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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No.: 2021-CP-27-00069
Appellate Case No. 2025-001116

Mark W. McGilton,..... Respondent,

v.

1223 May River Road, LLC, D.R. Horton, Inc., and
Lotty Trucking, LLC f/k/a Ramos Trucking, LLC,..... Defendants,

of which D.R. Horton, Inc. is the Appellant,

AND

1223 May River Road, LLC, ...Third-Party Plaintiffs,

v.

Kenneth Scott Builders, Inc., ...Third-Party Defendants.

RECORD ON APPEAL
VOLUME V

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RECORD ON APPEAL INDEX
Appellant D.R. Horton, Inc. – Respondent Mark W. McGilton
Appeal 2025-001116

VOLUME I

Orders

1. Consent Order September 20, 2022 (discovery and venue).	1
2. Order Granting Motion to Amend October 26, 2022	4
3. Order of Dismissal of 1223 May River Road, LLC October 26, 2022.	7
4. Consent Confidentiality Order January 3, 2024	10
5. Consent Scheduling Order January 17, 2024.....	20
6. Order Granting Plaintiff’s Motion to Compel March 5, 2024	23
7. Order, Form 4, Denying Motions for Summary Judgment June 4, 2024	32
8. Order June 13 2024 (amending scheduling Order).....	35
9. Order Form 4, field August 28, 2024 (scheduling).....	38
10. Order Consent Scheduling December 13, 2024.....	41
11. Order Granting Sanctions January 15, 2025	45
12. Order on Reconsideration filed June 3, 2025.....	56

Pleadings and Filings

13. Plaintiff’s Complaint filed February 17, 2021	67
14. Answer and Motion to Dismiss of 1223 May River Road filed March 19, 2021	82
15. Plaintiff ‘s Motion for Entry of Default as to Defendant Lotty Trucking filed March 22, 2021.....	87
a. Exhibit 1	89
16. D.R. Horton’s Answer filed April 14, 2021.....	91

17. Amended Answer, Motion to Dismiss, and Third-Party Plaintiff's Complaint of 1223 May River Road Against Kenneth Scott Builders filed April 15, 2021	100
a. Exhibit A.....	107
18. Defendants D.R. Horton and 1223 May River Road's Motion to Transfer Venue filed April 16, 2021	122
19. Kenneth Scott Builders' Answer to 1223 May Rivers Road's Third-Party Complaint filed May 27, 2021	124
20. Plaintiff's Motion to Compel and for Sanctions Against Defendant D.R. Horton filed November 4, 2021	131
a. Exhibit 1	133
b. Exhibit 2	158
c. Exhibit 3	160
21. Motion for Order of Dismissal of 1223 May River Road and Kenneth Scott Builders filed April 26, 2022	161
22. D.R. Horton's Motion to Stay Discovery filed August 3, 2022	163
23. D.R. Horton's Motion to Amend Answer filed August 4, 2022.....	167
24. D.R. Horton's Amended Answer and Crossclaims filed August 4, 2022.....	169
25. Plaintiff's Memo in Opposition to Motion to Change Venue August 15, 2022	189
26. D.R. Horton's Memorandum in Support of Its Motion to Amend filed August 16, 2022	195
a. Exhibit A.....	200
27. D.R. Horton's Memo in Support of Its Motion to Stay Discovery and In Opposition to Plaintiffs' Motion to Compel and for Sanctions filed August 16, 2022	217
28. D.R. Horton's Memo in Support of Its Motion to Transfer Venue filed August 16, 2022	224
29. D.R. Horton's Amended Memo in Support of its Motion to Transfer Venue filed August 16, 2022.....	230

30. Plaintiff's Memo in Support of its Motion to Compel and For Sanctions filed August 17, 2022.....	237
a. Exhibit 1.....	242
b. Exhibit 2.....	413
c. Exhibit 3.....	436
d. Exhibit 4.....	444
e. Exhibit 5.....	466
f. Exhibit 6.....	471
g. Exhibit 7.....	473

VOLUME II

31. D.R. Horton's Amended Answer and Third-Party Complaint filed October, 26, 2022 ..	476
a. Exhibit A.....	494
32. Kenneth Scott Builders' Answer to D.R. Horton's Third-Party Complaint filed November 22, 2022.....	511
33. Plaintiff's Renewed Motion to Compel and Rule to Show Cause filed October 17, 2023	523
a. Exhibit 1.....	528
b. Exhibit 2.....	530
c. Exhibit 3.....	533
34. Affidavit of Attorney's Fees filed March 15, 2024	535
35. Kenneth Scott Builder's Motion for Summary Judgment filed March 29, 2024.....	540
a.Exhibit A.....	543
b.Exhibit B.....	544
36. D.R. Horton's Motion for Summary Judgment as to Plaintiff filed May 21, 2024.....	561
37. Kenneth Scott Builder's Memo in Support of its Motion for Summary Judgment filed May 23, 2024	564
38. D.R. Horton's Memo in Support of its Motion for Summary Judgment as to Plaintiff filed May 29, 2024	570
a. Exhibit A.....	584
b. Exhibit B.....	601

c. Exhibit C	612
d. Exhibit D	621
e. Exhibit E	624
f. Exhibit F.....	629
39. D.R. Horton’s Memo in Opposition to Kenneth Scott Builders’ Motion for Summary Judgment as to D.R. Horton’s Claims filed May 29, 2024.....	630
a. Exhibit A.....	642
40. Plaintiff’s Memo in Opposition to D.R. Horton’s Motion for Summary Judgment filed May 29, 2024	659
41. Affidavit of Alfredo Uriostegui, dated April 10, 2017 filed May 30, 2024	674
42. D.R. Horton’s Motion to Amend Scheduling Order filed June 6, 2024	676
43. D.R. Horton’s Memo in Support of its Motion to Extend Scheduling Order filed June 10, 2024.....	678
44. Plaintiff’s Memo in Opposition to D.R. Horton’s Motion to Amend Scheduling Order filed June 10, 2024.....	682
a. Exhibit 1	689
b. Exhibit 2.....	698
c. Exhibit 3.....	720
d. Exhibit 4.....	723
45. D.R. Horton’s Motion to Reconsider Order on its Motion for Summary Judgment filed June 13, 2024	733
a. Exhibit A.....	750
b. Exhibit B	767
c. Exhibit C	778
d. Exhibit D.....	789
e. Exhibit E	792
f. Exhibit F.....	779
46. Plaintiffs’ Motion for Rule to Show Cause filed August 19, 2024.....	798
a. Exhibit 1	807
b. Exhibit 2.....	809
47. Letter with Exhibit 3 filed by Plaintiff August 20, 2024	814
a. Exhibit 3.....	814

48. D.R. Horton’s Motion for Costs and Sanctions filed September 4, 2024.....	818
a. Exhibit 1.....	821
49. Plaintiff’s Offer of Judgment filed October 3, 2024.....	824
50. Plaintiff’s Memo in Support of Motion for Rule to Show Cause filed October 14, 2024. Plaintiff requested exhibits 1-4, 7, 8 be included; Defendant has also included 6	826
a. Exhibit 1.....	854
b. Exhibit 2.....	857
c. Exhibit 3.....	860
d. Exhibit 4.....	864
e. Exhibit 6.....	868
f. Exhibit 7.....	869
g. Exhibit 8.....	872
51. Affidavit of Attorney Benjamin T. Shelton filed October 14, 2024.....	895
52. Affidavit of Attorney John Crawford filed October 15, 2024 with exhibits	899
a. Exhibit A.....	902
b. Exhibit B.....	910
c. Exhibit C.....	912
d. Exhibit D.....	916
e. Exhibit E	919
f. Exhibit F.....	923
g. Exhibit G.....	933
h. Exhibit H.....	936
i. Exhibit I	943
53. D.R. Horton’s Memo in Opposition to Plaintiff’s Motion for Rule to Show Cause filed October 16, 2024.....	947
a. Exhibit A.....	960
b. Exhibit B.....	963
c. Exhibit C.....	964
d. Exhibit D.....	966

VOLUME III

54. Affidavit of Attorney Jason M. Imhoff filed October 16, 2024.....	973
55. D.R. Horton’s Memo in Support of Motions for Sanctions filed October 16, 2024	980

a. Exhibit 1.....	985
b. Exhibit 2.....	988
c. Exhibit 3.....	992
d. Exhibit 4.....	994
e. Exhibit 5.....	1081
f. Exhibit 6.....	1085
g. Exhibit 7.....	1087
56. Letter and Deposition of Jared O’Sako filed October 17, 2024	1120
57. Letter filed October 18, 2024.....	1332
58. D.R. Horton’s Response and Objections to Plaintiff’s Proposed Order on Rule to Show Cause filed December 23, 2024.....	1337
59. Plaintiff’s Reply to D.R. Horton’s “Response” filed January 1, 2025	1343
a. Exhibit 1.....	1352
60. Letter of Default filed January 15, 2025.....	1353
61. D.R. Horton’s Motion to Reconsider filed January 27, 2025	1355
a. Exhibit A.....	1369
b. Exhibit B.....	1377
c. Exhibit C.....	1382
d. Exhibit D.....	1387
e. Exhibit E	1390
f. Exhibit F.....	1392
g. Exhibit G.....	1408
h. Exhibit H.....	1431
i. Exhibit I	1434

VOLUME IV

j. Exhibit J	1438
k. Exhibit K.....	1474
l. Exhibit L	1482
m. Exhibit M	1486
n. Exhibit N.....	1492
o. Exhibit O.....	1499
p. Exhibit P.....	1548

62. Plaintiff's Return to D.R. Horton's Motion for Reconsideration filed February 24, 2025	1550
a. Exhibit 1	1570
b. Exhibit 2	1571
c. Exhibit 3	1572

VOLUME V

c. Exhibit 3 Continued	1912
d. Exhibit 4	1941
63. D.R. Horton's Reply in Support of Motion to Reconsider filed March 31, 2025	1942
a. Exhibit A	1955
b. Exhibit B	1558
64. Plaintiff's Offer of Judgment filed June 4, 2025	1965
65. Notice of Appeal filed June 5, 2025	1967
a. Exhibit 1	1970
b. Exhibit 2	1981

Other Materials

66. Speeding Ticket of Mark W. McGilton in Beaufort County SC charged July 2019	1992
67. Notice of Motion to Compel and Sanctions Hearing July 11, 2022	1994
68. Notice of Motion to Compel and Sanctions Hearing November 9, 2023	1995
69. Certificate of Counsel	1996

MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

341Index: #3-20

ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

#
#3 65:18
#4 171:15 193:17 197:20,25 198:5,8,15, 18 199:3,10
\$
\$14,000 252:25
\$1560 221:21
\$16,000 26:6
\$2,235 223:2
\$2174.25 222:3
\$25 183:25 271:6,7,12, 15,18
\$3,500 252:23
\$30 123:22,23 271:6
\$3500 253:3
\$4,000 221:20
\$4,372.50 222:19
\$5,000 222:5,6
\$65 156:14
\$800 221:19
\$84,015 84:2
\$90 267:10
0
01/2011 243:5
0506 166:7
069360 133:13
1
1 8:2 30:24 90:23 101:18 110:12 112:24 118:14 119:9 120:6 121:11 128:6 151:18 157:6 161:21 170:18,21 172:17 175:4 176:4

177:25 180:11,12,24
190:6 192:18 204:1,24
210:21 212:8 213:22
214:3 241:7 246:19
254:23 331:16,17

1/24/2017 107:22

10 16:11 31:3 54:3
110:11 114:5,21 126:8
150:14 153:18 158:19
165:4 166:11 173:16
184:21 200:17 220:23
221:6 240:7,17 243:3,
18 246:18

10/4/2008 242:10

1056 274:15

1099 82:17 83:1,24 84:7
321:22 322:6,7

10th 110:14 143:7
154:5 161:2,4,12 179:2
220:22

11 16:11 54:4 55:18
56:3 60:8 126:1 140:23
153:2,8,14 159:21
168:20 169:5 172:15
174:16 179:12 186:2,8,
13 187:3,7,11 197:2
200:20 203:13 221:6

11/14 95:3

11/14/2016 94:25

11/15/2016 95:1

11/8/2016 95:23

11/9/2016 95:6

11/9/2017 186:3

11:00 95:25

11:00-ish 288:8

11:42 62:12

11:59 62:13

11th 154:5

12 20:15 39:4 56:4 57:5
60:7 101:18 142:4
160:22 167:2 180:3
182:25 203:22 208:13
210:14 221:6 332:19

1223 33:13 102:2 231:4,
17 232:5 282:19 283:24
285:17 286:13 287:12
294:11 298:5 301:8,13
323:11

123 298:2

12:00 102:10

12:24 79:9

12:30 215:18

12th 221:10

13 13:16 15:24 33:4
43:19 60:9 64:4 98:6
114:2 125:7,22 126:2
159:6,14 169:15
170:17,19 172:3,4
179:3 183:3 185:16,20,
21 188:2 192:12 206:17
220:3 221:4,5 249:8
253:4,23 274:18

133 19:23 20:11 275:20
277:5 282:5

13th 169:7 261:7

14 21:13 61:3 113:10
143:11 157:7,8 159:15
169:12,15,21 171:25
179:7 188:8 193:17
221:18 245:10 253:1

14th 207:20 332:19

15 61:6,9 92:12 116:3
123:11 125:1 137:6
138:17 143:9 152:14
156:2,14 157:14 159:1,
21 180:3 185:23 188:17
195:16,20 204:16
222:18 223:1 253:1
261:5,12

158 207:9,10,14,15

15th 85:10 332:8

16 61:20 80:6 98:9
106:16 115:1 125:19,22
140:7,14,15,17 144:16
151:9 155:9 160:21
179:15 190:1 196:11
205:16 243:19 333:9

164796 182:24

16th 126:8

17 62:15,16 63:7 101:16
106:16 125:22 137:11,
12,18 141:25 151:24
154:10 155:10 158:11
161:2 178:15 189:12
195:20 196:2 210:5
238:23 248:20 255:8
257:2,11 258:11

170 26:20 35:15 134:11
206:1 210:5 224:11

17th 178:2 255:13
256:13,23

18 15:13 26:6 32:17
64:8 72:20 73:17 104:6
107:22 116:4 123:12
125:21 152:18 170:23
178:23,25 179:9 183:10
185:5,8 189:8

18th 182:1

19 66:23 71:5 151:23
155:23 156:5 163:7,25
170:17 185:13 214:25

1986 12:16 252:12

19th 178:23 181:23

1:00 96:21

1:03 79:10

1:30 159:22

| 2 |
| 2 12:16 42:1 70:2,22 95:6 119:20 141:2 144:23 145:3 152:10 161:22 162:6 163:9 170:23 171:20,21 173:16 175:2,18 176:2 196:16 206:21 210:14 212:19 243:20 252:21 304:13 |
| 2-1/2 96:1 252:21 |
| 2/9/2018 208:2 |
| 20 71:3,8 76:21 121:17 137:15 143:9 152:23 153:5 158:7 163:2 169:23 183:7 190:6 |


