testimony. **Exhibit L**, Statement of Byrd; **Ex. D** at p. 21.

Eventually, Lt. Collins finds his way back to the Marion unit after speaking with the prisoner in Monticello. He and the yard Seargent, Renee Wright, start searching and fail to locate any injured prisoner in Marion. They give up the search and as they are leaving the unit they hear a banging on the last door coming out of the unit. They open the door and discover Plaintiff Simmons “on the bottom bunk full of holes.” **Ex J** at p.15. Simmons had been brutally assaulted at some point earlier in the evening—around 10:00 pm according to the testimony of Lt. Collins—and despite numerous calls for his aid by inmates throughout the prison, he was left to bleed out “full of holes” until sometime after 4:00 am.

After he was discovered, Simmons was taken to the hospital for treatment. He suffered massive blood loss from multiple stab wounds, bubbling air from his wounds, he lost consciousness on the table at the hospital and was still receiving CPR when he left the hospital for the trauma center. Then next day, Plaintiff was readmitted to the hospital due to infection concerns because of Defendant’s failure to provide medication to Plaintiff.

STANDARD OF REVIEW

Pursuant to Rule 56(c), summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c). When considering a motion for summary judgment,

the evidence and its reasonable inferences must be drawn in a light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Hackworth v. Greenville County, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006) (citing Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001)).

ARGUMENT

Defendant’s Answer asserts various defenses to Plaintiff’s claims: (1) comparative negligence; (2) intervening criminal acts; (4) TCA immunity pursuant to S.C. Code § 15-78-60 (3), (4), (5), (6), (13), (17), (20), and (25); (5) discretionary immunity; (6) assumption of risk; and (7) joinder. Defendant has the burden of proving these defenses and if the Defendant should fail to articulate evidence sufficient to establish these defenses then summary judgement should be granted.

Because it is incumbent on the Defendant to articulate its own defenses, one might reasonably expect that when discovery requests ask the simple question: “what evidence do you have in support of your affirmative defenses,” the defense would want to articulate that evidence. Strangely, the Defendant in this case has refused to provide any testimony as to its own defenses. In February 2024, in response to Plaintiff’s second Rule 30(b)(6) deposition notice, Defendant asserted that “any information concerning any of the defenses pled by the Defendant’s counsel . . . would invade the mental impression of counsel for the Defendant in the defense of this matter.” Def. Notice of Mot for Protective Order, filed Feb. 5, 2024. In response, this Court quite rightly held that a party asserting an affirmative defense bears the burden of proving those defenses and the Plaintiff is certainly entitled to seek discovery regarding those defenses. Order, filed April

8, 2024. The amount of effort the Defense expended to keep its own affirmative defenses a secret is truly bizarre.

Asserting the ridiculous position that their own defenses are not discoverable in a Motion for a Protective Order is not the only strange attempt to avoid discussing their own defenses. Plaintiff's counsel has noticed the 30(b)(6) deposition of Defendant SCDC multiple times. The most recent notice is captioned the "Seventh Amended SCRCP 30(b)(6) Deposition Notice and Topics List." The Court has been required to intervene and order Defendant to comply with the rules of discovery regarding these deposition three times as the Defendant failed to comply with the Court's orders. Defendant SCDC simply refused to produce knowledgeable witnesses or witnesses that were prepared to testify regarding the enumerated topics. More specifically, as to the defenses asserted by SCDC, their own witness testifying about their own defenses could not articulate a single shred of evidence to support their defenses and had not even bothered to read their own Answer in this case:

(MR. HAWKINS) Okay. As it relates to comparative fault, is there any evidence or facts you want to tell me about that I didn't ask you about?

