STATE OF SOUTH CAROLINA COUNTY OF MARLBORO LEVI OWENS AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER MCLEAN, Plaintiff, -vs- WAYNE HUNT, Defendant.	IN THE COURT OF COMMON PLEAS C/A NO.: 2016-CP-34-00265 **ENTRY OF DEFAULT**

It appears from the Affidavit of Default and other evidence presented by counsel for plaintiff, that a Summons and Complaint were properly served upon the defendant, Wayne Hunt on February 10, 2017 and that more than 30 days have elapsed and no timely answer has been made by the defendant. Plaintiff is therefore entitled to an Entry of Default.

It is hereby **ORDERED** that the Clerk of Court for Marlboro County make an entry of default on the roster of case by the name of defendant, Wayne Hunt.

IT IS SO ORDERED.

The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

Cheraw, South Carolina
~~September~~ 16th, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARLBORO	)	C/A NO.: 2016-CP-34-00265
	)	
LEVI OWENS AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER MCLEAN,	)	
	)	
Plaintiff,	)	**ORDER OF REFERENCE**
	)	
-vs-	)	
	)	
WAYNE HUNT,	)	
	)	
Defendant(s).	)	

This matter comes before me on motion of Alex Murdaugh to refer the matter to a Special Referee in order to determine the amount of damages.

It is, therefore, ORDERED that this matter be referred to Douglas Jennings, Jr. with finality to take testimony and determine the amount of damages. Any motions filed after this order shall be heard by the referee.

The Honorable Paul M. Burch
Fourth Judicial Circuit

WE MOVE:
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P. A.

BY: _____
R. Alexander Murdaugh
P. O. Box 457
Hampton, SC 29924
(803) 943-2111
ATTORNEYS FOR PLAINTIFF

I CONSENT TO SERVE AS SPECIAL REFEREE:

_____
Douglas Jennings, Jr.
Douglas Jennings Law Firm, LLC
P.O. Drawer 995
Bennettsville, SC 29512-0995

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF MARLBORO	)	**FOURTH JUDICIAL CIRCUIT**
	)	
Levi Owens as Personal Representative of the Estate of Christopher McLean,	)	No. 2016-CP-34-00265
Plaintiff,	)	**ORDER AWARDING DEFAULT JUDGMENT**
v.	)	
Wayne Hunt,	)	
Defendant.	)	

INTRODUCTION

This matter was referred to me pursuant to Judge Paul M. Burch's Order of Reference dated October 22, 2018 and Entry of Default dated November 16, 2017. The purpose of the reference was to conduct a hearing to ascertain the amount of the Plaintiff's damages in this default matter and to issue a final order awarding damages against Defendant.

After several delays which were unavoidable, I conducted the damages hearing on November 17, 2021. Plaintiff appeared with his attorneys, John E. Parker, Jr. and Jason Scott Luck. Defendant did not appear, either personally or through counsel, despite notice to him from Plaintiff's counsel. As evidence of notice of this hearing being provided to Defendant, Attorney Jason Luck filed an Affidavit of Service certifying that, pursuant to Rule 55(b)(2), SCRCP, on November 4, 2021, a Notice of Hearing was sent to Defendant Wayne Hunt at his last known address via First Class U.S. Mail. There has been no return of that notice, nor has Defendant responded or appeared. I therefore proceeded with the hearing in Defendant's absence.

SUMMARY OF THE EVIDENCE

This case arises out of a motor vehicle collision that occurred on December 10, 2013 on U.S. Highway 15 outside of McColl, South Carolina in Marlboro County. Christopher McLean, the 19-year-old son of Levi Owens(father) and Wanda Breeden (mother), was a passenger in a vehicle which was traveling in a southeasterly direction on US Hwy 15 attempting to make a left turn onto a secondary road when a truck being driven by Defendant Wayne Hunt traveling in a northerly direction on US Hwy 15 at a high rate of speed, crossed the center line of the road and violently struck the vehicle in which Christopher McLean was a passenger. As a result, Christopher McLean was gravely injured and was transported by helicopter to McLeod Regional Medical Center in Florence, SC, where he thereafter died as a result of the multiple trauma from this collision. According to the death certificate, Christopher McLean (hereinafter "decedent") died approximately six(6) hours after the collision as a result of the multiple trauma, including a closed head injury, a ruptured diaphragm, a ruptured bladder, and hypovolemic shock.

Christopher McLean was a 19-year-old unmarried recent graduate of Marlboro County High School with no children. He was intestate and is survived by his parents as his statutory beneficiaries and heirs at law. Plaintiff Levi Owens, father of decedent, was duly appointed as Personal Representative of the Estate by the Marlboro County Probate Judge on September 10, 2014. Plaintiff thereafter filed suit for the Wrongful Death of his deceased son and asserting the survival claim for the conscious pain and suffering of decedent. According to the prior Order of Circuit Judge Paul M. Burch filed November 16, 2017, the Summons and Complaint were properly served upon Defendant Wayne Hunt on February 10, 2017, and no timely response or answer was made by or on behalf of the defendant. Judge Burch thereafter ordered that Plaintiff was entitled

to an Entry of Default, and subsequently referred the matter to the undersigned Special Referee with finality to take testimony and determine the amount of damages to be awarded to Plaintiff in this wrongful death and survival case. *See Order of Reference filed 10/22/2018 by Circuit Judge Paul M. Burch.* By virtue of his default, Defendant has admitted that he was negligent and reckless with respect to the collision and that his negligence and recklessness proximately caused the decedent's injuries and death.