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191:14 213:22 259:18	11,17 185:4,9,13,16,23	183:10 211:20 212:12	27 77:6 79:6 112:14
20-ton 91:17	188:2,8,17 189:8,13	222:4 284:21	121:11 152:10 153:3,24
2000 15:13 106:8	190:1,6 191:14 192:11,	239 185:7	154:6 164:5,22 193:20
2003 16:19	18 193:2,4,15,20 194:2,	23rd 128:18 212:7	194:2 198:4 215:17
2007 240:9 241:6	9,23 195:4,20 196:24	24 74:21 116:7 136:25	216:12 217:10 222:2
2008 241:7 242:9 243:1	197:18,25 198:4,8	138:15 139:17 141:21	329:14 330:1 333:7,23
2011 243:3,14,15,16	226:24 247:7,10 248:4,	152:16 176:12 211:3	270 140:6
2012 254:23	14,24 255:8,13 256:13,	244 62:16 104:7	271 140:13
2013 253:4,23	23 257:2,11 258:11	245135 179:7	272 141:21
2014 21:15 243:19,20	2018 15:24 31:5 32:7	246 106:1	275 144:15
2015 21:13,15 78:20,22	33:4 43:19 64:4 85:7,9,	249 109:14	276 144:14 150:12
244:3,5 245:10 246:1,2,	10 195:16,20,25 196:2,	24th 183:13	277 150:13 151:13
5 261:15	11,16 199:21 200:17,20	25 107:17 133:14	278 151:15 205:5 224:9
2016 84:23 85:5 87:6	201:4 203:13,22 204:16	140:22 152:17 184:5	225:9 312:10
90:23 92:12 104:9	205:16 206:17 207:19,	221:19 240:9,13 241:6	279 151:22
125:7,8,9,14 126:8	20 208:17 209:22	242:17,19	27th 182:22 183:6
195:24 226:24 246:19,	210:14,19,25 211:3,20	25/2017 177:25	28 79:19 82:23 85:7
21,25 303:4	212:3,7,12,13,19 213:6,	250 111:18	92:16 106:1 109:14
2017 31:3 32:12,15 80:2	12,22 214:25 215:11,17	252 113:16	116:18 122:1 123:11
83:24 85:6 98:7,10	216:12 217:10,16	253 114:20	133:18 141:21 151:14
101:16 104:6 108:11	218:22 219:1,17 220:2,	254 115:1	153:5 154:13 156:10
110:5,11 111:17 112:3,	3 221:18,19,20 222:2,4,	255 116:17	178:21 180:9 191:16
14,24 113:10,22 114:2,	18 223:1 226:25 249:8	258 119:17	193:4 197:25 217:16
5,21 115:2 116:3,7,20,	250:1 259:18 261:5,8,	259 119:25	280 152:13
25 117:4,9,15 119:9,20	12 284:21 303:4 329:14	25th 221:18	281 152:14
121:9,11,17 122:1	330:1 331:16,17,23	26 76:3 140:10 142:4	282 152:21
123:12 125:1 126:1,2	333:6,7,21	153:1 155:3 184:11	283 153:6
127:18 128:19 130:15	20180379 104:7	215:10 221:20	284 153:11,22
133:14 136:25 138:13,	20180379107872 63:8	260 121:23	285 153:23
21 139:18 140:8,9,18,	2018039230 82:24	261 122:5 123:8,9	286 154:12
22 141:22,25 142:4	2019 250:11,14 254:24	262 123:10 125:5	287 155:8
143:11 150:18 151:16,	2021 251:4	263 125:6 126:6	288 155:16
19,23 152:3,5,10,16,18	2022 251:17,20	264 126:7	28th 138:16
153:1,3,5,8,14,18	20th 181:19	265 126:15	29 153:12 165:3 192:18
154:3,4,6,9,21 155:3,9,	21 72:11 73:2 84:23	266 133:18 137:4	193:2 197:17 208:17
10,23 156:2,5 157:6,21	107:17,18 143:7,9	267 137:5 138:14	224:4 230:17
158:2,3,13,22 159:6,14,	156:2 162:15 176:21	268 138:15	290 156:10
15,21 160:21,22 161:2	192:11 213:6,12	26th 220:7	291 157:7
162:15 163:2,7,25	215 261:15		292 157:14
164:5,22 165:3,17,18,	21st 181:18		293 158:10
24 166:11 167:2	22 104:9 127:18 136:11		
169:12,15,16,21,23	150:18 153:18 154:21		
170:17,23 171:9,23	176:17 180:17 181:9		
172:17 173:11,16	212:3,13 243:15 246:2		
174:16 176:7,12,17,21	22nd 213:19		
178:2,15,23 179:3,9,12	23 74:10 130:15 151:18		
180:3,9,17 181:9 182:7,	152:5,7 155:8 176:7		
23 183:3,10,13 184:6,			



MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

343Index: 294-5:53

ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

294 158:11
29910 77:16
29th 137:6 246:21
2:00 113:3 139:23
2:28 163:18
2:38 163:19
2nd 111:16

3

3 20:15 43:22 69:23
70:10 72:5,6,21 106:2
116:25 140:7 160:6
161:2 170:24 171:2,3,
10,13 174:16 181:7
183:14 184:6,17 189:8
193:4 198:8,11 208:4,5
243:16 244:3 248:14
331:21,25 333:21
3/16 178:19
3/27 331:22
3/27/17 139:15
3/8/18 219:9
3/9 219:12
30 113:22 123:12,14
124:13 136:11,13,16
138:13 157:21 165:17
193:15 210:25 218:3,10
230:19 233:7 271:6
300 163:22
301 164:23
302 165:13
303 165:20
305 169:19
306 169:21
307 170:4
308 171:18
309 172:14
31 112:3 138:21 158:2
171:9 185:4 210:19
237:9 246:1 254:24

310 172:15
317 178:20
318 179:3
319 179:11
32 237:9
320 181:10
321 181:11
324 182:24
326 184:5
327 184:10
328 184:23
330 186:1
331 186:2 298:2
332 188:8 189:6
333 189:7,19
334 189:20
335 191:15
336 193:4
337 193:16
338 194:4
339 195:2
34 252:6
340 195:7 196:7
344 199:22
345 200:20
346 203:20,24
347 204:19
348 206:20
349 207:25
35 50:22 259:14
350 208:13 209:13
351 210:12,14
352 210:24,25
353 211:15
355 212:18

355902 90:21
355906 87:19
355907 89:2 95:4
355908 92:16
355913 97:5
355918 108:7
355925 113:17
355948 121:24
355949 119:18
356 215:8
357 215:9
358 217:9
359 219:7
36 266:25 270:15
360 219:8
37 273:2 275:24
38 8:2 16:21 254:17
331:9,13
39 331:10,11,12
3:00 102:3,11
3:30 139:23 157:8
214:7,22
3:40 223:24
3rd 332:8

4

4 16:19 44:11 73:15
78:11 107:23 128:19,21
129:14 139:18 151:16
153:8 155:24 157:5
171:9 173:15 176:4
185:8 187:25 188:3,5
192:19,20,22,25 194:23
203:25 207:8 277:2,5
4's 193:1 198:25
4/10 143:25
4/11 142:19,20,22,23
4/12 142:20,22 143:2

4/13 144:4
4/14 143:22
4/17/2017 144:21
4/20/2017 144:15
4/21/2017 144:10
40 304:6
42 83:2,11,23
44 77:15 262:6 273:18
45 50:22
46 36:16,17 50:3 86:23
89:20 109:20 134:3,8,9,
11,12 224:13,14
225:16,23 226:1 228:8
274:18 293:7 332:9
462 206:8
4:00 102:14,20 108:12,
15,16
4:30 94:20 107:24
184:21
4:35 280:16

5

5 46:3 74:7 116:7 121:9
141:25 143:9 152:5
156:5 157:9,10 158:22
159:16 165:24 178:2,5
182:7,19 183:3 188:9
189:13,15,16 194:9
196:24 203:20 208:1
209:20 211:3,21 218:22
250:3
56 250:3
57 180:24 199:3
5:00 113:3 131:5 186:7
187:13 200:2,4 215:14,
19 216:13 217:19
5:30 108:12,15,16
5:48 336:1
5:53 280:17



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6	191:17 192:6 198:8	987901 217:15	acquaintances 21:2
6 20:15 46:10 74:19 76:22 117:4 141:22 151:23 152:3 155:6,16 157:23 158:1 159:6 162:15 163:4 178:3 181:19 182:23 185:13 195:4 196:16,24 197:9 199:21 200:17,20 203:13 205:17 209:22 211:15 212:3 219:1	8/13/2017 176:1	9:00 107:22	acres 274:18,25
6/6/2017 158:15	8/16/2017 175:15	9:30 115:4,19	actively 299:17
623 161:21	8/17/2017 175:21	9th 250:1 333:10	actual 10:19 233:20 249:7 322:7
65 115:4,19 127:9	8/18/2017 175:2	A	add 12:11 96:22,23
696012 209:19	8/2 171:20	A-L-I-A-S 57:12	added 101:13
7	8/2/2017 171:24	a.m. 62:12,13 102:20 107:22 131:4 214:4 215:14	additional 72:18
7 49:5 78:20 85:5 110:4 117:9 140:18 153:25 154:13,20 157:17 158:4 160:11 165:18 166:11 169:7,24 181:12 185:16 187:19,20 188:17 196:2 197:18,25 198:4 199:22 204:20 207:19 219:17 228:23 244:4 247:7	8/25/2017 178:14	ability 19:2 328:16	address 18:15 19:19 20:1 36:12 77:17,19,22 83:21 89:19 205:22 207:15 245:19,24 277:3 294:24 298:2 323:13,14
7/11/2017 166:23	8/28/2003 239:20	abnormal 120:24 315:8	addresses 20:8
7/31/2017 171:19	8/3/17 172:2	absolute 40:2	adjuster 70:9,24 71:1, 9,10,15 72:7,22 73:17 74:8
701 48:8,9 49:4 216:11 304:9,17 329:17,23 330:16	8/8 173:11	absolutely 60:11	adjusters 71:20,24 74:20 75:3,8
702 215:25 216:2,4,7 304:12,17,18,20 329:14,17 330:13,17,18	8/9/2017 173:7	Acapulco 12:25 13:7	adrenaline 55:16
7:00 214:4,14,19	80 267:9	accept 309:22	adult 20:16,17 238:24
7:30 96:20	800-767-0607 88:2	accident 8:25 15:21,23 36:9,10,11 39:2 41:8,17 43:18 49:7 50:14 54:10 56:7 58:20 65:11 85:13 220:16,18 223:7 232:7, 10 249:11 256:17,20 257:5 259:20 260:12,13 261:7,22 268:21 272:4, 6 277:4 278:25 279:23 280:1 282:10,15 283:6 284:22 285:23 287:14 290:4,5 301:7 304:23 305:10 308:16 309:13, 14,16,21,23 310:2,13, 14 314:16 315:13,23,24 316:1,3,4 320:23 323:9 326:3,24,25 329:11 332:3,18,20 333:24	advance 222:11
7th 78:16 161:19	81 63:7	account 80:16,19 264:21,23,24 265:8,12 322:18,20	Affidavit 32:19,24
8	843 162:22	accounts 85:5	affiliated 84:17 273:19 279:4
8 48:1 76:22 98:23,25 108:11 117:15 120:1 140:9 154:4,9 158:13 164:25 170:4 185:23	896006 209:14	accurate 32:2 39:7 46:7 87:18 94:23 95:8 139:2 198:2 200:6,11 214:1 215:5,6 223:17 225:20	afternoon 284:17
	896009 210:13		age 32:17
	896012 209:13		agency 255:14
	896014 208:3		agent 259:16 262:7
	896016 205:17		agree 31:15 122:4 125:1 145:13 151:20 287:10
	896018 203:25		Agreement 263:6,8
	8:00 102:20 131:4 157:8 159:22 186:7 187:13 200:1,2 215:14 216:12 217:19		ahead 19:1 310:4,5
	8:15 94:20		air 65:19 66:11,15 69:24 70:3 72:8,24
	8:30 115:4,19 214:4,6, 14,19,22		alcohol 14:4
	8th 220:2		Alfredo 8:4,11,19 60:17 156:25 262:8 273:21,23 318:23 335:24
	9		
	9 48:2,3 109:14 116:20 139:15 151:16 153:25 154:2,6 158:3,4,5 161:18 165:3,5,20,24 173:4,5,6 186:8 220:2 242:9 247:10 248:4,24 333:6		



Alias 57:12	298:4,15		116:17 119:17,25
alive 315:9	areas 29:16 139:1	B	121:23 122:5 123:8,10
Allman 157:1	arrange 151:1 208:12	back 8:25 13:12 15:13,	125:5,6 126:5 133:17
ambulance 46:21	250:25	17 16:18 29:11 38:1,3,	137:4,5 138:13,14
326:12	arranged 34:13 93:24	4,23 40:9 41:12 42:25	140:6,13 141:20
amount 84:3 88:25	94:4 96:12 124:7,11	44:15 45:10 49:9,21	144:14,15 150:13
103:6 137:17,20 138:1,	arrest 239:20 242:10	50:3 51:25 52:7,13,20	151:13,22 152:13,14,
4 194:14 200:25 201:24	244:4	56:1 58:7 60:16 61:18	21,22 153:6,11,22,23
259:3	arrested 238:20	62:7 65:21 69:11 83:12	154:12 155:16 156:10
and/or 39:10	asphalt 92:17,19,21,	94:13 97:25 100:16	157:6 158:10 163:22
angle 70:6	24,25 93:2,7 95:7	112:18,22 119:6,7	164:22 165:13,19
annual 317:5	201:23	123:3 129:22,24 143:14	169:19,21 170:4 171:18
answering 31:16	assuming 74:25 154:5	166:5,8 170:22 178:18	172:13,15 178:20
answers 10:20	196:4 214:10	201:10,16 203:6,10	179:3,11 181:9,11
anymore 25:20 289:13	assure 131:7 172:20	209:14 218:12 220:17	182:23 184:5,10,23
apologize 60:23 101:5	assuring 173:5	224:15 226:15 229:6,20	185:7 186:1,2 188:8
104:21 146:1 178:18	attached 66:11 70:3,9,	231:11 232:6,22 233:5,	189:6,7,19,20 191:15
214:12 309:7 316:13	23	8 235:2 238:4 239:1,25	193:3,15 194:4 195:2,7
appears 63:1 113:11	attended 16:16	245:19 250:9,11,24	196:6 199:21 200:19
119:20 138:8,9 140:22	attention 72:4 73:7,8	253:25 260:9 266:23	203:20 204:19 206:20
145:10 151:24 176:17	147:12 148:7 234:6	268:22 276:17 277:3	207:25 208:13 209:12
246:3	attorney 252:8	284:5,6,9 285:13	210:13,24 211:15
apple 218:17	attorneys 9:16	287:22 292:18 298:3	212:17 215:7,9 217:8
application 301:21	AU 33:7 39:10 77:11	307:25 310:15 314:8	219:7,8
applied 276:24	83:1 84:16,21 85:11,12	324:16,23	Bay 83:2,3,11,23
apply 17:6	144:7 149:25 260:23	background 29:23	Beaufort 18:23 21:3
approve 194:18	262:3 263:2,15 279:13	61:23 77:10	206:2 239:12 241:7
approximately 232:10	304:15 319:4,9 322:21	backing 218:14	247:14,15,18 280:25
336:1	327:13 332:7	bad 11:15 42:3,4 55:2	bed 269:3
April 31:3 139:18	August 172:17 173:16	79:23 97:22,25 111:13	beers 270:2
140:7,9,18 141:22,25	174:16 176:7,12,17,21	185:1,2 196:25 197:9	Bees 205:23,24 206:3,
142:4 143:7,11 150:18	177:25 246:1,5 251:20	229:2,4,5,8 234:25	7,12 207:3,5
151:16 152:16,17	authenticate 67:13	236:6 319:19	beginner's 244:7
153:1,3,5 195:20	avenue 161:3,4,12,19	Badgett 245:14	beginning 147:15
245:10 250:9 255:8,13	274:15 277:8	Baggett 275:13,14	308:17
256:13,23 257:2,11	avoid 312:23 313:1	bang 238:12	believer 311:25
258:11 331:17	aware 168:15	bank 80:16,19 264:21	Ben 9:15 72:14,17
area 18:16,19 19:12	axle 65:18 69:23 70:23	barely 68:23 323:8	Ben's 297:4
20:23 35:19,20 74:1	72:6,21 73:3,16 74:5,6,	based 32:25 89:25 90:1	bench 243:8
141:5 161:20 201:9	8,14,17 102:5 316:16,	124:2 131:16 136:19	benefit 319:20
224:6 228:12,21,22	17,21,22	145:2	benefits 319:16,17,21
229:4 230:9,14 231:14	axles 69:18 316:20	basically 222:11	bent 59:23
233:2 236:3 237:3,5,18,		basis 82:13 87:11,15	big 35:16 100:15
23 255:20 289:13		110:18	198:18,23,24 201:15
		Bates 63:8 82:23 104:7	202:25 203:2 204:13
		105:25 109:13 111:18	227:10 291:13 296:24
		113:16 114:20 115:1	