A. You're using the legal term about fault and stuff, so I'm not exactly - - what you're asking me.

Q. Is there anything you want to tell me about the third defense before I move on to asking you about other defenses?

A. What is the third defense?

Q. Comparative fault.

A. I need a better clarification. I'm not understanding what you're asking.

Q. Well, you were put up to give evidence on this. You're supposed to understand what I'm talking about.

A. I am not aware - - I do not understand your legal terms. Talk - -

Q. It has nothing to do with being a lawyer. An agency or company is not an actual person under Rule 30(b)(6) of the Rules of Civil Procedure - - is required to be knowledgeable about the topics listed in the deposition notice. Right? And this is very straightforward and unambiguous. It's less than two lines. Your attorney has had years to put somebody knowledgeable about this topic.

And every time I ask you a question, you're saying "I don't know what comparative fault means." And that's a defense that you're supposed

to be able to offer testimony about. You can't do it because you're not ready for this topic.

* * *

Q. Just tell me as to comparative fault. SCDC is saying it's my guy's fault that he got killed. Just tell me what evidence you have to support that other than this debt you're saying he owes.

Just tell me that. If you don't have any evidence, say "I can't point to any evidence."

A. I can't point to any evidence at this time that I know of.

Q. Okay. Have you ever read the answer to the amended complaint?

A. Not to my knowledge.

Q. Have you ever seen any of these defenses that you're here to testify about?

A. No, sir.

Q. Do you know anything about the defenses or the facts that SCDC will rely on to support them?

A. No, sir.

Q. You're not prepared to answer these questions at all about defenses, are you?

A. I'm prepared to talk about what I know about this investigation that led to criminal charges.

Q. Well, I'm asking you about defenses, which is what's in Topic 47. And what it says is "all facts in support of each defense pleaded in the answer or upon which the defendant will rely at trial."

You've never seen the answer; right?

A. No, sir.

Q. You don't even know what the defenses are, do you?

When I read these next several defenses, you don't even know what I'm going to say?

A. That is correct.

Deposition of Rayford Miller, 5/21/25, pp.15-20.

Throughout the entirety of this case, SCDC has consistently refused to participate in discovery in good faith and has instead employed a strategy of obfuscating and hiding clearly discoverable information. This case has languished since 2018 largely because of the infuriating bad faith discovery practices employed by defense counsel. Indeed, at this point in time, on the eve of trial, defense counsel has yet to respond to numerous discovery requests which Plaintiffs will seek in a final Motion to Compel to be heard along side the instant motion. However, Defense counsel's stalling and bad faith discovery tactics will have succeeded in preventing Plaintiff from

obtaining discoverable information in a timely manner. As discussed below, Plaintiff submits that the discovery misconduct by Defendant throughout this case merits harsh sanction.

With respect to Defendant's defenses, although Defendant does not seem to be interested in discussing each of them, the Plaintiff will address each of them in turn.

I. Comparative Negligence

Defendant's first defense is that of comparative negligence—that Plaintiff's own negligence was greater than Defendant's negligence. Comparative negligence is an affirmative defense for which the Defendant has the burden of proof. Ross v. Paddy, 340 S.C. 428, 436, 532 S.E.2d 612, 616 (Ct. App. 2000). Comparative negligence is only a bar to recovery if the plaintiff's negligence is greater than the defendant's negligence. Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002).

Plaintiff Simmons was a prisoner in a maximum-security prison. He was housed in a particularly dangerous and chaotic unit within that prison. The unit in which he was housed was supposed to have been on lockdown, however, as discussed above, Defendant had no control over the inmate population of that unit. At the time he was attacked, Plaintiff was asleep in a cell that was supposed to have been locked. While he was asleep, other inmates ran into the room and attacked him with illegal homemade weapons that, yet again, Defendant had absolutely no control over.

Defendant has articulated no evidence to demonstrate that a man sleeping in a locked room was more negligent for being assaulted by other inmates than the prison that had a duty to ensure that prison's safety. Defendant has asserted in its own summary judgement motion that Plaintiff did not tell SCDC about potential threats from other inmates. This is a ridiculous argument, as Plaintiff was locked in a maximum security prison where inmates are constantly under threat.