The Plaintiff was the only witness who testified at the hearing and I found his testimony to be very genuine and convincing and to unquestionably establish all the elements of damages in a wrongful death and survival case. In addition, Plaintiff introduced the following exhibits without objection:

1. Death certificate of the decedent.
2. Summary of Plaintiff's medical and funeral expenses totaling $62,323.88.

FINDINGS OF FACT

Based on the foregoing, I make the following findings of fact:

1. The decedent was 19 years old at the time of his untimely death, was single and without children, and enjoyed a particularly close, wholesome and loving relationship with his parents;
2. The decedent was in excellent health before the subject collision and had frequently engaged in exercise and sports activities with his father.
3. On December 10, 2013, the decedent was a passenger in a car that was negligently and recklessly struck by a truck operated by Defendant.
4. The collision was directly and proximately caused by Defendant's negligence, carelessness and recklessness.

5. The collision directly caused the decedent to suffer very serious bodily injuries which resulted in conscious pain and suffering, and which ultimately caused his wrongful death.
6. Defendant's negligence and recklessness caused pecuniary loss to the Plaintiff as outlined below, as well as significant mental shock and suffering, wounded feelings, grief, sorrow, and the loss of his son's society and companionship.
7. The decedent's estate incurred bills totaling at least $48,232.00 for medical treatment of the serious bodily injuries sustained in the collision.
8. The Plaintiff incurred funeral and burial expenses totaling $14,091.88.

CONCLUSIONS OF LAW

Based on the foregoing, I reach the following conclusions of law:

1. Defendant was negligent and reckless, which directly and proximately caused the collision, the decedent's injuries, conscious pain and suffering, and his wrongful death, and all damages which Plaintiff is entitled to under South Carolina law.
2. As a result of Defendant's negligence and recklessness, Plaintiff sustained actual damages in the amount of Five Million One Hundred Thousand ($5,100,000.00) Dollars, with $100,000.00 to be apportioned as survival damages to the estate and $5,000,000.00 to be apportioned as wrongful death damages to the statutory beneficiaries, itemized as follows:
    a. Wrongful Death
        i. Pecuniary loss (i.e., funeral expense): $14,091.88
        ii. Mental shock and suffering: $1,000,000.00
        iii. Wounded feelings: $1,000,000.00

iv. Grief and sorrow: $1,000,000.00

v. Loss of society and companionship: $1,935.908.12

b. Survival

i. Medical expenses: $48,232.00

ii. Conscious Pain, suffering, mental distress: $51,768.00

3. I do not find grounds to justify an award of punitive damages against Defendant.

ORDER

IT IS HEREBY ORDERED that Plaintiff is hereby awarded a final judgment against Defendant for actual damages in the amount of Five Million One Hundred Thousand ($5,100,000.00) Dollars.

AND IT IS SO ORDERED.

Douglas Jennings, Jr.
Special Referee

November 18, 2021

Bennettsville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP3400265

Levi Owens, Est
PLAINTIFF(S)

Wayne Hunt
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:

After review of the previous Order of Reference, this Court does not have jurisdiction over this matter. The Order of Reference states that "Any motions filed after this order shall be heard by the referee."

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 07/24/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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.

Marlboro Common Pleas

Case Caption: Levi Owens Est VS Wayne Hunt

Case Number: 2016CP3400265

Type: Order/Electronic Form 4

So Ordered

s/Paul M. Burch, Judge #2048

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-34-00265

Levi Owens, as Personal Representative of the Estate of Christopher McLean
PLAINTIFF(S)

Wayne Hunt
DEFENDANT(S)

Submitted by: Special Referee	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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. ☒ See Pages 2 and 3 for additional information.

☐ **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: **See page 2. Motions argued on October 10, 2024.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: **HOLD IN ABEYANCE. COURT DIRECTED PARTIES TO MEDIATE THE CASE.**

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
N/A		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

SPECIAL REFEREE	**N/A** **Judge Code**	**11-08-24** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Ashley B. Nance, Esquire Jason Luck, Esquire **ATTORNEY(S) FOR THE PLAINTIFF(S)**	John M. Grantland, Esquire **ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter: Mark Hagood

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

A hearing on the record was held on October 10, 2024, with all parties being properly represented by counsel. The Special Referee heard oral arguments and received written submissions on all pending motions, including:

(1) Defendant's Motion to Stay Execution of Judgment;

(2) Defendant's Motion to be Relieved from Default Judgment and/or to Vacate Judgment;

(3) Plaintiff's Motion for Supplemental Proceedings

Before ruling on the above three motions, and after a discussion with all counsel, the Court ordered parties to submit this case to mediation as soon as practicable. If parties cannot mutually agree on a Mediator by 11-30-2024, this Court will appoint one. All pending rulings will be taken under advisement and held in abeyance until a report of mediation is submitted to this Court. All counsel agreed to attempt to resolve by mediation as soon as possible, and the undersigned anticipates receiving a mediation report on or before 01-30-2025. If not resolved by then, the undersigned will issue an Order.