301:20 311:22 315:3
bigger 199:6 234:15
315:2
bill 85:4 111:4 194:14
billed 149:20
bills 95:17
bit 27:7,11 28:18,20
30:19 35:23 41:16
46:23 49:8 50:20,23,24
52:14 57:22 58:19
137:25 203:12 227:20
231:12 235:7,23 252:7
263:23 280:4 286:25
blame 316:8
bleeding 46:19 56:20
63:13 326:9
blessed 56:14
blown 224:8 227:20
blue 61:11
Bluff 207:9,10,11,12,15
208:5 300:1,2,4,7
Bluffton 18:14 19:24
33:4,13 77:15 80:25
89:14,15 135:23,25
141:1,2,5 161:3,4,12,18
162:23 208:14 224:5
225:10,17 235:14
247:17 253:25 255:21
295:13,15,19,20
297:23,25 298:1,4,8,14,
15 300:9,10 323:15
boat 228:18 230:7
Bojangle's 86:21 87:1
90:22 91:3,5,19 95:21,
24 104:11,14 106:21
293:8,10,11,19 294:1,2,
4,6
bolts 42:25 68:20 69:1
70:10,11,14
bond 240:23
books 43:12,13
born 12:13,14,15 272:3
borrow 222:13 290:8

bottom 53:22 76:20
91:10 122:22 131:11
140:25 176:22 179:6
197:24 230:7 239:19
bought 26:18 27:1 44:5
48:19 261:19
brake 60:4 65:20,22
69:25 71:14 72:6,8,22,
23
braked 311:13
brakes 50:19 51:16
52:24 65:24 66:3 71:16,
17 76:22 77:2 311:4,7
313:8 314:19
brand 68:24 69:11
brass 238:19 239:24
break 11:20 12:1 29:20,
21 41:20 62:10,11 79:7,
8 102:24 163:16,17
217:22 218:9 223:25
280:12,14,15
breakdown's 103:6
breeze 178:16
Brendan 77:15 262:6
273:18
Bridge 277:2,5
briefly 21:6 280:10
bring 30:14 36:5,8
37:9,11 41:8 64:25 67:1
68:3,8 69:3 79:18 92:9
107:1,8,10 109:3
120:25 124:1,23 132:13
173:1 179:25 202:13
228:25 229:6 231:6
253:17 268:8 289:16
301:4,8 324:22
bringing 92:10 94:9
96:16 150:22 151:3,5
185:2,3 290:8 304:18,
21
brings 189:2
broke 53:20 59:24
102:2,5,10,21 103:9
187:25 326:3
broken 64:17 65:21,23

brother 18:7 220:7
brothers 17:23 18:18
86:21 89:7,12,13 90:4,
22 91:3,4,9 92:8,20,22
93:1 95:24 104:10,17,
18 118:15,19,22,25
139:23 154:18,21,25
155:7 156:1,13 157:1,2,
17 162:6 167:3 168:21,
23 170:18,22 171:10,16
172:22 173:1,14,17
174:17 175:5,18 176:5
178:1 184:18 188:4
189:21,24 192:23
193:17 197:21 198:1,5,
9 208:15 210:20 211:2
301:19,20 302:6,7,13
334:16
brought 40:13 96:13
104:13 109:23 216:5,14
231:17 305:3 328:21
330:8,10 334:14,17
bu 297:11
Buckwalter 27:20
86:25 90:3,4 95:20
232:16,18 293:14,21,24
build 198:19 199:16
202:5,11 229:21
233:17,19 286:17
287:19
builder 167:22
builders 24:25 25:3,8
26:16 27:12 33:12,17,
21 34:1,3,6,14 36:3
37:9 39:5,11,13 40:2
45:18,22 63:10 81:9
82:19,24 86:20 87:4
94:8 100:14,19 109:7,8
117:18,25 139:10
149:18 201:8 202:7
210:12 222:16,17
223:19 229:16 237:15
247:3 248:6 263:19
265:7 272:23 287:11
288:10 292:23 293:16,
23 295:1,25 296:18
297:7,18 298:17 299:2,
24 300:7,12,25 301:10,
11,22 305:4 318:24
319:9,15 320:5,19
322:11 323:22 327:22

328:17 331:12 334:9
Builders' 34:21 285:17
building 35:16,17
100:15 160:13,14,15,
18,20 174:24,25
179:17,18,19,21 182:25
188:21 201:6 202:2,4,
12 203:3,4 229:21,24
236:3 286:17,19 299:17
built 189:3 201:10
202:4,5 229:11,12,15,
16 234:16 308:1
bunch 37:6 80:20,24
95:17 121:2,4 123:16,
17 132:23 146:22
148:11,14 164:15
166:20 199:11 236:22
256:6 257:17 280:6
288:19 292:24 300:25
327:9 334:6
bundled 335:15
Burnt 89:14,15,20
business 133:6 279:13
322:18,20 327:13
busy 304:3,5
butcher 60:18
buy 25:12,14,15,17
48:20 124:9 260:1
261:21 278:19,20
buying 276:24

C

cab 44:1
cage 59:24
cal 167:23
Calibogue 183:15,19
184:6 212:5 294:23
300:16,18,20
call 10:3 56:18,21 57:25
60:17 105:8 109:2
112:20 123:25 127:3,6
128:2,6 132:21 146:17
150:25 160:15 163:13
174:7 191:6 193:9
194:13 201:25 202:25



203:1 223:23,24 228:19
233:10,11 236:4,22
239:16,23 256:5 258:14
278:4 282:23,24 283:1,
5,10,12 284:16 293:19
294:4 298:14 306:22
316:19 319:20 325:14,
15
called 26:20,21 27:16,
19 57:13,18,24 71:12,
15 89:10,14 105:8
107:6 128:5 133:22
134:10 174:2 191:5
205:7 228:24 239:18
243:8 253:12 255:18
256:7 278:10,11,14
283:10,15 293:10
294:23 322:6 327:24
328:7 333:23
calling 58:1,6 230:10
calls 56:17
Camden 252:19
cancel 146:25 220:9
272:20
canceled 146:24
255:5,10 257:6,7,12
cancellation 254:25
cancer 257:16
car 53:4 247:5,22,25
248:1,3,20 249:6
251:10 310:9,13,19,24
315:14
care 54:21
career 308:12
carefully 110:13
Carolina 49:2 77:16
252:19 258:18 316:19
carpet 278:3
carrier 266:7
carry 118:21
carrying 13:24 239:19
cars 50:15 53:4 312:8,
23 313:1,11,16,17
case 18:4 82:21,22

281:11,15,17
cash 25:15 80:12,20,21
81:2 265:10,16 272:17
cached 265:15
cat 310:12
caused 63:12 312:16
314:15 316:1,2,3
causing 309:20,23
CDL 17:6 21:8,19,23
22:10 23:24 24:1,2,5,
10,13 244:12,14,19
278:4
center 61:8 ~~249:19~~
certification 254:2
certified 254:3
chamber 65:19 69:24
72:6,22
chance 25:15 ~~63:21~~
232:25
change 44:7 47:6,9
48:14
changed 31:12,24 47:4
256:11 315:10
chapter 250:3
character 43:11
charge 80:21 148:25
201:5 241:13 242:2,16
249:20 251:5 267:5,8
269:8 317:25
charged 136:15 238:2
240:12 251:14
charges 239:15
Charleston 255:15,19
check 80:13,14,15,19,
22 81:8,15 85:4 222:2,5
223:2 253:21
checked 156:16
checks 81:3 140:14,17
221:15 223:6
chest 60:2
children 20:14,16,17
57:2,8 83:12 265:17

283:16
chips 45:10
choose 50:12
Church 89:14,15,20
circle 19:23 20:12
134:11,18,20,21,23,24,
25 135:4,15,16 225:22
226:21 231:1 275:20
277:6
circumstances
257:14
cited 147:6
city 118:4,11,12 141:13
claim 326:15 327:20
328:17
clamps 66:11,15 67:20,
22,23,25 70:4
clarify 293:22
classify 304:19
clean 11:18 170:5,8,16
198:18,24
cleaned 198:21
cleaning 170:15
cleanup 170:14
clear 11:19 15:24
188:25 227:19 236:10
237:8 267:21
cleared 276:13
click 275:23
client 293:23 299:25
clocked 82:7,8,9
close 12:24,25 18:25
19:11 20:19,23 21:1,2,
11 27:21 41:15 44:10
191:20 230:18 253:1
297:11 323:7
closed 77:13
closer 235:23 237:10
cloud 14:8
club 35:17

clubhouse 201:16,25
202:1,25 228:17 229:10
230:10 233:6,11,20
235:19 236:4
CNR 91:12
code 229:9
coffee 11:21
College 17:18
collided 54:9
collision 33:3
color 44:1
colors 47:19
comic 43:12,13
comment 177:20
commercial 21:15,20
22:24 23:2 123:5 245:1
248:2,19 249:3 250:5,
15 253:22 258:17
279:22
common 241:1
Comp 259:1
companies 107:5
149:17 151:2 278:8,14
307:21 334:1,4
company 33:16,25
34:12 36:3 77:12 84:17
88:16 94:8 150:1
204:13 250:25 256:22
257:24 259:9,12 261:11
262:11 264:7,10
265:22,24 268:19
278:19 290:2 299:9,11
303:13 315:15 317:24
318:4 329:8 334:15
compare 90:19
compensate 102:8
compensation 84:2
326:14 327:14,19
328:5,18
competent 32:17
completely 50:16
56:20 308:10
complex 192:2 298:13



MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI 348Index: comply-crushers

ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

323:15	contributing 309:20	182:17 183:4,5,11,12	CR 179:12,13 182:8
comply 328:2	control 39:14	184:8,9 185:14,21,24	190:7,9
complying 318:12	convenient 191:20	186:5,6 189:13,14	crash 38:10 47:20
components 70:25	conversation 10:5	194:25 195:5,17 198:9	56:11
71:1 73:18 74:8	13:24	199:24,25 201:18	create 264:10
compression 66:13	conversations 248:12	203:16 206:9,15 208:20	created 94:18
concern 10:2	convicted 240:16,19	211:7 213:13 214:8	credentials 277:12
concert 157:4	246:21	215:12,15 217:1,12,20,	Creek 26:21,22 35:15
concluded 335:25	conviction 240:24	21 224:12 228:23	201:13 202:17 205:23,
concrete 92:17 160:16	242:18	230:15 232:7,8 233:4	24 206:3,7,12 207:4,5
172:21,25 174:17 177:1	cool 42:16 43:17	235:13 236:2,4,5	225:25 228:3
183:21 189:8,21,24	110:14 234:13	237:16,17 241:4,5,8	crew 37:13 45:18
190:4 191:9,10 195:10,	cop 246:10	243:6 245:7 264:16	crews 45:24 46:1
12 201:23	copies 211:13 223:14,	268:6 284:18 285:7,9	crime 238:2
conditions 196:25	17 254:22	286:16 287:13,15,18,20	criminal 240:4,20
197:9	cops 246:8	293:25 295:3,5 296:4,	241:15 243:21
confirm 121:7 312:21	copy 14:20 59:2 87:18	16,20 297:20,22 301:2,	cross 225:24
connection 66:12	126:5 138:9 139:2	6 315:17 318:1,11	CROSS-
connects 69:18 201:13	335:7,13,14,15,17,20	319:6,7,13 320:15,24	EXAMINATION
228:7	corner 36:21 136:8	321:1,23 322:22 323:19	280:18 318:21
CONNER 162:11	191:1,22 225:22 226:21	326:4,7,13 329:11,12,	crossed 328:20
272:24 318:22 335:20	298:11 318:23	19,25	Crossfit 159:9,10,16,
Conrad 116:8,9,10	corporate 263:11,16	corrected 331:13	17 160:6 162:16,17,21,
121:12,13 166:12,17,24	264:21 265:12,18	costly 270:21,23	22,23 163:4,8,12,23
169:7,14,20 170:23	266:14	Counsel 9:20,23 10:3	164:3 173:14 178:3,6
171:2,7 175:3,16,19	correct 9:20,22 11:16	255:2	180:12,21 181:3,4,6,8,
176:18,23 180:24	13:21,22 14:16 22:25	count 89:10	13,20,24 182:2,20
301:24,25	23:7 31:4,8 32:3,4,5,13	counting 137:20 138:2	183:14 184:6,18 188:9,
Conrad's 301:23	33:18 35:4 36:10 39:8,	143:8	11,18,20 189:9,17,18
302:13	15,16,18,19,21,23 40:1,	counts 165:4 185:21	190:18 191:25 192:16
construction 27:22	4 47:21 49:5 58:4 60:24	County 18:23 21:3	193:5,23 194:5 295:17,
66:6 173:15 198:23	69:16 81:17 84:18,19	206:15 239:12 245:16	23
204:2,4,8,12,22 206:22,	92:4 94:16,18,19 96:17,	247:18 250:4 251:11	crush 91:14,15,16
23 207:21 208:1,6	18 98:7,8 109:21 112:1,	274:14 280:25 281:1,5	169:4 190:7 196:2,12
209:21,25 213:23	4 113:1 114:3,6,22	couple 268:13 282:13	211:16
214:18 294:3,5,8,25	115:2 116:1,23 117:2	289:1 294:21 295:13	crushed 95:5 199:5,6
296:15 297:6,17 298:18	119:23 122:2 125:3,23	304:8 319:2 329:4	crusher 109:4 175:19
299:2,6,7,8,10,14,17,25	127:19 128:4,13,16	333:25	190:8,10 191:17 192:8,
302:23	131:3 133:25 134:15	courses 21:17	9,12,13,14 195:14,15
continue 26:15,17 65:6	135:19,24 136:22	court 10:12 86:8	198:11,15 199:23
continuing 73:22	137:2,7,8,22 138:5,19	238:22 240:23 241:7	200:21 201:1,20,21
contract 39:9 301:12	139:20 140:11,16,19,20	242:21 243:9,11,22	203:14 207:8 209:19
contributed 315:23,24	141:23,24 142:2,24	246:3,9,12 247:14,18	211:4 212:8
	143:8 144:8,17 149:18	335:5,12,16	crushers 200:18 208:4
	152:11,19,24 153:3,20	covered 72:8,23	
	154:8,10 163:5 167:25	234:25 333:24	
	173:12 175:5 181:16,21	covering 65:20 69:24	
		229:8	