Plaintiff would have no way of knowing if ‘beefs’ between prisoners would be acted upon or when any assault might occur. Additionally, as the testimony of Defendant’s officers make clear, Defendant had little control over the inmates in that unit. So even if Defendant was aware that the inmates that assaulted Plaintiff presented some sort of threat, it is clear that Defendant’s grossly negligent management of that facility would have been completely incapable of preventing an assault.

Merely asserting that Plaintiff should have told prison guards that he thought he might be in danger when Plaintiff had no way of knowing if or when he might be attacked does not amount to negligence greater than Defendant’s own grossly negligent mismanagement of the Marion unit. Because Defendant has offered no evidence from which a jury could possibly find that Plaintiff more negligent than Defendant, the Court should grant summary judgment as to Defendant’s claim of comparative negligence.

II. Intervening Acts

Defendant claims that Plaintiff’s injuries are the result of intervening criminal acts of third parties and that the claims are barred. Where an intervening act is claimed as a bar to liability the test is whether the act of the third party was reasonably foreseeable given the attendant circumstances. Mellen v. Lane, 377 S.C. 261, 283, 659 S.E.2d 236, 247 (Ct. App. 2008) (citations omitted). An act is reasonably foreseeable if it is a natural and probable consequence of the original actor’s conduct. Id. at 283, 659 S.E.2d 236, 248 (citation omitted). If the action of the third party was foreseeable, the Defendant is still liable. Id.

Again, because Defendant refuses to tell Plaintiff what the basis of its defenses are, either through deposition or through discovery response, Plaintiff can only speculate as to what Defendant claims is the intervening act. To the extent Defendant believes that the assault by other

inmates constitutes an intervening criminal act by third parties, that act is clearly a foreseeable consequence of Defendant SCDC's negligence in this case. SCDC had no control over the inmate population in a maximum-security housing unit, so assaults are clearly a reasonably foreseeable consequence of SCDC's negligence. See Ex. D at p.40 ("Q: How often do inmates end up in unassigned cells? How often do inmates end up in cells they're not assigned to? . . . A: Happens more than I would like to have seen."); Ex. B at p. 141 ("Q: Or why the allowed Simmons to be in a – a non-assigned dorm room. Do you know any of that? A: That was fairly common for the unit at that time. . . . they just kind of went to whichever cell they – they almost assigned themselves cells"); Ex. B at 142 ("Q: And that was known amongst – among corrections officers that the inmates essentially ran the unit and assigned themselves cells? A: Yeah, I mean, it was known, and it was known to police services agents as well. . . . I would think it would be essential for the security of the institution for inmates to be in their assigned cells.")

To the extent that Defendant claims that the actions of Ofc. Anthony Hall are an intervening act, Ofc. Hall is not a third party, he was an agent of SCDC working for SCDC at that time in the scope and course of his employment.

Even if Hall was somehow considered a third party, which he is not, his action are again foreseeable in light of the circumstances. The testimony on record demonstrates that SCDC was on notice that when Ofc. Kennedy left the day shift there were still unlocked and opened doors in Marion unit. Defendant was on notice that the unit had not been properly locked down for the evening and did nothing to rectify the situation. Additionally, there was only one officer in the unit. SCDC is keenly aware that guards often engage in improper activity such bringing in contraband and assisting inmates—this is why prison guards are searched before they enter the prison. Thus, even if Ofc. Hall intentionally opened the cells, by failing to follow its own protocols and policies

SCDC should have reasonably foreseen that an assault such as the one that Plaintiff suffered, was a likely outcome.

This Court should grant summary judgment as to Defendant's claim for intervening acts because those acts are a direct and foreseeable consequence of Defendant's own negligence. SCDC has policies in place to prevent the very thing that happened in this case. The rules and policies regarding lockdowns, counts, staffing, and other security measures in places to ensure safety within the Marion unit were simply not followed. The assault that happened to Plaintiff was a foreseeable consequence of Defendant's failure to follow its own policies.