Douglas Jennings, Jr.
Special Referee

Bennettsville, South Carolina
November 8, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARLBORO	)	CIVIL ACTION NO.: 2016-CP-34-00265
	)	
LEVI OWENS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER MCLEAN,	)	
	)	
Plaintiff,	)	**ORDER**
	)	
v.	)	
	)	
WAYNE HUNT,	)	
	)	
Defendant.	)	

This matter came before me on Defendant Wayne Hunt's motion to vacate a default judgment filed and entered on November 18, 2021. The parties filed supporting and opposing memoranda with affidavits and documents as well as supplemental briefing prior to the hearing. On October 10, 2024, the undersigned Special Referee heard oral arguments on the motion at which John M. Grantland, Esq., appeared on behalf of the Defendant and Ashley B. Nance, Esq. and Jason Scott Luck, Esq. appeared for the Plaintiff. After hearing the arguments and discussing the matter with counsel, the final decision on the motion was held in abeyance and the parties were directed to attempt further mediation. After a significant delay, the parties reported back to the undersigned that the parties were at an impasse and that further mediation would serve no useful purpose. After carefully considering the parties' briefs, the controlling law, and arguments of counsel, the Defendant's motion is DENIED.

Plaintiff argues that Defendant's motion, filed pursuant to Rule 60(b), SCRCP, should be denied because Defendant was properly served via his statutorily designated in-state agent on February 9, 2017. According to Plaintiff, service was effective and complete on this date and was

sufficient to confer personal jurisdiction over Defendant, notwithstanding Defendant's claim that he never received actual notice of the lawsuit from his statutory agent or had any knowledge of this action until November 2, 2022. Plaintiff argues that even if Defendant did not receive actual notice of the lawsuit, this is not a sufficient reason to vacate the default judgment under Rule 60 because pursuant to South Carolina precedent and the statutory scheme for service on a nonresident motorist, on February 9, 2017, Defendant was imputed with constructive notice of this lawsuit via service on his statutory agent. Additionally, Plaintiff argues that Plaintiff and Defendant's statutory agent made efforts to provide Defendant with reasonable notice of this lawsuit within the statutory period and that those efforts have been documented and are part of the record of this case.

Defendant argues that service was improper and ineffective because Plaintiff did not timely comply with the statutory scheme's requirement for filing an affidavit of mailing and copy of the envelope used to convey notice of the pleadings and service to Defendant prior to the expiration of the statute of limitations, and therefore the default judgment is void for improper service and lack of personal jurisdiction. In the alternative, Defendant argues that the default judgment should be vacated because he can meet the requisite showing of excusable neglect, mistake, inadvertence or surprise under Rule 60(b)(1), SCRCP.

For the following reasons, the undersigned concludes that the statutory scheme's requirement of filing the affidavit of mailing and envelope is intended to serve as proof of the provision of additional notice to the defendant and was substantially and sufficiently complied with by Plaintiff by filing the affidavit of mailing and envelope, which were generated on March 10, 2017, and therefore the default judgment is not void for lack of effective service or personal jurisdiction. I further find that Defendant's affidavit demonstrates that there is not a satisfactory explanation for the default, as Defendant attests that he did not provide notice of his change of address as required by North

Carolina law such that Plaintiff would have been able to ascertain a correct address for delivery of the summons and complaint once served on his statutory agent, and the only reasonable inference from the evidence is that he also did not provide the United States Postal Service ("USPS") with a valid forwarding address at which he could have received the summons and complaint commencing this action.

On December 10, 2013, Christopher McLean was killed when a vehicle he was riding in with his girlfriend, Maisha Jacobs, was involved in a collision with a commercial truck driven by Defendant, apparently within the course and scope of his employment with Wilmington Shipping Company ("WSC"). The collision occurred in Marlboro County, South Carolina, but Defendant at the time was a resident of North Carolina. Hunt's NC commercial driver's license listed his address as 16671 NC Highway 210, Rocky Point, NC 28457, and this address was listed on the collision report. The subject truck was leased, and the collision report therefore did not list WSC as an owner or otherwise mention WSC as an entity potentially liable for any damages arising from the collision. Unbeknownst to anyone but Defendant, including Plaintiff, Jacobs, responding law enforcement, and the North Carolina Department of Motor Vehicles, four months prior to the collision Defendant had moved to a different address within North Carolina, and therefore the address listed on his driver's license and the collision report was incorrect. On December 8, 2016, Plaintiff filed a summons and complaint alleging wrongful death/survival claims against Defendant in the Marlboro County Court of Common Pleas.[1]

On November 16, 2017, Plaintiff's counsel filed an affidavit of default and a motion for entry of default, which was signed by the circuit court. The case was referred to me on October 22, 2018. A damages hearing was set for November 17, 2021, and notice of the hearing was sent to Defendant

[1] Under Rule 3(a), SCRCP, Plaintiff had until April 7, 2017 to serve Defendant.

at his last known address on November 4, 2021. On November 18, 2021, I entered and filed a default judgment awarding Plaintiff $5,100,000.00 in survival and wrongful death damages. On October 26, 2022, Defendant appeared and filed this motion to vacate the default judgment.