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crushing 211:22
cup 292:10
cursor 61:23 230:7
 237:6,22
customer 300:11
customers 300:25
cut 97:4 98:20 105:25
 111:17 114:25 119:19
 131:11 139:1,7 141:12
 223:16
cuts 193:21
Cypress 26:22,23 27:9
 28:8,15 33:12 34:25
 35:3,5,13,14 38:22,23
 40:21 41:13 42:10
 45:21 47:10,12 50:3
 59:13,14 64:12,21
 75:21 81:15 93:17 94:3,
 10 96:4,16 97:7,20
 98:2,13,16,18 99:15
 100:25 101:8,20,22
 102:25 104:8,10,15,16,
 18,20 106:12,19 107:1,
 4,17,21 108:7,8,11,21
 109:9 110:1,6 111:25
 112:4,17,25 113:11,25
 114:2,6,22 115:24
 116:3,20,21 117:1,4,13,
 14,15 118:4,15,19,22,
 25 119:9,21 120:25
 121:3,18,20,25 122:6,
 20,21 123:11,24 124:4,
 17,21 125:2,9,19,21
 126:9,15,20,24 127:14
 128:16,19,24 129:7,8
 130:23 131:18 133:19
 134:17 135:11 136:21,
 25 137:15,16,25 138:3,
 15,17 139:15,17 140:7,
 10,15 141:11,14,18,22
 142:1,10,23,25 143:2,8
 144:13,15,22,23 145:4
 147:10 148:3,19,21
 150:22 151:5,15,17,23,
 25 152:6,8,11,15,18,22
 153:2,5,7,10,14,19
 154:7,9,17,18,20,25
 155:6,8,12,22,25 156:4,
 6,12,25 157:7,12,15,18
 158:6,7,14,20 159:4,6,
 12,13,17,18,23 160:9,

11,25 161:8,10 162:8,
 10,15,24,25 163:5,7,11,
 25 164:2 166:3,9,12,13,
 24 167:3,7 168:2,18,20,
 23 169:14,16,20 170:2,
 9,12,15,21 171:3,5,7,
 13,16,17,25 172:2,6,19
 173:18 174:18 175:23
 176:2,5,10 178:4,9,24,
 25 179:4,7,14,22 180:4,
 22 181:2 182:9,10,12,
 13,25 183:4,8,11
 184:11,14,15,19,21,24
 185:5,11,13,19,24
 186:3,8,14 187:21
 188:1,5,9,12,18 189:9,
 17,18,21,25 190:9,12,
 14,19 192:19,24 193:6,
 19 194:2,7,12,21,24
 195:3,8,13 196:6,13,22
 197:16,23 198:1,5,9,12
 199:10,23 200:18,22
 201:3,11,12 202:19,21
 203:14,21 204:1,21,23
 205:19 206:22 208:6,10
 209:17,21 210:1,15,22
 211:5,23 212:2,8,9,14,
 20,25 213:15,25 214:7,
 22 215:1,10,18 216:12
 217:11,15 218:23
 219:2,11,15,19,24
 221:12 223:22 225:25
 226:7,11,21 227:6,23
 228:3,9 230:21 231:6
 232:6 233:1 235:24
 237:19 260:9 267:12,
 15,23,24 282:16 284:5,
 6,9,20,25 285:2,6
 286:3,4,7 287:22 288:5
 289:15 290:3,11 292:22
 300:24 307:13,14,24
 322:24 324:16,20,24
 325:4,6,23 330:2

D

D-O-M-I-G-U-E-Z

19:18

D.R. 99:23 100:7 167:6,
 16 168:9,16 235:15
 236:14 280:21 281:6
 309:18

dad 273:24
daily 87:11,15 110:18
Daniel 19:9
data 275:25
date 28:16 31:4 32:6
 36:9,10,11 85:4 90:22
 104:19 105:24 106:9
 115:1 127:16,22 128:24
 130:5 151:8 171:18
 173:2 176:5,10 208:16
 213:3,6,10,11 220:14
 223:4,6 239:20 242:10
 243:5,14,15,19,20
 244:4 246:1,19 249:8,
 22,23 251:20 253:4
 261:13 284:21 306:19
 318:10 331:2,6,22
 332:20 333:10
dated 133:14 152:16,17
 169:21 171:19
dates 21:11 22:20
 40:15 84:25 114:18
 127:17 147:17 172:11
 222:21,23 254:16
 333:15
daughter 37:12 82:3,4
 100:21 104:3
day 27:20 35:2 38:5,8,
 15,18 40:17 41:9 45:6
 53:16 64:17 89:24 96:1
 98:18,22,24 101:23
 102:9 106:7 107:19
 109:11 111:6 112:9
 113:12 115:25 116:22
 119:10,22 121:20
 125:3,22 126:10 137:21
 138:4 141:11 145:1
 185:3 186:9 189:10
 220:12,17,19 221:13
 230:25 231:4,15,20,24
 233:3,15 242:13 244:1
 245:11 255:25 282:10,
 21 283:22 287:14
 291:10,16,22 301:7
 302:11,16,17 303:5,8
 308:18 309:9 320:3
 323:9,20 324:12 325:6,
 21 329:24 330:7
 332:17,18

days 39:25 100:25
 101:8 103:21 123:4
 129:22 220:1 222:25
 223:6 248:22 259:20
 291:10,18 332:11,15,17
dead 51:11 315:1,6
deal 136:17,18 229:17
 264:20 335:2
deals 156:18
dealt 100:20
decals 252:15
December 104:9
 194:9,23 195:4 197:17,
 25 198:4 246:2 254:24
decide 220:8
dedicated 106:17
deep 327:12
deli 36:24 208:14,18
 209:16,18 210:20 211:1
 230:21 295:20 298:10,
 11 300:9,10 323:15
deliver 110:17,18
 120:23
delivered 323:11
dense 228:22
Department 55:11
 78:3 134:3,6,8,12 316:9
depends 120:16 199:4
 271:3,19
depictions 46:7
deposit 80:15,19
 265:7,11,13
deposited 265:9
deposition 8:22 9:3,7
 10:4,11 67:10,12 85:8
 283:2 335:23
describing 52:3,6,9
 227:22
details 38:21
determined 321:3
Dhu 109:14,16,18,19,22
 110:1,2 115:5,7,20,22



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116:8 120:6,10 121:12
158:24,25 167:7,17,18,
19,20 168:17 180:25
182:15,16 293:4,5,6

diagram 225:5

dial 35:23

difference 105:4
143:14 198:14,16
236:21

difficult 227:2

dig 99:13 235:1 236:8
280:9

digged 236:12

digging 199:12

dinner 218:21

direct 8:7 10:8

direction 52:25 135:20
230:21

directions 135:21

directly 107:8 149:21
150:5,7,9 280:1 334:10,
20

dirt 29:1 33:12 34:12
35:1,2 36:3 37:19,20
40:18,20 41:6 69:13,20
92:6,9,17 93:10,11,14,
15,16,19,20,21,22 94:2,
9 96:11,13 97:10,19
98:2,17 99:17 101:3,18
104:20,22,23,24,25
105:1,5,6,8,9,10,13,17,
20 106:2,3,4 107:1,19
109:9,10 111:2,13,19,
21 113:19 114:15
115:24 116:21 117:1
119:10,22 121:18,19
122:6 124:4,9,16,22
125:21 126:9,23 127:3,
6,7,8,13 128:1,2,3,6,7,
8,13 129:6,8 160:19
162:1,3,6,7 164:11,15
166:19 167:24 170:6,8,
14,16 171:10,25 172:7,
16,21,25 174:16,21,22,
24,25 177:25 178:3,9,
24,25 179:25 180:3,10,
11,14,20,21 181:12,20,
24 184:11,14,24 185:4,

8,14,19,24 187:20,25
188:14 189:8,15,21,24
190:3,19 193:6,18
194:5,12,14,20,23
195:3 199:15 203:25
204:1,11,13,15,20,24
205:13,18 207:21
208:1,6,10,14 209:2,20
210:15,20,21 211:1,21,
25 212:4 213:23 214:3,
14,18 216:11 217:11
218:23 219:2,11,18
228:25 229:2,3,4,5,7,8,
9 230:15 231:3 233:2
234:20,21,25 236:6,13,
22,25 237:1,2,15,19
260:6 276:6,12,13,20
280:4,6 283:3,4,9,19
286:15 287:17 289:16
296:11 299:12,15,18,
20,21,22 301:8 306:19
313:6 323:10,17 329:21
330:2 331:21

dirty 45:1,5,13

disagree 283:8

disappear 146:14

discussing 229:10

discussion 14:13
60:14 76:1 168:13
302:4 307:3 332:24
335:9

dismissed 239:17

dispatch 269:16

disposal 109:1

disposition 243:5,15,
20 246:19 247:10
251:20

dispute 55:21 87:22,24

disrespectful 277:10

distance 61:13

distances 227:9

distinction 111:20

distracted 310:7

Division 235:14

DMV 17:9 21:8 191:1

239:10 252:17 261:25
document 30:14,25
31:9,24 76:3,14,20 77:6
84:14 85:16 87:7,10
94:18 255:1 329:5

documents 8:14 41:3
82:12,15

dollar 36:22,23 37:2
134:13,14 297:1

Dominguez 19:16

door 55:5

doors 54:16

dot 235:17 250:21
256:1

doubt 196:1

downtown 36:24
208:14,18 209:16,18
210:20 211:1 230:21

drag 198:20

drain 199:2

drainage 199:3

drive 29:7,9 64:17,20
69:15,17 112:21 191:11
210:3 244:18,23 253:25
254:1 277:2 282:16
312:10 316:4 317:19
320:17 322:23

driven 286:6

driver 22:12,13 23:11
25:23 245:4 278:5
306:15

driver's 14:15,17 15:7,
9,16 16:25 17:2,5 21:6
59:3 66:10 69:23 70:2,
5,10,25 74:7,13,17

drivers 269:14

driving 21:14,18,20
22:24 23:1,9,11,14 29:7
33:5 50:6,8,9,13 53:3
64:4 100:8 137:9
244:25 248:19 250:5,15
258:21 292:17 305:13
306:10 310:17,18
312:10

drop 37:22 45:8 70:23
73:16 74:5,6,7,14,17
134:4 316:20,21,22
323:17 324:2,11

dropped 37:24 282:19
283:4 313:6 324:6,8

dropping 45:14

drove 37:21 51:3
244:12

drugs 14:4

drum 65:22

dual 316:16,17

dug 237:3

duly 8:5

dump 33:5,7 45:23
49:25 50:2 76:6 93:3
101:9 108:24 258:21
284:20 286:6 288:11
290:19 298:12 300:6
301:3 313:4 316:12
320:6,17,22

dumped 283:18 298:2

dumping 41:6 180:2

duplicate 95:6

E

earlier 64:11 75:10
164:11 179:18 188:24
218:7 231:19 252:7
281:21 282:8 290:18
300:15 306:17 307:5
326:2

earliest 125:12

early 112:9 125:13
201:3 239:21 282:9
288:6,7

easier 30:20 224:15
231:12

east 135:21

easy 227:5

eat 218:17 277:25

Ed 21:6,18



education 16:3,22
17:1,2
electronic 335:7
else's 144:4
Email 14:24
emblem 42:12 43:8
44:14
emergency 60:3
310:12
employ 288:10,17
employee 100:14
employees 99:23
103:25
empty 50:21 228:14
313:4 316:25 317:1
end 42:21,22 53:13
87:12 88:4,5 89:20
102:14 107:22 108:2,3
110:17 112:6 114:11
209:6,9,10 222:25
268:22 321:10 329:10
ended 242:18
ending 106:1 109:13
111:18 121:23 123:8,10
125:5,6 126:5,7 133:17
137:4,5 138:13,14
140:6,13 141:20 150:13
151:22 164:23 165:13,
19 172:13,15 178:20
179:3,11 182:24 184:5,
10,23 185:7 186:1,2
189:7 191:15 193:3
194:4 196:6 199:22
200:19 203:20,24
204:19 206:20 207:25
209:12 210:12,14,25
211:15 212:17 215:7,9
217:8 219:7,8
ends 85:10
engineering 63:9
English 13:18
entire 198:21
entities 9:17
entity 17:16 33:16 78:4

entrance 198:24
202:17 228:8 310:15
entrances 227:22
EPS 244:6
equipment 34:18,20,
22 99:4 103:14,19,24
186:10 208:24 209:4
218:16 268:4
equivalent 135:2
established 329:18
exact 13:13 18:15
21:12 27:25 103:6
130:5 174:14 220:14
333:15
EXAMINATION 8:7
329:2
excavator 101:10
209:7 292:1
excavators 99:13
excuse 34:8 229:3
exercise 39:14
exhibit 15:1 30:23 42:1
43:22 44:11 46:3,10
48:1,2,3 54:3,4 55:18
56:3,4 60:7,9 61:2,4,9,
20 62:15,16 63:7 64:7,8
66:23 71:3,4,8 72:20
73:16 74:10,21 76:3
77:6 79:6,18 82:22 85:7
92:16 106:1 109:14
116:17 123:11 133:18
141:21 149:15 151:14
154:12 156:10 178:21
191:16 224:1,4 227:3
230:17,19,20 231:11
233:7 237:9 252:6
254:17 259:14 266:25
270:15 273:2 275:24
331:9,10,12,13
exhibits 8:1 331:8
existing 27:2
exit 134:21 135:1,4,16,
17
expedite 335:19
expenses 222:9

experience 21:14
expert 65:14
experts 62:20 63:9
65:14 76:4
explain 40:15 57:22
71:11 130:2 312:15,18
314:22,23,25 315:11
324:6 327:11
explained 188:24
explanation 312:2
extra 103:22 278:17
extremely 53:12
eye 49:10,22

F

facing 233:4
fact 295:23
facts 32:20,23,24
failure 249:19
fair 46:7 89:17 119:11,
14 126:11 173:10
176:19,24 187:4
fairly 62:25 319:1
familiar 106:14 135:21,
22 224:5 225:6 289:24
family 18:22 19:7 21:1
265:17 308:25 310:21
fast 53:7 293:12 308:2
314:2
Fatality 42:3
father 220:6 222:9
257:16
fault 308:16
favorite 49:14
February 12:16 108:11
110:4,11,12,14 111:16
112:24 113:10 114:2,5,
21 115:1 116:3,7 121:9,
11,17 122:1 123:12
204:16 205:16 206:17
207:19,20 209:22
210:14 212:7,12,13,19