III. TCA Exemptions

Defendant next claims that it is entitled to immunity under enumerated exemptions in the Tort Claims act, S.C. Code § 15-78-60 (3), (4), (5), (6), (13), (17), (20), and (25). Plaintiff submits that Defendant was so grossly negligent in its failure to follow its own policies and procedures that this Court should determine as a matter of law that Defendant was grossly negligent. If Defendant was grossly negligent in its supervision, protection, control, confinement, or custody of Plaintiff, the exemptions to the TCA cited above are inapplicable.

The law regarding application of gross negligence in Tort Claims Act cases is well settled. “[W]hen an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception.” Chakrabarti v. City of Orangeburg, 403 S.C. 308, 320, 743 S.E.2d 109, 115 (Ct. App. 2013); see also, Steinke v. S.C. Dep't of Lab., Licensing & Regul., 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999) (“when a governmental entity asserts various exceptions to the waiver of immunity, is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard.”). Failure to read the exceptions in this

manner would render other portions of the TCA a nullity, which is contrary to the legislative intent of the Act. Steinke, 336 S.C. at 398, 520 S.E.2d at 155.

In effect, when a governmental entity is grossly negligent and one of the TCA exceptions containing a gross negligence standard is actually applicable to the facts of the case, other exceptions that may not contain the gross negligence standard are essentially inapplicable. In the instant case, the claims in this case assert gross negligence by SCDC in their custody and confinement of Plaintiff and in their supervision of employees responsible for confining, protecting, and maintaining custody of Plaintiff. In this case, and in most any case that involves the South Carolina Department of Corrections, the exception found at S.C. Code § 15-78-60(25) will always apply. That exception provides that the governmental entity is not liable from:

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, **except when the responsibility or duty is exercised in a grossly negligent manner;**

S.C. Code Ann. § 15-78-60(25). Because this subsection clearly applies to Defendant, the exceptions found at section 15-78-60(3), (4), (5), (6), (13), (17), (20) cannot absolve Defendant of liability if Defendant was grossly negligent in its supervision, protection, control, confinement, or custody of Plaintiff.

Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). It is the failure to exercise slight care. Id. Gross negligence has also been defined as a relative term and means the absence of care that is necessary under the circumstances. Hollins v. Richland County School Dist. 1, 310 S.C. 486, 427 S.E.2d 654 (1993). “Gross negligence ordinarily is a mixed question of law and fact.” Clyburn v. Sumter County School Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) (citations

omitted). “When the evidence supports but one reasonable inference, however, the question becomes a matter of law for the court.” Id. at 53, 451 S.E.2d at 888-89 (citations omitted).

As discussed in the factual recitation above, Defendant demonstrated an utter lack of concern for the safety of Plaintiff before the assault occurred and after Defendant was made aware of the assault. Defendant has numerous policies in place to ensure the safety of the guards and the prisoners in the institution, and many of those policies were completely ignored. This alone is grounds to rule as a matter of law the Defendant was grossly negligent. See Jinks v. Richland Cnty., 355 S.C. 341, 348, 585 S.E.2d 281, 285 (2003) (detention center officers’ failure to follow policy concerning medical observation is evidence of gross negligence). On the night of the assault, Defendant knew that the cell doors were not all locked down, they knew that Ofc. Kennedy had left for the day without assisting Ofc. Hall in locking the doors, they failed to send a supervisor to assist Ofc. Hall, and they knew that the Marion unit was a dangerous unit where the inmates were in control. These failures and many others can only lead to the singular conclusion that Defendant was willfully indifferent to the potential for an assault to occur and failed to exercise the slightest care to prevent that from happening.

Because Defendant so clearly intentionally and consciously failed to do what was incumbent upon it to do—which was to simply follow its own procedures to ensure the safety of the inmates and the guards—Plaintiff was brutally assaulted. If Defendant had simply exercised the slightest care and, as an example, ensured that all doors were locked for the night shift, ensure that the prisoners were in their correct cells, send a supervisor down to the unit to assist the lone guard with locking down the unit, have more than one guard in the unit to ensure safety, or any of the many other basic safety precautions that they could have taken, this assault never would have occurred.