Pursuant to S.C. Code Ann. § 15-9-350, Plaintiff served Defendant through the Director of the South Carolina Department of Motor Vehicles as Defendant's statutory agent for service of process. On February 9, 2017, the Director received the process on behalf of Defendant, and on February 10, 2017, the Director mailed notice of service and a copy of the process by certified mail to Defendant at his last known legal address. The certified mail was not accepted or receipted by Defendant, and was returned to the SCDMV March 8, 2017, unaccepted and unable to be forwarded. On March 10, 2017, the SCDMV created an affidavit of mailing and copy of the envelope documenting the Defendant's failure to accept and receipt the certified mail, and that the notice of service and a copy of process had been sent to Defendant's last known address through open mail on March 10, 2017, in compliance with S.C. Code Ann. § 15-9-380. (*Id.*).

"Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP." *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). A motion to vacate or set aside a default judgment is addressed to the sound discretion of the trial judge whose ruling will not be disturbed absent a clear showing of abuse of discretion. *Boland v. South Carolina Public Service Authority*, 281 S.C. 293, 315 S.E.2d 143 (1984). An abuse of discretion is shown where the decision of the court was controlled by some error of law. *Id.* "[R]elief from default judgment under Rule 60(b), SCRCP, requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party." *ITC Com. Funding, LLC v. Crerar*, 393 S.C. 487, 494, 713 S.E.2d 335, 339 (Ct. App. 2011) (punctuation and citation omitted). This standard

is more rigorous than the "good cause" standard established for setting aside an entry of default under Rule 55(c), SCRCP. *Sundown*, 383 S.C. at 608, 681 S.E.2d at 888. "The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." *Id.*

By virtue of operating a motor vehicle on the public roads of this State, a nonresident driver by operation of law is deemed to have designated the Director of the Department of Motor Vehicles as his in-state statutory agent "upon whom may be served all summons or other lawful process in any action . . . growing out of any accident or collision in which such nonresident may be involved by reason of the operation by him . . . of a motor vehicle on such public highways, streets or public roads or anywhere within this State." S.C. Code Ann. § 15-9-350. South Carolina's nonresident motorist substitute service statute was enacted for the benefit of residents who are injured within South Carolina by a nonresident motorist and permits such residents to acquire proper service on the nonresident without regard as to whether the address the nonresident has listed on his driver's license is accurate, and as such the substitute service statutes should be given a liberal construction so long as the statutes' requirements are substantially or sufficiently complied with. *See Wright v. Peterson*, No. 5:20-01859-MGL, 2021 WL 1140243, at *4 (D.S.C. March 25, 2021) (noting that nonresident motorist statutes such as S.C. Code Ann. § 15-9-350 are enacted for the plaintiff's benefit and are to be liberally construed).

After receiving the SCDMV's notice of acceptance of service on behalf of Defendant, Plaintiff filed an affidavit of service with the Court on February 15, 2017, demonstrating that the Director had accepted service of process on behalf of Defendant just as if it had been served on Defendant personally. A principal is "affected with constructive knowledge of all material facts of which his

agent receives notice while acting within the scope of his authority." *Bankers Trust of S.C. v. Bruce*, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Ct. App. 1984). S.C. Code Ann. § 15-9-380 describes the procedures to be followed if the defendant either intentionally or unintentionally does not accept and receipt for the certified mail containing the forwarded notice of service and copy of the process:

> [T]he original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and *the envelope and affidavit of mailing* with sufficient postage of such open letter *shall be filed with the clerk of court* in which such action is pending *and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.*

S.C. Code Ann. § 15-9-380 (emphasis added).

Relying on the emphasized language, Defendant argues that service is ineffective until the envelope and affidavit of mailing are filed with the circuit court and that service does not occur until the date the envelope and affidavit of mailing are filed.[2] In other words, Defendant believes the default judgment is void for ineffective service of process and lack of personal jurisdiction. Plaintiff argues that under South Carolina decisions interpreting other substitute service statutes that service is effective and complete once the Director receives the pleadings, and that section 15-9-380's requirement only provides for proof of additional notice that can be imputed to a defendant once it is filed. Plaintiff additionally argues that under case law interpreting compliance with substitute service statutes and rules, Plaintiff substantially and sufficiently complied with section 15-9-380 by filing the

[2] An alternative argument proposed by Plaintiff is that when the affidavit of mailing and envelope are filed, retroactively the date of service is the date the notice of service and forwarded pleadings are sent through open mail, which in this case occurred within the statutory limitations period, and the record of service was perfected when the affidavit of mailing and envelope were filed prior to Defendant's motion. *See* S.C. Code Ann. § 15-9-380 ("[T]he original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and . . . shall have the same force and legal effect as if such process has been personally served upon such defendant."). I have not considered this argument as I do not find that it is necessary to my decision.

affidavit of mailing and envelope. For the following reasons, I find Plaintiff's arguments to be more persuasive than those advanced by Defendant.