213:6,12,22 214:25
215:10 216:12 217:10,
16 243:15 247:7 248:4
250:1,11,14 261:5,12
284:21 329:14 330:1
331:16 332:8 333:21
fee 123:6,7 249:9
feel 55:16 129:21
145:23 272:22 327:24
fees 252:16 261:24
feet 45:11
felt 55:13
fence 56:8 99:17,18
figure 71:11 92:1
129:13
file 86:10 243:14,19
244:4 265:18 326:14
327:19 328:4,17
filed 322:1,3 327:21
328:6
fill 33:12 34:12 87:7
104:20,24,25 105:1,3,4,
6,8,9,10,13,17,19 106:4
107:7 111:19,21 127:7
128:6 171:10,25 172:16
174:21 178:3,9,23,25
180:3,10 181:12,19,24
184:11,14 185:4,8,14,
19,23 187:20 189:8,15,
20,24 190:3,19 193:6,
18 194:5,20,23 195:3
203:25 204:15 205:18
207:21 208:1,6,9
209:20 210:15,21 212:4
213:23 214:3,14,17
260:6 322:24 323:3
filled 86:4 112:18,22
filling 97:23,24 114:14,
15 322:14
filtrates 199:7
financial 274:11
find 25:21 134:12 235:1
331:8
fine 55:14 60:20 73:23
243:9 300:23 316:15



Finger 246:20
finish 11:3,5 16:10 68:7
78:18 86:7 88:9 101:4
102:9,20 129:17 208:22
233:14 257:10 267:19
finished 41:6 208:15
230:4
finishing 170:5,14
fire 40:3 55:11 134:3,6,
7,12 136:4,5
fired 303:22
Firm 9:15
fist 58:10
fitting 66:13
fixable 259:23
fixing 102:6 215:23
329:22
floor 314:9
flooring 278:3
follow 161:18 330:17
follow-up 335:3
follow-up's 329:5
food 293:12
football 49:13,16
forfeited 240:23
forfeiture 240:3,5,20
241:15 242:20 243:21
246:2 249:14
forgot 9:4 71:13
255:17,24 279:2
form 83:24 84:7 85:21
86:5,6,9,10 136:23
145:6 154:22 162:11
186:11 212:22 272:24
288:1
forward 276:9
found 8:14 76:8 77:2
238:18 259:16 329:5
foundation 67:9
frame 79:24 80:1 161:8
166:2

frames 166:7
free 303:10,12
Freightliner 76:6
friend 132:24 281:8
305:1 307:16
friends 19:7,8 21:2
115:15 238:7 269:23
307:19
from/to 171:4
front 42:12 47:24 50:15
51:12 53:5 54:24 63:19
67:2 134:13 199:18
201:9 209:6,8,10 310:9,
22 312:24 313:2,17
316:2,5
fuel 323:8
full 8:9,19 103:22
218:21 286:15 292:7
304:6
fully 12:6
fuzzy 224:8

G

G&j 290:22,23,24
G-I-T-L-L-Y 19:18
G-U-E-R-R-E-R-O
12:20
Gabby 100:21 113:7
gap 178:14
gas 27:21 271:11
322:12,15,25 323:3,7
gate 123:1
gave 25:14 43:3,5
91:25 149:24 150:4
222:11 247:20 255:22
256:2 261:25 322:10
332:14
gear 50:20 313:12
326:3,4
GED 16:12,13,23 17:13,
15
general 9:25 28:17

36:22,23 37:2 79:24
80:1 226:8 254:4,8,9,
15,19 266:2,9 278:1,2
generality 79:20
generally 30:5 63:24
Genesis 259:17,24
260:10 261:16 270:9,10
278:18 279:18,19,25
290:1 331:19
Georgia 17:18
GHP 289:19,21
Gibbet 228:1,7
Giovanni 18:10
girl 272:3
girlfriend 57:1
girlfriends 20:19,22
GIS 275:25
Gitlly 19:16
give 10:19 21:11,23
73:22 87:11 115:13
247:20 250:20,23 282:5
289:1,3,5
glass 63:5
goalie 238:10
god 35:7 43:2 167:15
229:25 312:1 315:8
good 43:4 54:20 55:16
97:21,24 106:2,3
111:13 127:7 128:6
174:22 185:2,3 189:1,3
193:13 200:25 201:24
229:3,4,6 230:14 236:6,
25 237:1 242:14 298:8
319:18 326:22
Google 230:19,20
232:23 235:4 270:15
gosh 298:7
grab 218:17 324:22
grabbed 54:18
grade 16:10
grading 237:15

graduate 16:8
graduated 17:12
grass 51:2 236:23
grate 63:18
grateful 327:12
grease 69:12
great 282:7
Greek 291:1,4
green 290:24 291:2,3,6
ground 13:12
Guerrero 12:18
guess 25:23 26:1,2
27:18 28:3 48:9 51:10
54:21 55:16 57:25
66:20 70:21 71:23 82:7,
10 89:22 90:12,18,20
91:20 96:12,14 97:13
102:13 105:3,9,15
111:3,14,22 112:18
118:3,8,9 119:4,7
120:11 123:18,19 135:5
139:13 151:1 160:16
164:16 189:2 194:15
207:11 229:9 238:16
241:22 256:7,10 262:14
264:11 276:12,22
283:10 298:21 306:8
308:1,3 312:8 320:10
327:8,9 328:15 334:17
guiding 232:15
guilty 243:8 245:6
guy 25:18,22 27:1,3
48:21 99:25 100:5,22
133:5 255:15 275:12
278:11 297:2 306:22
guys 40:11 51:3 129:15
132:17 146:15 149:2
167:15 255:24 256:9
278:8 280:6 288:17
289:14 306:17
guys' 288:18
gym 159:7,10 178:3,6
181:8 295:23



MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

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H	116:13 121:14,15 245:20,22 278:12	241:3 293:3	274:1,2,4,9 275:1 276:9,24
Habitat 274:8	hash 197:19	hearing 167:10,13	honest 21:10 41:11 44:23 54:14 66:17,18 70:15 73:10 75:16 84:9 103:20 128:10 148:7 223:3 236:17 245:24 247:4 255:18 258:13 275:17 279:11 284:12 286:23 288:19 311:21 317:12 321:25 332:5
half 272:4	haul 33:15 34:7 38:14 86:19 99:7 132:15 174:2,5,6 185:4 237:2 259:24 261:16 287:7,8 301:4	heavy 103:18 194:16 290:7	hood 43:25
Hampton 96:3,5,6,7,15 164:5,9,10,17,19,25 165:10,11,14,20,24 178:12 181:12,14,15, 20,24 182:1,5,14,19 193:18 210:15,21 212:4 296:5,7,8,10	hailed 39:15 90:2 91:4 108:19 126:23 159:17 170:24 171:2,10 173:17 174:18 184:24 185:8 189:16,17 190:19 192:12 193:5,18 194:6, 23 195:3 210:19 211:1 212:7,13,19,25 213:2, 15,24 214:7,13,17,25 215:10,17 216:11 217:10,15 218:22 219:1,9,11,14 234:19 237:19 330:1	held 14:13 60:14 76:1 168:13 220:12 302:4 307:3 332:24 335:9	Horton 99:23 100:7 167:6,16 168:9,16 235:15 236:14 280:21 281:6 309:18
hand 52:18,19 81:10 111:2 238:8,13,14	hauling 33:12 35:2 92:21,24 93:1 98:2,17 99:3 101:9 105:16 109:10 111:9 112:15 113:19 116:21 126:9 128:23 171:12 173:23 187:3,20 219:18,20,23 234:18 236:6,7 237:16 259:17,25 260:11 261:17 270:10 280:4 285:5 287:2 290:1 325:8 329:21 331:16,21 332:1,2	helped 132:15,16 233:17 292:1 330:11	hose 65:19 66:11,12,14 67:20,21,23,25 69:24 70:3 72:8,24
handed 67:3 111:5	haunts 309:9	helpful 29:22	hoses 66:11,15 70:3
Handing 14:21	head 16:7 35:12 50:3 53:19 63:5,12 82:4 89:17 122:12,15,24 123:2 161:16 205:4 207:22 208:2 214:18 294:14,19,20 326:6 327:11	helping 104:2	hospital 53:16 308:21 327:6
handle 81:13 259:6	headed 30:13 232:6 284:5,6	hey 256:8 306:18,21	hot 290:7
hands 10:21 51:25 52:1,7	heading 135:23,25	HHI 294:19	hour 39:5 88:21 115:4, 20 127:9 156:14 210:10 240:7,13,17 242:17,19 271:2,7,12,15,18
handwriting 85:18,19 86:12,13 89:3 91:1,11, 21,22 92:4,5 94:16 113:5,6,8 114:8,11,16, 17,18 116:16 117:7,11 126:13,14 127:24 130:20,21 137:10 138:8,22,23 143:16,17, 19,23 144:2,5,11,19,24 156:19 161:25 175:8, 10,11,13 180:7 196:8,9 203:18 206:18 211:9,11 216:18 219:5,6 223:11, 12 306:6	health 319:22 320:2	HHP 122:9,10 294:16, 19	hourly 80:9 81:22 87:15 187:15 320:25 321:3
hang 269:25 270:3	hear 167:14	high 16:7 17:20	hours 39:23 48:25 81:23 82:1 87:9 96:1, 22,24 97:14 98:20,23, 25 101:14 141:2 186:8, 13 214:14 252:21 304:6
happen 50:10,11 58:20 102:7 145:19 308:18	heard 76:17 100:4,6 213:18 234:24 235:3	higher 315:7	house 20:3 160:20 167:23 198:20 199:18 201:6 202:2,25 203:2 234:23 273:11 275:21 297:4 317:21,22
happened 8:25 42:23 50:14 51:22 56:7 131:6 145:1,17 147:7 177:4,9 220:20 221:2 232:11 238:5,17,21 248:23 257:5 265:2 277:4 285:4,23 311:3,20 312:16 313:18 314:2 326:25 333:24		Highway 36:16,17 46:16 224:9 225:9 274:18	houses 160:18 179:18 199:17 234:16 297:1 307:25
hard 51:17 108:16		Hilton 16:7 89:17 122:12,15,24 123:1 204:1,24 205:1,2,4,7, 10,12,14 207:22 208:2 213:23 214:15,18 294:14,19,20 298:18,20	Humanity 274:9
Hardeeville 80:23,25		hire 287:9	humongous 51:4
		hired 9:5 296:17	
		hiring 123:18	
		Hispanic 280:6 289:14	
		hit 50:19 51:10,16 52:24 60:2 63:5,15 311:4,7 313:8 314:18 315:2,5, 14 326:6,10	
		hitting 51:12 238:9,10	
		hold 110:16	
		hole 70:9 112:15,16,18, 20,21,22 113:20 234:17,22,23 279:15	
		holes 105:3	
		home 19:19 20:1 220:18 273:11,12	



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hundred 45:10 187:24
196:23 320:14

hunger 264:11

hurt 38:9 46:19 308:9
309:4

hustle 75:18

I

idea 96:23 136:12
157:25 196:17 211:17
232:10 303:1

identification 8:3

identified 65:15 223:11

identify 48:13 61:1
67:6 306:6

image 235:4 237:8,10

images 42:15

imagine 122:22 168:4
172:19 228:10

Imhoff 67:8,15 72:13,
16 73:21 76:12 129:15
136:23 145:6 154:22
186:11,19 212:22
213:3,18 280:12,19,20
288:2 300:17,19 302:5
307:4 335:16,18

immediately 313:8

important 10:14,18
71:19

in-law's 275:22

in-laws 278:2

in-laws' 274:20 281:21

incident 247:11 249:7,
22,23 272:13

income 33:24

incorporate 264:19

incorporated 259:18
261:4

incorrect 113:13

index 239:11

indicating 50:25

120:14 249:15

indication 138:1
150:14 172:16 194:1
197:13

indications 138:17
140:14

indicator 65:22

individual 33:24

influence 14:4

information 13:12
32:25 78:2 252:9
254:20 306:9

informed 34:3,6

initials 86:15

inquiry 33:1

inserted 177:19

inside 159:17 192:24
193:19 194:6,24 195:3
199:17 212:2

inspect 62:20 194:17
253:19

inspected 65:24 71:25
74:1,14 75:3 78:3,8
79:1 103:9 195:23
253:14 318:9

inspection 65:10 76:8
77:8 78:1,16,21 175:1
194:6,10,11,12 317:6,
11

install 67:23,25 68:20

installed 68:23

installing 68:25

instance 243:10 330:5

insurance 58:25 146:6,
10,20,23,25 147:3,6,13,
17,20 148:5,13 195:21
254:2,3,7,13,20,23
255:4,9,12,17 256:3,13,
19,22,23 257:2,4,8,11,
12,24 258:1,8,17,20,23
266:3,5,7 270:23
272:17 279:7,9 318:1,4
319:22 320:2 327:14

insured 256:4,16 257:6

intended 11:23 12:4

intending 12:5

interaction 99:22

interest 273:10 274:12
319:9 320:6

interpretation 146:2

interrupt 52:5 149:10

intervention 239:3

interviewed 9:7
328:11,22

introduced 334:18

investigator 40:10

investigators 46:17
308:23

invite 281:15

invoice 82:12 85:21
87:19 89:2 90:21 92:15
95:4 97:4 104:6 105:25
108:6 111:17 113:17
114:21,24,25 117:22
119:18,19 121:23 122:6
123:15 125:12,25 126:4
131:11 138:16 143:22,
25 149:24 150:6,9
151:18 169:8,23 179:6,
7 182:24 203:24 205:17
208:3 209:14 210:13
217:14 218:9 305:4
331:1 334:8,19

invoices 75:19 94:23
105:13 126:8 164:18
200:12,13 211:13
223:9,18 330:25 331:2,
3,5 332:10

involved 9:17 33:3
239:8 270:6 320:7,23

involves 244:25

island 279:3 294:19

issue 177:13

issued 321:22 322:4,9

issues 65:9,13,16 70:8

items 259:16

J

J&a 306:24

Jacob 33:7 39:10 77:11
83:1 84:16,21 85:11,12
144:7 149:25 260:23
262:3 263:2,15 265:14
279:13 304:15 319:3,9
322:21 327:13 332:7

January 78:16,20 98:6,
9 101:16 104:6 107:17
112:3,14 113:22
195:16,20,25 196:2,11,
16,24 198:8 199:21
200:17,20 203:13,22
208:17 210:19,25
211:3,20 212:3 215:17
220:7 221:18,19,20
222:2,4 240:9 241:6
244:4 254:23 292:9

Jared 100:1,3

Jason 73:19 280:20

Jasper 18:23 21:2
206:15 239:12 245:15
250:3 251:11 274:14
281:1,5

Jenkins 274:15 277:8

job 24:3,6,11 26:19,24
27:8,18,20 28:1,21,25
29:4,6,10 34:24 38:4
39:6 58:1,7,19 59:12,16
64:19,23 65:3,4 69:9
115:17 155:15 166:8
168:9 208:21 283:21,24
285:16,17 292:9 325:16

jobs 168:6 306:18

joined 238:25

judge 245:14 246:19,20

judgment 14:8

July 165:18,24 166:11
167:2 169:7,12,15,21,
23 170:17,23 171:9

jump 290:17 292:12
309:2

June 157:6 158:3,13,22
159:6,14,15,21 160:21,



22 161:2 162:15 163:2,
7,25 164:5,22 165:3,17
253:4,23

jurisdiction 242:16

jury 18:5,8

K

keeping 105:14 269:8

Ken 27:14,16 28:2,18,
19 30:2,5 33:21 37:14
58:13 79:21,25 80:7
81:9 84:8 91:18,25
95:16 100:21 103:19,23
104:1 105:12 136:18
147:21,22 148:24,25
150:5,10 160:3 184:4
188:20 260:7 266:24
267:1,11 282:23,24,25
283:17,18 286:7,14
299:13 303:21 307:11
321:6,19 323:22
325:12,20 327:22
332:14