This Court should hold that Defendant's conscious failures merit a finding of gross negligence as a matter of law. As a consequence of that determination, the Court should further find that the Plaintiff is entitled to summary judgment with respect to Defendant's claim of exemptions under the Tort Claims Act, S.C. Code § 15-78-60 (3), (4), (5), (6), (13), (17), (20), and (25).

IV. Discretionary Immunity

Defendant next claims that its employees were exercising discretionary authority and should be immune from suit. This defense requires a showing that Defendant's employees actually weighed competing alternatives and made a discretionary decision. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994) ("Discretionary immunity is contingent on proof that the Highway Department, faced with alternatives, actually weighed competing considerations and made a conscious choice. The governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before it.").

In the instant case, there is no evidence that Plaintiff's injuries are the result of a discretionary choice conforming to any professional standards. The sold evidence in the case is that Defendant's employees were so unbothered, lazy, and apathetic to the policies and procedures that governed their jobs that they simply ignored established policy. Their failure to follow these policies resulted in the injuries suffered by the Plaintiff. Because Defendant has offered no evidence that its employees were following any sort of professional standards or decision making in the events leading up to Plaintiff's claims, the Court should grant summary judgment on this defense as well.

V. Assumption of Risk

The defense of assumption of risk has four elements: “(1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to the danger.” Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 78, 508 S.E.2d 565, 569 (1998) (quoting Senn v. Sun Printing Co., 295 S.C. 169, 367 S.E.2d 456 (Ct.App.1988)). “The doctrine is predicated on the factual situation of a defendant's acts alone creating the danger and causing the accident, with the plaintiffs act being that of voluntarily exposing himself to such an obvious danger with appreciation thereof which resulted in the injury.” Id.

Obviously, Plaintiff did not voluntarily expose himself to assault by other inmates. Defendant can point to no evidence in this case that would give rise to any inference that Plaintiff knew he was about to be assaulted and voluntarily exposed him to such assault. Even if Plaintiff was aware that some people were out to get him, he was in a locked cell with no expectation that the door would be opened to allow others to attack him. If a prisoner participates in a fight on the yard or in a prison riot, perhaps one might argue that he voluntarily exposed himself to the consequences of that activity. However, if the prisoner is asleep in a locked cell, it cannot be said that he volunteered to be attacked in his sleep. There is clearly no evidence in the record to support this defense and the Court should grant summary judgement.

VI. Joinder

Finally, Defendant claims Plaintiff failed to name a necessary party. Defendant has identified no necessary or indispensable party that should be named. Furthermore, if there were such a party that remains unnamed, which there is not, the proper remedy would be for the unnamed party to be made a party, not to dismiss the action. Charleston Cnty. Parents for Pub.

Sch., Inc. v. Moseley, 343 S.C. 509, 514, 541 S.E.2d 533, 535 (2001) (“the remedy under Rule 19, SCRCP is for the Court to make the Charleston Delegation a party, not to dismiss the action.”). Because the record contains no evidence of any necessary and unnamed party to this matter, this defense should also be stricken and the Court should grant summary judgment.

VII. Motion to Strike

SCDC has repeatedly violated its discovery obligations, warranting sanctions under Rule 37(b)(2)(C), SCRCP. The court has twice issued sanctions against SCDC for failing to make witnesses available for deposition. Despite these sanctions, SCDC has continued to obstruct the discovery process by failing to provide a witness capable of articulating evidence supporting its defenses. In addition to their continued failure to produce knowledgeable witnesses, Defendant has failed to produce many, many discoverable materials that have been requested by the Plaintiff. Plaintiff’s counsel believes that these discovery tactics are an intentional effort to bog down the Plaintiff’s ability to present this case and that this conduct merits a harsh rebuke from the Court.