This Court interprets the quoted language from section 15-9-380 as a requirement for the plaintiff to file the affidavit of mailing and envelope, which must be requested from the SCDMV, at some point after the failed receipt as proof of *additional* notice. This notice is in addition to the constructive notice initially imputed to the defendant by the Director's acceptance of service as his statutory agent. It does not set a specific deadline by which a plaintiff must file the envelope and affidavit, nor does it provide a consequence if plaintiff fails to ever file the envelope and affidavit. The statute does not purport to serve as a jurisdictional requirement. The statute by its terms does nothing to invalidate the initial service on the Director.

The statute in question never states the prior *substitute service* does not have force or legal effect until the affidavit of mailing is filed, and instead states that the *envelope and affidavit of mailing* have the same force and legal effect as if they had been personally served upon the defendant upon their filing; that is, defendant is thereafter charged with personal notice of their contents in addition to the constructive notice imputed from the Director to the defendant. *See* S.C. Code Ann. § 15-9-380 ("[T]he envelope and affidavit of mailing . . . shall be filed with the clerk of court . . . and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant."). This distinction is important, as the first concept (the act of substitute service under sections 15-9-350) goes to service, constructive notice, and conferral of personal jurisdiction (which notably tolls the statute of limitations), while the second (the filing of the envelope and affidavit) is solely concerned with the legal fiction of additional notice.

In *Holman v. Warwick Furnace Co.*, 318 S.C. 201, 456 S.E.2d 894 (1995), the Supreme Court of South Carolina analyzed an analogous statute providing for the in-state service of a statutorily

designated agent for service of process. S.C. Code Ann. § 15-9-245 provides that service of process can be made on a foreign corporation doing business within South Carolina without a certificate of authority by serving the Secretary of State. The Secretary of State then forwards by certified mail the pleadings and a notice of service to the last known address of the corporation. S.C. Code Ann. § 15-9-245(a)-(b). Similar to section 15-9-380, section 15-9-245 also provides that if the foreign corporation fails to receipt for the certified mail containing the forwarded pleadings and notice, the plaintiff must file an affidavit of compliance with an attached copy of the envelope documenting the failed receipt, along with copies of the subsequent open mailing of the prior correspondence to the foreign corporation. S.C. Code Ann. § 15-9-245(c). Section 15-9-245 provides that once the affidavit of mailing is filed, the foreign corporation is charged with knowledge of the forwarded mailings' contents. *See id.* (stating that if the notice requirements are complied with, "the foreign corporation refusing to accept the certified mail must be charged with knowledge of the contents thereof").

The *Holman* court noted that under South Carolina law, a suit commenced within the time prescribed by statute tolls the statute of limitations, and that a civil action is commenced by filing and service of the summons and complaint. *Holman*, 318 S.C. at 206, 456 S.E.2d at 896. The court stated that *in previously construing other statutes similar to section 15-9-245*, it has held that "service is effected when the designated agent is served." *Id.* at 204, 456 S.E.2d at 895-96. Therefore, "service under § 15-9-245 is effected upon delivering suit papers to the Secretary of State." *Id.* (citing *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638 (D.S.C. 1989).

> This accords with the general rule that service upon an agent designated by law is permissible *without any need to personally serve the defendant*. 62B Am. Jur. 2d *Process* § 239. Once a summons and complaint are delivered to the secretary of state, *service is complete*, regardless of whether the corporation actually receives notice of the suit. 19 CJS *Corporations* § 959. We hold that service pursuant to § 15-9-245 is effective upon delivery of the S & C to the Secretary of State.

Id. (emphasis added). "Accordingly, once service was effected, the statute of limitations was tolled." *Id.* at 205, 456 S.E.2d at 896.

Of course, once service is effective and complete, a court has acquired personal jurisdiction over that defendant. *See Ex parte S.C. Dep't of Revenue*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002) (stating that a court generally obtains personal jurisdiction by the service of a summons); *In re M.W.*, 232 Ill. 2d 408, 426, 905 N.E.2d 757, 770 (Ill. 2009) ("A respondent or defendant may consent to personal jurisdiction by his appearance, or he may have personal jurisdiction imposed upon him by effective service of summons."). Any statutes directing the statutory agent to subsequently forward copies of the pleadings and notice of service to the defendant are "not a requirement to effectuate service, but rather to provide *additional* notice." *Peake v. Suzuki Motor Corp.*, Civil Action No. 0:19-cv-00382-JMC, 2019 WL 5691632, at *8 (D.S.C. Nov. 4, 2019) (emphasis added).

To put it differently, section 15-9-380's directives are analogous to the forwarding of process from a registered agent to his principal and have no bearing on service. The logic of *Holman* applies with equal force to sections 15-9-350 and -380 as it does to section 15-9-245. Service was effective once the pleadings were accepted by the Director, and as a result, some constructive notice was imputed to Defendant, personal jurisdiction over Defendant was at that point conferred to the Court, the statute of limitations was tolled, and the SCDMV's efforts to forward the pleadings to Defendant were efforts to provide reasonable additional notice of the lawsuit.