Ken's 113:7

Kenneth 24:25 25:3,8
26:16 27:12 33:11,16,
21,25 34:3,6,13,21 36:2
37:8 39:5,10,13 40:2
45:18,22 57:14 63:10
81:9 82:19,24 86:20
87:4 94:8 100:14,19
109:6,7,8 117:17,25
139:3,10 149:18 201:8
202:7 209:3 210:12
222:16,17 223:18
229:16 237:14 247:3
248:6 263:18 265:7
272:23 285:17 287:10
288:10 292:23 293:16,
23 295:1,24 296:18
297:6,18 298:17 299:1,
24 300:7,11,24 301:10,
11,22 305:4 318:24
319:8,15 320:5,18
321:5 322:11 328:17
331:11 332:2 334:9,19

Key 255:15,16

Key's 255:22

kick 314:13

kickbacks 269:13

kicked 279:9

kid 57:3

kids 19:13 272:1,5,6

kind 30:1,10 35:22
43:14 50:19 51:19,24
52:7 71:11 97:17 98:5
99:21 106:14,22 107:5
110:24 115:10 116:2
118:8 129:10 132:22
145:17 161:17 199:7
201:10 225:8 227:12
228:21 255:20 272:22
281:22 282:11 292:18
305:18 306:10 313:25
314:1,8 317:14 319:16
328:11 334:6

kinked 65:19 69:24
72:8,24

knew 24:6 107:6
231:23 289:13 324:11

knowing 306:21

knowledge 20:9
122:11 168:8 188:21
189:4 200:5 215:4
223:13 234:22 306:20

knuckles 238:19
239:24

KSB 307:10

L

lack 257:13

lady 279:2

lake 164:19 165:10,11,
14,20,25 178:13
181:12,14,16,20,24
182:2,5,14,19 193:18
201:15 210:15,22
228:10,11 234:13,15

Lakes 96:3,5,6,7,8,15
164:5,9,10,17,25 204:1,
25 205:1,2,4,7,10,12,14
207:22 208:2 212:4
213:24 214:15,19

296:6,7,8,11 298:18,20

land 188:25 276:4
281:22

lane 77:15 249:20
262:6 273:19

lanes 52:17,19

larger 199:5,6

late 215:22 329:22

Law 9:15

laws 318:12

lawsuits 280:22

lawyer 10:1,4 239:8,25
309:24

lawyer's 31:13

lawyers 9:4 308:22
327:25 328:8,23

lay 199:13

learned 103:21

learning 263:20

leave 29:10 107:4
326:11

leaving 49:12 134:17

led 257:7,9,11

ledger 84:21

left 17:19,20 52:18
75:15 134:20 135:9,11,
13 148:7,9 163:22
188:14 202:22,23 206:1
218:2 249:19 284:20,25
285:2 310:16 311:15
312:3,5,15,16 313:23
314:19 315:14

left-hand 135:3 201:15

legal 241:18,20 277:12

lend 222:7 274:24
278:21 319:19

level 167:23

Levy 81:1

liability 40:4 258:25
266:2

license 14:15,17 15:4,
7,9,16 17:5 22:2 59:3
242:3,6,8 253:22 256:2
261:22,23 262:1

licensed 241:12,25
247:9 251:7

life 308:14 315:10

light 228:6

likes 42:15

limit 240:8,14,18
242:17,19 243:4,19
246:18

lines 58:8 125:14

linking 275:25

list 19:1

litigation 9:18 63:11

live 17:25 18:1,2,3,13,
16,18,20,22 19:10
77:20,23 274:24 275:18
282:5 309:7

lived 20:11 77:21
274:16 275:19

lives 18:14 19:10,12
274:6

living 38:11 83:6,7,13,
19 275:3 281:21,23

LLC 33:8 39:10 77:11
83:2 84:16 85:11,13
259:17,25 260:18,24
261:17 262:3,15,18,21
263:2,15 264:23,25

LLC's 264:19

load 34:7,8,9 45:7
48:11 49:25 50:2 90:6
106:25 111:10,11
118:14,18,20 120:6,24
121:11 122:18 123:12,
14,23 124:14 136:11,
13,16 141:2 158:23
159:25 161:7,21 162:3,
5,24 166:17 168:20
170:13,18,22 175:4,18
176:4 177:25 180:10,
11,12,24 181:19 182:7,
11,14 186:8 188:3
190:6,8,10,12 192:18



194:5 204:1,24 208:4,
24 209:2,19 210:21
212:8 213:22 214:3,13
231:20 250:2,17 282:19
283:3,4 298:3 323:10
324:2,22
loaded 34:12 35:2,6
36:3 37:19,20 39:17
40:18 122:23 137:21
138:4 145:3 154:20
176:4 231:3,15 233:3
250:19
loader 209:7,9,11
loading 69:20 93:14,
16,19,21 107:18 109:16
115:24 117:1 119:10,22
121:19 122:6 126:19
128:12 129:4,6,8
136:21,25 150:21 152:7
154:14,16 168:23 172:7
178:9 186:20,21 187:3
188:11 208:15,22
209:15 219:20,23
229:2,3 230:14
loads 38:14 40:22 41:8
45:14,23 90:12 95:6
96:16 98:16 104:14
106:2 107:17,18 109:14
116:4,7 120:1,13
123:11 124:12 125:21
127:2 128:2,20,21
129:14 131:2,4,17
134:4 136:11 137:15,
17,21 138:2,4,15,18
139:15,17 140:7,10,15,
23 141:3,10,22 142:1
143:7 144:16,24 145:3
150:14,21 151:9,16,18,
23,24 152:5,8,10,14,18,
23 153:2,5,8,12,18,24
154:6,10,13,20 155:6,9,
16,24 156:2,5,14,17
157:5,7,8,9,10,14,17,23
158:1,7,11,17 159:3,7,
16,18,22 160:6,8,12
161:2,22,25 162:6,15
163:4,9 164:2,25 165:3,
4,5,20,24 166:11 169:7,
24 170:4,11,17,19,23,
24 171:2,3,10,13,25
172:3,4,16 173:16
174:16 175:2,18 176:2

178:2,3,5,23,25 179:4,
7,15 180:3 181:12
182:19,25 183:3,10,14
184:6,16 185:5,8,14,17,
23 186:3,8,14,23,24
187:2,3,7,11,19,20
188:9,17 189:8,15
192:6,12 193:4 195:8
196:2,11,16,24 197:2,9,
10,18,25 198:5,8,11
199:22 200:17,21
203:13,21,25 204:20
205:18 206:21 207:8,21
208:1,5,13 209:20
210:14 211:4,16,20,21
212:3 231:23 282:19
283:19 286:15 291:25
306:19 324:8,12
local 48:23,24
located 13:1 76:22
116:13 161:20 162:21
227:13
location 37:21,24
39:17,20 90:3 106:5,24
118:6,13 120:22 151:7
153:12,23 154:6 155:11
162:19 196:21 197:13,
15 266:17 268:22 313:7
324:23
locations 83:18 114:14
146:13
long 20:11 22:17,18
23:13,17 26:10 38:18
42:18 54:17 79:3
102:22 127:23 210:8
233:15 257:4 261:16
302:17 309:8
longer 58:19
longest 224:1
looked 43:14,16 69:11
217:9 273:3 304:8
loose 65:19 69:23
70:25 71:2 72:7,22
73:18 74:9,20 265:5
Lopez 19:9
lose 256:19
lost 265:5 313:24,25

lot 11:24 18:24 19:3
21:25 100:17 107:13
109:1 186:19 199:8,12,
13 223:21 233:22,25
234:1 236:1 244:24
245:21,23 270:25
271:9,23 273:16 276:13
291:15 306:11 315:10
lots 191:17 235:25
260:6 295:7 297:2
Lotty 281:6
low 271:21
lunch 217:22 218:13
lying 93:12

M

mad 239:5 309:1
MADAM 335:5,12,16
made 25:16 26:8 84:4,
20,21 112:20 128:11
203:8 228:14 252:8
330:6
Magistrate 247:18
Magistrate's 241:7
247:14
maiden 8:16,21
main 50:14 66:9 155:15
202:17 267:17 286:23
309:5 327:23
maintain 73:12 74:16
249:19
maintained 71:20,25
73:14 75:4,7
maintenance 22:5,7
59:9 66:2 68:4,16 73:13
74:17 75:8 315:20,22
maintenanced 73:4
make 11:17 14:25
21:24 26:10 32:2,15,18,
19 50:11 56:17 63:1
135:12 163:13 189:1
190:14 218:21 223:23
227:2,15 264:7 267:20
286:21 305:17 308:2

316:14 317:3
makes 71:14 97:23
making 278:21 317:25
318:9
man 13:10 19:6 38:9
40:22 41:19 42:14 56:5,
12 57:9 71:13 75:17
92:13 103:11 122:21
154:2 168:24 173:3
188:13 216:8 251:19
277:25 288:18 308:17
managed 260:1
262:16,19
management 82:4
manager 104:3 255:17
262:16,19
managing 264:3
map 35:22 224:3,25
225:1,12,20 226:12
231:3 232:9 235:4
275:23,24
maps 35:8 225:6,7
230:19,20 232:23
270:15
marathon 11:23
March 15:24 33:4 43:19
64:4 85:10 116:20,25
117:4,9,15 119:9,20
125:1,7,9,22 126:1,2,8
127:18 128:18 130:15
133:14 136:25 137:6
138:13,16,21 140:22
218:22 219:1,17 220:2,
3,22 221:4,5 222:18
223:1 243:16 244:3
247:10 248:14,24 249:8
259:18 261:7 332:8
333:6,7,10,22
Margaritaville 175:16,
17 176:18,22 205:5
297:15,16
mark 9:5,14 49:11
51:15 54:13 55:22
56:10 60:22 61:15,17,
25 62:2,4 216:16
236:10 327:25



marked 164:21 332:5
marks 51:20,23 62:6
137:19,20 158:19
311:12 312:5
married 56:24 220:8
Martha 273:22,25
material 39:14 82:18
86:18 89:11 90:9 111:3
116:11 118:1 121:4
123:17 126:25 166:18,
20 202:13 262:2 305:21
308:1
materials 39:21
matter 45:6
matters 143:15
Mcgilton 9:14 76:5
252:9 281:5 284:22
308:8
Mcgilton's 328:23
meaning 241:20
327:21
means 91:4,12 101:22
104:24 108:8 109:10
119:2 138:3 140:1
157:25 159:25 184:25
185:1 187:7 192:7
197:10 214:21 239:16
240:5,21,22 241:16
242:20 243:9 246:12
262:10,12,13 294:16
299:14
meant 197:20
mechanic 253:17
medications 14:8
meet 22:19 27:14
253:6,7
meeting 263:4 266:12
member 262:15,18
266:12,13 279:19
members 18:22 262:24
members' 263:4
memory 283:8 313:25
mention 307:15

mentioned 328:11
329:8
mentioning 167:16
met 20:23 27:12,13
28:18 106:22 288:20
293:18
metal 238:8,10 239:23
Mexico 12:14,17 18:2,
21 220:11 285:10,14
333:11,13,14
middle 44:15 69:17
110:10 315:3
Miguel 22:15,17,19
266:19 269:19,21
281:9,10
miles 240:7,13,17
242:17,19 243:3,18
246:18
Mill 26:21,22 35:15
201:13 202:17 225:25
228:2
mind 57:23 67:7 327:9
328:20
mind's 49:9,21
mine 18:12 19:20
132:24,25 238:7 290:12
305:1 330:16
minor 238:6
minute 60:10 75:21
minutes 218:3,10
263:11
miscellaneous 250:2
missed 105:9 307:5
missing 111:23 225:24
226:16,19 239:13
mistake 125:16 137:10
mistaken 16:11 26:6
40:23 65:3 97:16
133:21 324:8
Mix 190:17,18,20
191:18,24 192:16
193:5,23 195:8,10
196:3,5,12 198:12
199:23 200:18,21

203:14,21 207:9 208:5
209:20 211:4,22 302:21
mixed 256:7
mobile 273:11,12
274:25 276:9,24
moment 13:25 22:14
35:16 41:10 46:18 47:5
56:23,25 57:16,19 64:5
66:7 83:13,14 88:22
94:1 96:6 120:23
131:20 146:12 147:8,17
148:12 167:12 174:14
187:10 188:15 203:8
209:8,14 228:7,9
241:18 250:7 252:4
258:10,12 272:2,6
286:21 288:22 311:23
316:23 317:23 331:4
Monday 221:8,12
285:22,25
money 44:7 84:3 222:8
257:13,20 269:1,6,11
270:12,16,19 272:18
275:10,11 292:14,17
319:19
month 272:4
months 15:19
Morganville 19:10
morning 130:1 214:15,
19 282:8,9,15 283:19
288:7 292:11,12
mornings 34:4
mortgage 275:9,15
mother 57:7 273:25
283:16
mother's 8:16,21 274:5
motion 49:19,22
motor 249:8 266:7
mount 70:11
mouth 26:2 104:21
141:6 148:1 219:22
255:23,24
move 13:9,14 97:18
137:24 147:10 177:2
179:25 209:2 232:17

287:7
moved 13:15 16:4
59:15 147:14 275:4
277:5 281:24
moving 29:1 51:24
52:1,7 58:23 61:2,5
99:11,12 114:20 116:14
128:8 135:20 179:3
195:2 207:25 208:3
216:11 217:11 237:16
275:1,5,21 281:25
330:2
mud 198:21
mulch 154:13,14,15,16,
20 155:1,6,17,24
157:18,23 158:1
multimillion 297:1
multiple 307:21

N

named 21:3 99:25
100:5 255:15,16
names 18:3 19:3,4 94:2
127:7 288:14,18 289:2
298:22 333:2
Napa 245:23
narrow 310:18
National 254:4,8,9,15,
19 266:9
native 13:20
necessarily 18:7
needed 132:20 148:4
280:6 308:1 324:4
neighborhood 192:4
newbie 258:22 259:4
night 268:2 278:5,17
Nods 43:9 231:25
nolle 239:15,16
nonemployee 84:2
nonpayment 255:5
normal 99:19 127:10



North 13:6

note 331:12

notice 43:25 255:9

noticed 218:7

November 90:23 92:12
125:13 184:17 185:8,
13,16,23 188:2,8,17
189:7,12 190:1,6
191:14 192:11,18
193:2,4,15,20 194:2
195:24

number 30:23 39:4
43:22 44:11 46:3,10
48:1,2,3,9,12,15 49:4
54:4 55:18 56:3,4 60:7,
9 61:2,4,6,9,20 62:15,
16 63:7 64:8 66:23
69:23 70:2,22 71:3,4,8
72:5,6,11,20,21 73:2,
15,17 74:7,10,19,21
76:3 77:6 79:6,18 82:22
85:7 88:1 97:5 104:6
105:25 106:1 109:14
111:17 114:25 116:18
119:19 123:11 133:18
141:21 149:5 151:14
154:13 156:10 171:9
173:14 176:4 178:21
180:24 182:24 187:25
188:3,5 191:16 192:19,
20,22,25 193:1 198:25
199:3 203:20,25 208:3
215:25 216:2,7,10,19,
21 224:4 230:17,19
233:7 252:6 259:14
266:25 273:2 275:24
277:12 316:10 329:13
331:9,10

numbers 8:2 48:12
87:20 90:6 92:18 97:4,9
105:5 114:15 125:16
216:23 256:11 304:14

nursery 120:1,2,4,7,12
133:19,20,21,22 134:14
136:1,16,21 141:3
150:15,22,25 151:5,24
152:1 153:8,10 156:5,6
157:9,11,14 158:6,8,11,
18 159:1 160:22 169:24
170:5,13,18,19,24
171:2,5,8 302:18,20