Plaintiff previously filed a Motion to Compel seeking compliance with the Court’s orders and Rule 30(b)(6) and Defendant continued to present numerous representative witness for this case but these witnesses have no idea about the topics for which they are offered. The purpose of a Rule 30(b)(6) deposition is for a party to have an organizational representative witnesses testify on its behalf regarding the knowledge of that organization. Defendant, however, has produced a confusing morass of witnesses with little or not knowledge about the topics for which they are asked to testify. As one example from above, in the deposition of Rayford Miller, who was presented to testify about their affirmative defenses (among other things) had not even read their Answer and had no idea what an affirmative defense was.

With respect to the written discovery, many discoverable items have simply not been produced. For example, Plaintiff was assaulted in a room with a roommate and was subsequently locked in that room with the another person. Clearly Plaintiff's counsel would like to talk to this other person who was a direct eyewitness to the attack. Defendant has never identified this person who is an absolutely crucial witness. As another example, there is much confusion over the timing of these events. However, SCDC policies require that detailed logs be kept at many posts, including the control room, the shift Lieutenant, and the dorms. Only the Marion log book has been produced in a somewhat incomplete form. None of the other log books have been produced but they have to exist. Either they were intentionally destroyed to prevent their disclosure in this case, or the Defense is intentionally hiding them. As another example, a man was brutally assaulted in a prison cell and the defense has not produced a single picture. It defies belief (and SCDC policy) that there was not a single picture taken of the scene. The defense simply refuses to produce these and other clearly discoverable items.

Unfortunately, the Defendant is in complete control of the discovery materials and the Plaintiff can only guess at what the Defendant has in its possession. Thus, Plaintiff cannot direct the Court to the specific items that Defendant has failed to produce—we can only speculate about what is being withheld. But some items that have not yet been produced must exist and their failure to produce them means that they have either intentionally destroyed them, are hiding them, or through them away against policy. For example, the various log books are required to be kept on a permanent basis. Because they have only produced a handful of pages from the Marion logbook, they are either intentionally withholding the control room and shift Lieutenant's log books, or they were destroyed against policy. There is no other explanation.

The South Carolina Supreme Court has recognized that striking a party's pleadings is an appropriate sanction for discovery abuse when the noncompliance is willful, in bad faith, or grossly indifferent to the opposing party's rights. Innovative Waste Mgmt., Inc. v. Crest Energy Partners GP, LLC, 445 S.C. 19, 911 S.E.2d 406 (2025). In Innovative Waste, the Supreme Court upheld the circuit court's decision to strike the violating party's answer and counterclaims because they did not comply with three motions to compel, two discovery sanctions, and wasted nearly seven years of time and money. *Id.* at 21, S.E.2d at 407.

In Barnette v. Adams Bros. Logging, Inc., the South Carolina Supreme Court held "Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just," including an order dismissing the action or proceeding, or any part thereof." Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003).

Here, SCDC's repeated failure to comply with discovery obligations demonstrates willful disobedience and gross indifference to the plaintiff's rights, justifying the striking of its answer. It is clear that Defendant is intentionally engaging in bad faith, deceptive discovery practices in an effort to stymie the Plaintiff's ability to litigate this case. So for these reasons, and others presented at a hearing on this matter, Plaintiff requests the Court strike the Defendant's Answer.

Conclusion

For the reasons discussed above and for those that may be discussed at a hearing on this matter, the Plaintiff respectfully requests the Court grant this motion and that the defenses raised in Defendant's Answer be foreclosed by Summary Judgment. Liability in this matter should be determined in favor of the Plaintiff, and this matter should proceed to trial on damages alone. In

the alternative, Plaintiff requests the Court strike the Defendant's pleadings as a sanction for their bad faith, deceptive discovery practices.

(signature page follows)

Respectfully submitted,

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Dec 19 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-002478

Randle Jackson as the Personal Representative of the
Estate of Dashaun Simmons.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

PROOF OF SERVICE

I hereby certify that a copy of the Motion to Dismiss Appeal has been served electronically upon the South Carolina Court of Appeals at ctappfilings@sccourts.org, and upon the attorneys of record for the Appellant at their respective email addresses listed below, on this 19th day of December 2025:

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