The language in section 15-9-380 cited by Defendant to support his argument that service is only effective upon the filing of the envelope and affidavit of mailing contains no plain and unambiguous terms concerning a court's personal jurisdiction, it does not state that its filing requirement is necessary for the prior *substitute service* to be effective, and is merely providing that once the affidavit and envelope are filed, the defendant is chargeable with additional notice of their

contents as if he had been personally served with the envelope and affidavit. *See Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995) (stating that the rules for service have two separate purposes, one purpose being to confer personal jurisdiction, the other to assure the defendant of *reasonable* notice of the action). While section 15-9-350 is primarily concerned with service and acquiring personal jurisdiction, the entire thrust of section 15-9-380 is to provide a method reasonably calculated to afford the defendant additional notice of the lawsuit, and nowhere within its language does it purport to alter or affect a court's personal jurisdiction once the pleadings have been served on the Director pursuant to section 15-9-350.

Substitute service statutes such as section 15-9-350 are enacted for the benefit of the plaintiff by creating a method of service that provides certainty when there is a probability that the out-of-state defendant will be difficult if not impossible to personally serve with process. *See Wright,* 2021 WL 1140243, at *4. Under Defendant's proposed interpretation of section 15-9-380, the service of the summons and complaint on the Director no longer has any significance, and the only step taken in the statutory scheme that effectuates service is the plaintiff's filing of an affidavit of mailing and envelope, and service is only effective upon the date of this filing.

Under Defendant's interpretation, the Director merely serves as conduit for service, not as an agent, through which service ultimately rises and falls depending upon when the plaintiff files an affidavit of mailing. Defendant's interpretation gives no certainty of service to the plaintiff, since the creation of the affidavit and envelope are all subject to variables that are completely beyond his control. Such a reading of the statute is clearly at odds with the General Assembly's intent to provide a streamlined method for South Carolina citizens to serve out-of-state motorists who have caused

them harm on South Carolina roadways. It would also essentially eradicate the significance of the General Assembly appointing the Director as the statutory agent for an out-of-state motorist.

The statute in question contains no language requiring the plaintiff to file the envelope and affidavit of mailing within the statutory period for service (likely because it is inherent that service was effective upon delivery to the Director) or any other deadline. Instead, it only states that if the plaintiff does file the envelope and affidavit of mailing, that thereafter by operation of law it is just as if the envelope and affidavit of mailing had been personally served upon the defendant, i.e., that the defendant is chargeable with additional notice of the contents of the affidavit and envelope. Defendant's argument would permit nonresident defendants to willfully refuse to provide a valid address to law enforcement and injured residents, evade service, then benefit by virtue of the fact that it is difficult or impossible for the South Carolina resident and the SCDMV to ascertain where the nonresident actually lives, as well as from the vagaries of (1) when the USPS will attempt delivery to the nonresident's incorrect address, (2) when any forwarded mail when arrive at the next address, (3) geographic proximity to South Carolina or the United States, (4) when the SCDMV will actually receive the returned, unopened, non-deliverable or refused envelope, and (5) when the plaintiff will finally receive a copy of the returned envelope and SCDMV's affidavit of mailing.

Defendant's argument that the Court never exercised personal jurisdiction over Defendant because he claims the affidavit of mailing and envelope were untimely filed and he never received notice of the lawsuit is contrary to section 15-9-380, which explicitly provides that a defendant need not receive actual notice of a pending lawsuit for service to be effective. This has been confirmed by the Supreme Court in interpreting section 10-431.1, the predecessor to section 15-9-380:

> [I]t is no absolute requirement to good and valid service that the Defendant actually receive the notice in order to vest jurisdiction in the courts, provided the Plaintiff has acted in good faith and stated correctly the last known address of the nonresident Defendant . . . . [I]n some cases it has been said that the burden is on the Plaintiff to

> investigate and learn the last known address of the Defendant. However, the general trend of authorities is to sustain the validity of service of process if the statutory provisions in themselves indicate there is a reasonable probability that, if the statute is complied with, the Defendant will receive actual service . . . . [T]he only requirement was that Plaintiff comply with the statute in good faith, which was done in this case.

Cook v. Fed. Ins. Co., 263 S.C. 575, 583, 211 S.E.2d 881, 883 (1975).

Plaintiff has complied with the statutes for service upon the Director as the designated agent for Defendant, and Defendant has not provided any evidence indicating that Plaintiff has acted in bad faith. *See Roche*, 318 S.C. at 209-10, 456 S.E.2d at 899 ("Exacting compliance with the rules is not required to effect service of process. Rather, [the Court must] inquire whether the plaintiff has *sufficiently* complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings."). Plaintiff served Defendant by mailing a copy of the process, along with a fee, to the Director. S.C. Code Ann. § 15-9-350. The SCDMV then sent notice of the service and a copy of the process by certified mail to Defendant at the last address he made known to the public, the States of North Carolina and South Carolina, and Plaintiff.

Under *Roche*, South Carolina requires "sufficient" compliance with the Rules to effect service of process. Other jurisdictions have defined substantial or sufficient compliance with the rules for service as compliance in respect to the essential matters necessary to assure every reasonable objective of the statute. *See, e.g. Fisher v. DeCarvalho*, 298 Kan. 482, 490, 314 P.3d 214, 219 (Kan. 2013) (defining substantial compliance as "compliance in respect to the essential matters necessary to assure every reasonable objective of the statute."). Under South Carolina law, one objective of service is to "assure the defendant of *reasonable* notice" of the action, and not to provide actual notice to the defendant in every instance. *Roche*, 318 S.C. at 209, 456 S.E.2d at 899. Plaintiff and SCDMV complied with all statutory requirements conceivably possessing the objective of giving Defendant reasonable notice of this action. Under the logic of *Holman*, *Hammond*, and *Peake*, the *filing* of the

envelope and affidavit of mailing is not a step taken to give the defendant reasonable notice of the proceedings (because after all, at this stage the defendant is likely in default), and instead merely serves as proof of those efforts.

Defendant argues that South Carolina law requires strict compliance with statutes regarding substitute service. This has never been South Carolina law, which only calls for sufficient or substantial compliance with statutes regarding substitute service, and the cases cited by Defendant in support of his argument refer to service by publication, not substitute service. *Caldwell v. Wiquist*, 402 S.C. 565, 574, 741 S.E.2d 583, 588 (Ct. App. 2013). Additionally, I find Defendant's citation to an unpublished decision of the Court of Appeals, *Free v. Buff*, No. 2015-UP-162, 2015 WL 1396362, (S.C. Ct. App. Mar. 25, 2015), to be unpersuasive in this instance, given the factual disparities between that case and the case before this Court..

In *Free*, the court appeared to base its decision on the fact that no affidavit of mailing or affidavit of service had been filed at all, although this is difficult to ascertain as it is an unreported decision with no dicta explaining its rationale. In this case, the return receipt and affidavit were filed by Plaintiff documenting the efforts SCDMV made to afford reasonable notice to Defendant of this lawsuit. Further, *Free* does not contemplate or even address the arguments and case law that have been brought to my attention by Plaintiff in this case, particularly the application of the courts' reasoning in *Holman*, *Hammond*, and *Peake* under an analogous substitute service statute. Under these circumstances, *Free* is unavailing because it did not seek to decide whether a plaintiff's efforts were sufficient under the statutory scheme and only supports that service will be ineffective if no affidavit of service, return receipt, or affidavit of mailing are ever filed by the plaintiff. Further, *Free* has no precedential value, should not be relied upon in proceedings in which it is not directly involved,

such as this one, and in the absence of any clear explanation for its holding it has virtually no persuasive value. Rule 268(d), SCRCP..

Here, Plaintiff filed an affidavit of service documenting his efforts at service on February 15, 2017. When the certified mail was not accepted and receipted for by Defendant, the SCDMV appropriately sent the process through open mail pursuant to S.C. Code Ann. § 15-9-380. On March 10, 2017, the SCDMV prepared an affidavit of mailing demonstrating that the notice had been returned "Unclaimed Unable To Forward" and that the process had been sent to Defendant by open mail as required by the statute. These efforts mirrored the General Assembly's directives, which were calculated to create a reasonable probability that Defendant would receive additional notice, even if he did not receive actual notice. After acquiring the affidavit and a copy of the returned envelope, Plaintiff filed them on July 11, 2022, over four months before Defendant appeared in this action and filed his motion for relief from the default judgment. Again, S.C. Code Ann. § 15-9-380 sets forth no deadlines for filing the affidavit of mailing and envelope, and South Carolina law only requires substantial, not exacting, compliance with the statute, and reasonable, not actual, notice in order to give effect to its objectives.

Under the rationale of *Holman*, service was effective on the Director and complete on February 9, 2017. I find that Plaintiff and the SCDMV have substantially complied with the requirements of the statutes and Rules of Civil Procedure. These efforts were designed to afford Defendant reasonable notice of the proceedings that had been commenced against him. The process was served upon the SCDMV within the statutory limitation period, the process and notice of service were forwarded to Defendant by certified mail within the statutory limitation period by Defendant's agent, and when the certified mail was returned unaccepted, the SCDMV immediately prepared an affidavit of mailing and sent the notice of service and process through open mail within the statutory

limitation period. Plaintiff has filed an affidavit of service and an affidavit of mailing along with the return receipt demonstrating that this occurred. Plaintiff's service on the Director effectively tolled the statute of limitations and established the circuit court's jurisdiction over Defendant, and therefore the default judgment is not void for lack of jurisdiction or ineffective service.

Additionally, the filing of the SCDMV's affidavit of mailing and envelope with the Court are analogous to filing proof of service, and it is undisputed that the act of filing proof of service is not part of the process of service itself and cannot invalidate the service.[3] *See* Rule 4(g), SCRCP ("Failure to make proof of service does not affect the validity of the service."). Likewise, filing the affidavit of mailing and envelope are not part of the process of service and do not invalidate it. Under Defendant's argument, a circuit court would lack personal jurisdiction over a properly served defendant before proof of service was filed, and actions could be dismissed if proof of service was not filed within 10 days after service under Rule 5(d). *See* Rule 5(d), SCRCP (giving courts discretion to permit untimely filing of proof of service); *Beckham v. Durant*, 300 S.C. 329, 332, 387 S.E.2d 701, 703 (Ct. App. 1989) ("Nowhere does the rule provide failure to file proof of service within the ten day period nullifies the service . . . . Thus, failure to make proof of service within a ten day period of service . . . would not affect the validity of service."). Clearly, this is not what South Carolina law provides. Further, Rule 4(i), SCRCP permits a plaintiff to amend the proof of service at any time.

Rule 60, SCRCP, also provides that a default judgment may be vacated due to mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. The burden is on the defendant to show proof of a good faith mistake of fact, surprise, or excusable neglect. *Williams v. Watkins*, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009). This requires the defendant to provide a satisfactory explanation for the default and give reasons why vacation of the default judgment would

[3] Similarly, S.C. Code Ann. § 15-9-380 does not state that failure to file the affidavit of mailing and envelope will affect the validity of the service upon the Director.

serve the interests of justice. *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888. The defendant must also meet the other factors for granting relief, which include the timing of his motion for relief and the degree of prejudice to the plaintiff if the relief is granted. This Court does not even reach a consideration of the timeliness, meritorious defense, and prejudice factors because for the following reasons, Defendant has not articulated a satisfactory explanation for his failure to appear even under the more lenient Rule 55(c), SCRCP "good cause" standard. The evidence only demonstrates that his failure to appear and defend is entirely the product of his own conduct. Had the defendant updated his address on his commercial driver's license after he moved, as he is required to do by law, and/or had he simply provided a notice of change of address to the USPS so that mail would be forwarded to his new address, this case would have never resulted in a default judgment.

Defendant's affidavit does not describe any mistake of fact that would justify vacating the default judgment. The affidavit *does not* set forth that Defendant left a valid address with law enforcement after the subject collision, that he informed the other occupant of the subject vehicle, Maisha Jacobs of his proper address, or that he has ever updated his license during the pendency of this action. On the other hand, the affidavit *does* set forth that on the date of the subject collision, December 10, 2013, Defendant had lived in a new residence in North Carolina since August 2013 but had not updated his Commercial Driver's License within 60 days as required by North Carolina law. *See* N.C.G.S. § 20-7.1 ("A person whose address changes from the address stated on a drivers license must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a duplicate license within that time limit stating a new address.").

Further, Defendant's failure to receive the certified mail sent by the SCDMV to Defendant's last known address creates a reasonable inference that Defendant had failed to provide a forwarding

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address to the USPS, which would have given him the means to receive from his statutory agent notice of any actions filed against him as a commercial driver who used public roadways within South Carolina. Defendant ostensibly knew that he had been involved in a fatal collision within South Carolina, knew that his address listed on his driver's license was wrong, knew that he had informed no one of his actual address, and knew that he had never provided a forwarding address to USPS.

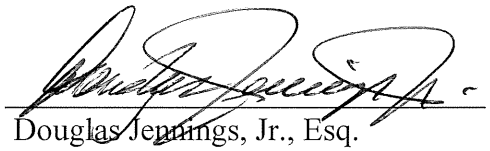
I find that Defendant has not produced any evidence tending to show that he would have been reasonably surprised that he never received actual notice of the process and notice of service from SCDMV. This also precludes a finding that Defendant's conduct constituted excusable neglect. Defendant had a legal obligation to update his address prior to the subject collision under South Carolina and North Carolina law. There is no evidence that he did so. The nature of this neglect is multiplied by the apparent subsequent failure to provide a forwarding address or make any efforts to inform anyone connected to the events of this action of how he could be reached or contacted.[4] This does not constitute the surprise or type of neglect necessary to vacate an over two-year old default judgment. *See, e.g. Bodell Const. Co. v. Robbins*, 334 P.3d 1004, 1009 (Utah Ct. App. 2014) (stating that the failure to update one's address and stay apprised of proceedings is not excusable neglect justifying vacating a default judgment under Rule 60(b)(1)). In this case, the neglect is entirely Defendant's and is not based on any cognizable mistake of fact, therefore, it cannot reasonably come as any surprise to Defendant that he did not receive actual notice of this lawsuit until after a default judgment had been entered.

Defendant's admitted failure to comply with the laws of North Carolina is the only reason Defendant did not receive notice of this lawsuit from his agent. Because Defendant made the conscious choice to not update his address with the North Carolina Department of Motor Vehicles,

[4] These failures also prevented Plaintiff from discovering the identity of Wayne Hunt's employer.

give an accurate address to responding law enforcement at the scene of the subject collision, or provide a valid forwarding address to the United States Postal Service, he cannot now complain that a default judgment was entered in his absence when he admittedly never undertook any of these obligations. Because service was effective and complete upon delivery of the suit papers to the Director of the SCDMV, the default judgment is not void for lack of proper service or personal jurisdiction.

For the foregoing reasons, I respectfully DENY the Defendant's motion to vacate the default judgment.



Douglas Jennings, Jr., Esq.
Special Referee

January 5, 2025
Bennettsville, South Carolina