O

oak 51:5

oath 79:13,16

Object 136:23 145:6
154:22 162:11 186:11
212:22 272:24

objected 213:19

objection 67:9 72:13,
17,18 73:20,22 76:13,
14 287:25

objections 186:20

observation 200:24

obtain 255:12

obtained 22:2,10 24:13
258:1

obtaining 16:23 24:9

occurred 130:15

October 84:23 178:2,
15,23 179:2,9,12 180:3
182:23 183:3,6,10,13
184:5,11 185:4 241:7
242:9 243:20 251:4
281:17 282:2

off-road 66:6

off-site 40:19,21
124:22 236:14 237:19

off-the-record 14:12
60:13 75:25 168:12
302:3 307:2 332:23
335:8

offense 237:25 238:3,7

offenses 251:23

offered 25:13

office 9:16 81:11
235:15 256:8 259:15
262:4

Officer 256:11

Officers 262:22

oil 65:19,20,21 69:24
72:8,23

Okatie 204:2,4,5,7,8,
12,20,22,23 205:18,21
206:21,23 207:21
208:1,6 209:21,25
213:23 214:18 244:20
299:6,8,10,14,16
302:23

on-line 77:7 249:16

on-site 26:23 27:8
28:24 34:17 47:10,14
97:13,17 100:13 106:23
152:9 160:17 171:12
173:17 174:18 183:8
184:15 197:6 212:8,14,
20,25 213:2,15,24
214:7,22 215:1,18
217:10 218:22 219:2,9,
11,14,17 222:25 285:5
287:24 290:15,20,21
292:5 329:21 332:1

one's 18:20 172:4
223:10,12 249:5 313:18

Ooh 62:18

open 54:16 55:5
260:20,21,22 261:11
264:18 314:13

opened 263:17

operate 264:13 290:16

operated 147:2 217:3

operating 147:6 160:3
168:16 241:10 242:3,5,
7 247:8 251:5 261:15
263:6,8

operation 241:11
247:8 251:5

operations 270:7

operator 258:18

opportunities 24:11
279:16

opportunity 25:6,10,
11 32:19 327:17

opposing 255:2

opposite 53:11

option 321:14

options 271:24

order 78:7 110:24
203:9

organized 262:13

organizer 262:8,10,12
264:2

original 335:13,14

Osaka 100:1,3

overlay 235:5

overnight 29:3 268:1
292:5

owe 275:10,11

owed 277:16

owned 33:7 42:7,20,21
47:7 66:3 275:6

owner 33:8 253:6
315:15,18 319:3 320:14

ownership 319:9
320:6

owns 274:4

P

p.m. 79:9,10 113:3
131:5 163:18,19 200:4
214:7 215:14,19
280:16,17 336:1

pad 65:20 69:25 72:8,
23 96:11 112:21
160:16,20 179:19
188:22,23 189:1 194:15
202:2,4,12 230:11
236:9 286:17,21,22
287:11

pads 167:22,23 174:25
179:17,22 182:25
198:22 199:18 201:6
233:13,16,19 234:23
235:9

pages 62:17

paid 26:3 39:5 72:3
80:7,9,10,12 84:23
88:20 102:11,13 110:25
111:14 118:2 132:5,8,9
146:19 149:25 221:17,



19,20 222:19 249:15
271:2 320:25 322:17

paint 44:8

painting 46:15,17

Palmetto 207:9,10,11,
12,15 208:5 299:25
300:2,4,6

paper 9:10

paperwork 40:14
241:19 249:12 259:6
262:14 274:23 276:23

parcel 273:18

parcels 273:3

parents 13:15

park 161:3,4,12,18,24
162:1,16,17,18,20
163:4,8,12,23 164:2,6
165:1,10,11,14,21,25
181:5,7 183:14 190:25
191:2,11,24 201:17
203:5 235:11 236:11
237:6,11,23 266:22
267:2 292:20 297:25
298:1,4,8,14,15

parked 26:24 269:5
292:5

parking 244:23,24
245:21,23 267:5

Parkway 96:8 181:8

part 31:2 56:6 58:1
114:9 117:22 233:13

participate 104:1

parts 269:3

pass 123:1 136:5 175:1
184:1 203:9 230:4

passed 51:21 220:6

passenger 53:22
65:18 66:10 70:3,8,22
72:5,21 73:15 74:5,6
314:9

passing 277:7 311:1

past 20:13,20 202:24
203:4 275:4 281:25
288:12

Pat 160:13,14,15,19

path 50:12

Patrol 46:16

pause 66:24 67:18

paved 267:4

pay 26:13 73:8 80:14
81:19,21 88:13,24
90:10,18 102:19 107:8
123:6 132:5 145:14
146:17 147:12 148:7
150:1 221:15 222:13
234:6 246:8,11 247:22,
23 252:16 257:21
261:24 292:14 319:21
321:8,9 322:11 327:14

payable 85:5 221:16

paychecks 265:6

paying 73:7 123:20,21,
23

payment 222:20

payments 25:16 26:8,
10 84:20,21 85:2,3
278:22

pedal 60:4

Pedro 13:1

people 18:24 25:24
82:5 90:19 95:19
100:16,17,20 107:6
115:12,16,17 124:3,15
132:22,23 133:8,11
146:22 164:16 198:20
216:15 238:16 257:18
260:5 273:16 280:5
283:15 288:21 290:16
291:7,8 300:22 305:17,
20 306:21 307:17
316:1,4,8 331:4

percent 76:21 187:24
196:23 320:14

perfectly 13:18

perform 66:2

performed 77:8

period 137:18 147:23
292:22 295:8

permit 244:7,15,17,18
245:1

permits 276:25

permitting 241:11
247:8 251:5

person 33:15 60:22
259:9 305:18 309:11
317:25 323:24,25
326:21 327:7

personal 248:3 251:10
260:5 264:14 265:8,11
280:5 334:16

personally 64:16
81:10,13 217:3 253:19

phase 228:23

phone 56:17 163:13
193:9 223:24

phonetic 13:3

pick 34:7,8 94:5 108:23
120:21 139:23 194:5
288:4 292:19 299:15

picked 194:12 296:12
323:10

pickup 29:7,9 53:4
268:15,16,18 282:16
284:7 287:23 317:15

pickups 199:19

Picoslat 13:3

picture 14:24 27:3,5
41:22 44:12 46:11,24
47:18 48:4 49:3 54:6
55:19 59:18 61:7,9
63:22 100:11 230:13

pictures 41:18 46:6
61:1 62:17 64:3 66:18,
22 270:15 329:18,20

piece 238:8 239:23

Piggly 36:13,18 298:12

piles 276:12

Pinecrest 19:23 20:12
275:20 277:5

Pines 126:16,19,20,24
127:14 128:9,13,16,19,
24 129:7,9 130:24

131:19 144:22,23 145:4
148:20,21 180:10,11
183:14,18 184:7 211:21
212:1,4 294:21,22,24
295:8 300:16,21

pit 164:11 204:11
205:18,21 206:25 207:1
209:21 210:1,15 285:8
290:8 299:22 302:25

pits 299:12

place 81:5 89:9 93:2,3
108:23,24 116:10
120:1,2,4,7 121:6,13,16
148:8,9 155:20,21
167:1 180:1 210:9
218:2 226:23 274:15
293:12 295:24

places 80:21 81:2,6,7
109:1 120:19 121:1
161:7

Plaintiff's 8:1

plan 38:7,14

plant 191:9,10 195:10

plantation 96:7,10
122:12,16,24 123:2
172:24 207:12 293:7
294:14,20 296:14,16

plantations 296:24

plants 133:23 236:24

playing 67:16 68:18
71:6 72:12 73:24 74:11,
23

plays 292:10

pled 245:6

point 24:18 29:1 31:11,
22 54:13 64:13 72:2,3
82:2 105:14 121:2
124:3 135:20 147:9
149:10 208:11 216:14
227:5 264:22 265:1,2
266:6 289:10 330:8

pointing 175:12 228:21
237:5 276:8

police 312:19

popped 69:19 256:3



Porch 297:24
Porh 297:23,24
Port 172:21,23,24
296:14,16,21
position 130:9
positive 235:3
possibly 275:4 306:14
potential 65:16
power 315:7
pre-marked 8:3
pre-trial 239:2
predecessor 82:22
predominantly 148:4
premium 257:21
prepared 76:4 149:16
188:23 202:15
preparing 188:22
prescribed 14:7
present 25:11
presented 139:3
285:22
presume 139:14
pretty 27:9 29:5 31:21
45:1 58:10 80:4 81:20
82:6 88:15 99:16
100:15 145:17 147:9
215:6 218:1 222:24
234:19 246:14 270:12
271:9,21 278:16 294:18
303:7 306:11 308:25
previous 77:19 121:22
144:14 169:19 172:4
199:17 237:9 252:8
253:6
previously 170:1
239:10
price 253:3 321:14,15
printed 64:6 230:20
prior 57:2
Pritchard 231:1

problem 13:23 67:14
83:7 177:15 303:24
problems 50:8 272:15
process 21:21 22:1
54:18 236:16 263:21
produced 8:5 82:18
139:10 254:25 332:13
production 82:21,25
profits 269:10
program 239:1,3
Progressive 254:10,12
project 87:3 167:6
168:16 174:1 293:17
324:3 325:1
projects 292:25
promise 227:18
proof 256:12 258:8
proper 66:12
property 34:17 189:2
239:19 274:19 275:9
277:17
prosequi 239:15
prosse 239:16
provide 86:6,9 87:10
100:24 101:7 264:4
265:17 319:16
provided 86:5 90:9
223:18 331:11
providing 82:11
public 239:11,15
pull 268:25 316:5
pulled 239:12 245:17
255:25
pump 199:14
pumps 199:13
Punisher 42:15 43:10
44:14
purchase 25:2,5 124:4
253:4
purchased 24:23 25:1
28:11 78:7 93:22 94:3

252:19,22 253:15
purchasing 93:15,20
124:6
pure 299:21
push 70:5,6
pushed 129:21
pushes 71:12
pushing 129:10,12
pushrods 70:23
put 8:17 18:7 30:15
42:14,16,23,24 43:1,4,
15 44:17,21 45:6 48:10
55:14 66:14 67:8 69:12
70:14 72:1 76:12 77:7
94:22 104:21 105:10,
19,21 108:4 123:14
130:9 131:24 141:6
148:1 149:4 156:18
177:17 194:15 197:20
199:1 216:24 219:22
239:22,24,25 271:11
274:25 299:23 330:16
puts 88:23

Q

qualified 244:16 245:4
quality 174:20
question 10:7 11:3,5,7
27:15 34:19 46:2 68:7
76:9 78:18 79:23 86:7
101:4 130:8,13 145:12
167:5 197:2,12 214:11
240:22 267:19,20 298:8
306:4 309:21 314:21
323:4 328:15
questions 10:10 11:10
12:6,8 14:9 29:17
107:13 280:8 282:13
317:10 318:19 319:2
329:1 335:3
quick 163:14,16 223:25
233:15
quickly 107:15
quit 303:14,17,19

R

R-E-Y-N-O-S-O 8:17
raise 10:21
Ramos 22:13,15,17,19
23:7,14 24:6,12,15,17,
20 26:17 27:7 69:4,6
133:2,4 266:20 267:5
268:8 269:4,11,17,19,
21 270:14 279:5
Ramos' 266:19
Ramos's 266:18
range 271:5 331:15
rate 127:11
rates 321:1,3
reach 136:4 308:21,22
read 30:17 32:16 40:6
69:25 126:4 141:4
161:22 225:7 335:6
reading 40:9 72:20
73:16 169:1
Ready 190:17,18,20,21
191:18,24 192:16
193:5,23 195:8,10
196:3,5,12 198:12
199:23 200:18,21
203:14,21 207:9 208:5
209:20 211:4,22 302:21
real 42:4 163:13 233:14
reality 239:23
rear 74:19 75:3,8
reason 8:17 10:3 18:5
23:1,3,4 24:9 50:14
51:13 64:2 66:9 112:9
127:21 146:14 153:13
177:17,19 272:18
286:13,23 311:21 314:6
327:2,3,23
reasonable 33:1
reasons 110:21
112:10,11
recall 16:14,18 17:11
25:18 37:13 38:17 41:1,
4,10 47:2 51:22 55:1



56:19 57:15 62:6 66:1, 7,14,21 68:14,25 69:2,3 70:15 73:5,9 74:3,15,18 75:9,16,18,20 78:2,5,6, 15,20,25 79:4,19,24 84:5 86:11 87:21 88:23 92:3 93:9 100:23 101:12 102:4,15 103:1, 6 106:9 108:17 109:16, 25 112:20 120:3,4,12, 23 124:23 126:19,21 127:16 130:4 144:25 145:25 146:6,8,10,23 147:8,16 148:14 149:22 150:21 159:20 161:9 166:6 178:13 180:19 186:15 188:15 196:1 205:11 207:17 210:7 218:5 221:11 222:7 223:3 229:25 231:21 234:7 245:11 247:4,6 249:2 252:4 254:16 256:24 261:14 265:4 267:9 282:18,21 284:14 286:2 288:22 294:18 295:10 305:6 310:16 311:2 317:8 321:24 324:9 331:1,5,6 332:1, 4,6	211:12 record 8:10 11:18 14:11,23 51:24 54:2 60:12,16 67:9 75:23 76:13 77:8 82:23 87:15 156:8 168:11 169:22 178:19 222:4 228:20 237:22 239:10 246:13 270:14 282:9 recorded 275:16 records 59:9 73:12,14 75:2,6 REDIRECT 329:2 redo 261:2 referencing 16:1 85:7 110:9 referrals 269:13 referring 188:6 refers 76:6 reflects 221:24 refund 272:20 registered 241:12,24 247:9 251:6 256:9 259:16 265:21 268:18, 20 registration 59:6 247:23 251:8 252:1 256:2 regular 82:13 128:3,5 139:8 174:21 247:5 248:20 249:6 253:13 260:5 278:8 regularly 100:20 106:11 305:8 regulations 318:13 reimburse 184:3 reimbursed 183:25 reiterate 142:17 reiterated 40:7 related 15:20 18:6,24 19:7 71:17 82:21 99:17 relates 71:16 77:7	relating 251:9 relationship 40:3 58:13,15 272:11 relive 49:10 rely 306:8 remember 15:15 21:10 23:15 26:3,5 27:25 28:5,23 31:9 34:11,18 35:5,11 37:8 42:19 46:15 48:20 50:13 51:1, 12 52:14 53:14,15,25 54:11,12,23 55:8,23 56:21 57:13 67:24 68:22 70:16 75:5,9 79:2 82:11 83:9,23 84:7,9,11 85:1 92:11,21 93:14,16, 19,21 94:1 99:24 109:22,23 115:6 122:23 125:11 128:8,10 136:14 147:1 154:14,16 162:20 163:21 173:20 174:11, 14 176:14 179:21 183:18 187:11 201:2 203:8 208:16 216:6,8 217:25 218:15 220:13 221:2,14 240:10,12,16 241:13,14 242:23,25 243:23 244:1 245:17 246:4,20,24 247:11,13, 19 248:15,18,25 249:10 251:4,14,16 252:11,14, 18,22 255:8 256:21 271:1 283:9 284:4,8 287:21 289:4 295:14 296:8 300:3 306:2 310:20 311:16 314:3,5, 14 317:13 332:16 remind 79:12 reminding 79:15 remove 124:16 removing 124:4 renewed 252:15 rent 20:5 83:18 renting 77:24 83:20 275:19 rephrase 119:13 130:8, 13 212:24	replace 64:12 replaced 64:18,20,23 69:15 replay 49:19,22 report 65:7 85:11 221:16 312:19,20 reporter 10:12 86:8 335:5,12,16 reporter's 331:12 represent 9:14,17 280:21 282:22 318:24 represented 9:20,23, 24 request 173:24 252:8 278:5 requested 88:7 149:1 256:1 requesting 288:9 required 21:7,19 147:19,23 requirements 258:17 research 258:15 RESERVED 335:21 residency 241:18 resolution 263:14,16 266:14 response 63:9 responsibility 309:12, 22 responsible 318:3,8 320:1 322:14 rest 38:7 115:25 223:25 308:13 restrictions 15:3,7 retained 76:4 retirement 226:23 returns 265:19 review 32:19 40:14 reviewed 178:19 reviewing 31:9
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MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI 362Index: Reyes–Saturday

ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

Reyes 8:15	169:14,16,20 170:2,9, 12,15,21 171:3,5,7,8, 13,16,17 172:1,2,7,19 173:18 174:18 175:23 176:2,5,10 178:4,10,24 179:1,4,7,14,22 180:4, 22 181:2 182:9,10,12, 13,25 183:4,9,11 184:12,14,15,19,21,24 185:5,11,13,19,24 186:3,8,14 187:21 188:1,5,9,12,18 189:9, 17,18,22,25 190:9,13, 14,19 192:19,24 193:6, 19 194:2,7,12,21,24 195:3,8,13 196:6,13,22 197:16,23 198:1,6,9,12 199:10,24 200:19,22 201:3,11,12 202:20,21 203:15,21 204:1,21,23 205:19 206:22 208:7,11 209:17,21 210:1,16,22 211:5,23 212:2,8,9,14, 20 213:1,16,25 214:7, 22 215:1,10,18 216:12 217:11,15 218:23 219:2,11,15,19,24 221:12 223:22 225:25 226:7,11,22 227:6,23 228:4,9 230:21 231:7 232:6 233:1 235:24 237:20 260:9 267:12, 15,23,24 282:16 284:5, 7,9,20 285:1,2,6 286:3, 4,7 287:22 288:5 289:15 290:4,11 292:23 300:24 307:13,14,24 322:24 324:16,20,24 325:4,6,23 330:2	283:24 285:17 286:14 287:12 294:12 298:6 301:8,9,13 313:7 323:11,15,17 324:2 325:1 road 33:4,13 35:18 36:14,15,16 40:24 41:7, 9 49:12,25 50:2,22 51:4,6,7 83:2,3,23 86:25 89:14,15,20,21, 22 102:3 111:10 132:22 136:8 159:22 160:2 164:14 170:15 199:16 205:23,24 206:7,10,12 207:4,5,16 210:3 224:23 225:16,18,19,24 228:1,2,4,7 231:1,5,18 232:5 233:24 245:19 282:20 283:24 285:18 286:14 287:12 290:12, 14 291:13 293:14,21,24 294:12 298:6 301:8,9, 13 310:13,18 313:7 315:4 324:2 roads 201:6,7,9,21 203:7 226:16 roadway 56:7 rock 86:17,18 89:11 90:2,10,19 95:5 104:11, 13,14 116:10,11,14 118:14,18,21,24 121:16 139:23 161:21,22 162:5 166:14,19,25 167:1 169:2,3,6 170:18 171:9, 15 173:15 182:11 184:17 188:3,14 192:19,20 193:17 197:19 198:1,5,8,15,18 199:5,6,7,10,14 201:1 211:22 rocks 45:8 166:21 198:24 rod 70:5,6 roll 99:4 194:13,16 roller 99:5 101:11 180:2 rollers 99:11,12 rolling 180:2	room 83:19 Rose 109:14,16,18,19, 22 110:1,2 115:5,7,20, 22 116:8 120:6,8,9,10 121:12 158:23,24,25 167:7,17,18,20 168:17 180:25 182:14,16 293:4,5,6 rotate 156:24 route 230:24 232:4 Royal 172:21,23,24,25 296:14,16,22 rude 11:17 78:19 267:18 ruined 308:12 rule 76:21 rules 9:11,25 244:7 run 40:16 91:14,15,16 169:4 175:19 190:7,9, 10 192:8,9,12,13,14 195:14,15 196:3,12 198:11,14,15 199:22 200:18,21 201:1,20,21 203:13 207:8 208:4 209:19 211:4,16 212:8 271:7 310:13 running 100:16 253:20 334:16 runs 85:6 rush 12:5 55:17 RV 201:17 203:5 228:18 230:7 233:22,25 234:1 235:11 236:1,11 237:6, 10,23 Ryan 318:23
rich 300:22	169:14,16,20 170:2,9, 12,15,21 171:3,5,7,8, 13,16,17 172:1,2,7,19 173:18 174:18 175:23 176:2,5,10 178:4,10,24 179:1,4,7,14,22 180:4, 22 181:2 182:9,10,12, 13,25 183:4,9,11 184:12,14,15,19,21,24 185:5,11,13,19,24 186:3,8,14 187:21 188:1,5,9,12,18 189:9, 17,18,22,25 190:9,13, 14,19 192:19,24 193:6, 19 194:2,7,12,21,24 195:3,8,13 196:6,13,22 197:16,23 198:1,6,9,12 199:10,24 200:19,22 201:3,11,12 202:20,21 203:15,21 204:1,21,23 205:19 206:22 208:7,11 209:17,21 210:1,16,22 211:5,23 212:2,8,9,14, 20 213:1,16,25 214:7, 22 215:1,10,18 216:12 217:11,15 218:23 219:2,11,15,19,24 221:12 223:22 225:25 226:7,11,22 227:6,23 228:4,9 230:21 231:7 232:6 233:1 235:24 237:20 260:9 267:12, 15,23,24 282:16 284:5, 7,9,20 285:1,2,6 286:3, 4,7 287:22 288:5 289:15 290:4,11 292:23 300:24 307:13,14,24 322:24 324:16,20,24 325:4,6,23 330:2	283:24 285:17 286:14 287:12 294:12 298:6 301:8,9,13 313:7 323:11,15,17 324:2 325:1 road 33:4,13 35:18 36:14,15,16 40:24 41:7, 9 49:12,25 50:2,22 51:4,6,7 83:2,3,23 86:25 89:14,15,20,21, 22 102:3 111:10 132:22 136:8 159:22 160:2 164:14 170:15 199:16 205:23,24 206:7,10,12 207:4,5,16 210:3 224:23 225:16,18,19,24 228:1,2,4,7 231:1,5,18 232:5 233:24 245:19 282:20 283:24 285:18 286:14 287:12 290:12, 14 291:13 293:14,21,24 294:12 298:6 301:8,9, 13 310:13,18 313:7 315:4 324:2 roads 201:6,7,9,21 203:7 226:16 roadway 56:7 rock 86:17,18 89:11 90:2,10,19 95:5 104:11, 13,14 116:10,11,14 118:14,18,21,24 121:16 139:23 161:21,22 162:5 166:14,19,25 167:1 169:2,3,6 170:18 171:9, 15 173:15 182:11 184:17 188:3,14 192:19,20 193:17 197:19 198:1,5,8,15,18 199:5,6,7,10,14 201:1 211:22 rocks 45:8 166:21 198:24 rod 70:5,6 roll 99:4 194:13,16 roller 99:5 101:11 180:2 rollers 99:11,12 rolling 180:2	room 83:19 Rose 109:14,16,18,19, 22 110:1,2 115:5,7,20, 22 116:8 120:6,8,9,10 121:12 158:23,24,25 167:7,17,18,20 168:17 180:25 182:14,16 293:4,5,6 rotate 156:24 route 230:24 232:4 Royal 172:21,23,24,25 296:14,16,22 rude 11:17 78:19 267:18 ruined 308:12 rule 76:21 rules 9:11,25 244:7 run 40:16 91:14,15,16 169:4 175:19 190:7,9, 10 192:8,9,12,13,14 195:14,15 196:3,12 198:11,14,15 199:22 200:18,21 201:1,20,21 203:13 207:8 208:4 209:19 211:4,16 212:8 271:7 310:13 running 100:16 253:20 334:16 runs 85:6 rush 12:5 55:17 RV 201:17 203:5 228:18 230:7 233:22,25 234:1 235:11 236:1,11 237:6, 10,23 Ryan 318:23
ride 244:24 290:17	169:14,16,20 170:2,9, 12,15,21 171:3,5,7,8, 13,16,17 172:1,2,7,19 173:18 174:18 175:23 176:2,5,10 178:4,10,24 179:1,4,7,14,22 180:4, 22 181:2 182:9,10,12, 13,25 183:4,9,11 184:12,14,15,19,21,24 185:5,11,13,19,24 186:3,8,14 187:21 188:1,5,9,12,18 189:9, 17,18,22,25 190:9,13, 14,19 192:19,24 193:6, 19 194:2,7,12,21,24 195:3,8,13 196:6,13,22 197:16,23 198:1,6,9,12 199:10,24 200:19,22 201:3,11,12 202:20,21 203:15,21 204:1,21,23 205:19 206:22 208:7,11 209:17,21 210:1,16,22 211:5,23 212:2,8,9,14, 20 213:1,16,25 214:7, 22 215:1,10,18 216:12 217:11,15 218:23 219:2,11,15,19,24 221:12 223:22 225:25 226:7,11,22 227:6,23 228:4,9 230:21 231:7 232:6 233:1 235:24 237:20 260:9 267:12, 15,23,24 282:16 284:5, 7,9,20 285:1,2,6 286:3, 4,7 287:22 288:5 289:15 290:4,11 292:23 300:24 307:13,14,24 322:24 324:16,20,24 325:4,6,23 330:2	283:24 285:17 286:14 287:12 294:12 298:6 301:8,9,13 313:7 323:11,15,17 324:2 325:1 road 33:4,13 35:18 36:14,15,16 40:24 41:7, 9 49:12,25 50:2,22 51:4,6,7 83:2,3,23 86:25 89:14,15,20,21, 22 102:3 111:10 132:22 136:8 159:22 160:2 164:14 170:15 199:16 205:23,24 206:7,10,12 207:4,5,16 210:3 224:23 225:16,18,19,24 228:1,2,4,7 231:1,5,18 232:5 233:24 245:19 282:20 283:24 285:18 286:14 287:12 290:12, 14 291:13 293:14,21,24 294:12 298:6 301:8,9, 13 310:13,18 313:7 315:4 324:2 roads 201:6,7,9,21 203:7 226:16 roadway 56:7 rock 86:17,18 89:11 90:2,10,19 95:5 104:11, 13,14 116:10,11,14 118:14,18,21,24 121:16 139:23 161:21,22 162:5 166:14,19,25 167:1 169:2,3,6 170:18 171:9, 15 173:15 182:11 184:17 188:3,14 192:19,20 193:17 197:19 198:1,5,8,15,18 199:5,6,7,10,14 201:1 211:22 rocks 45:8 166:21 198:24 rod 70:5,6 roll 99:4 194:13,16 roller 99:5 101:11 180:2 rollers 99:11,12 rolling 180:2	room 83:19 Rose 109:14,16,18,19, 22 110:1,2 115:5,7,20, 22 116:8 120:6,8,9,10 121:12 158:23,24,25 167:7,17,18,20 168:17 180:25 182:14,16 293:4,5,6 rotate 156:24 route 230:24 232:4 Royal 172:21,23,24,25 296:14,16,22 rude 11:17 78:19 267:18 ruined 308:12 rule 76:21 rules 9:11,25 244:7 run 40:16 91:14,15,16 169:4 175:19 190:7,9, 10 192:8,9,12,13,14 195:14,15 196:3,12 198:11,14,15 199:22 200:18,21 201:1,20,21 203:13 207:8 208:4 209:19 211:4,16 212:8 271:7 310:13 running 100:16 253:20 334:16 runs 85:6 rush 12:5 55:17 RV 201:17 203:5 228:18 230:7 233:22,25 234:1 235:11 236:1,11 237:6, 10,23 Ryan 318:23
ridge 26:22,23 27:9 28:8,15 33:13 34:25 35:3,5,14 38:22,23 40:21 41:13 42:10 45:21 47:10,12 50:4 59:13,14 64:13,21 75:21 81:16 93:17 94:3, 10 96:4,16 97:7,20 98:3,13,16,18 99:15 101:1,8,20,23 102:25 104:8,10,15,16,18,20 106:12,19 107:1,2,4,17, 21 108:7,9,12,22 109:9 110:1,6 111:25 112:4, 17,25 113:11,25 114:2, 6,22 115:24 116:4,20, 21,22 117:1,5,13,14,16 118:5,15,19,22,25 119:9,21 120:25 121:3, 18,20 122:1,7,20,21 123:11,24 124:5,17,21 125:2,10,19,21 126:9, 15,20,24 127:14 128:16,19,24 129:7,8 130:23 131:18 133:19 134:17 135:11 136:21 137:1,15,16,25 138:3, 15,17 139:16,17 140:7, 10,16 141:11,14,18,22 142:1,10,23,25 143:2,8 144:13,16,22,23 145:4 147:10 148:3,19,21 150:23 151:5,16,17,23, 25 152:6,8,11,15,18,22 153:2,6,7,10,15,19 154:7,9,17,18,20,25 155:6,8,12,22,25 156:4, 7,12,25 157:7,12,15,18 158:6,7,14,20 159:4,6, 12,13,17,19,24 160:9, 11,25 161:8,10 162:8, 10,15,25 163:5,8,11,25 164:2 166:3,9,12,13,24 167:3,7 168:2,18,21,23	169:14,16,20 170:2,9, 12,15,21 171:3,5,7,8, 13,16,17 172:1,2,7,19 173:18 174:18 175:23 176:2,5,10 178:4,10,24 179:1,4,7,14,22 180:4, 22 181:2 182:9,10,12, 13,25 183:4,9,11 184:12,14,15,19,21,24 185:5,11,13,19,24 186:3,8,14 187:21 188:1,5,9,12,18 189:9, 17,18,22,25 190:9,13, 14,19 192:19,24 193:6, 19 194:2,7,12,21,24 195:3,8,13 196:6,13,22 197:16,23 198:1,6,9,12 199:10,24 200:19,22 201:3,11,12 202:20,21 203:15,21 204:1,21,23 205:19 206:22 208:7,11 209:17,21 210:1,16,22 211:5,23 212:2,8,9,14, 20 213:1,16,25 214:7, 22 215:1,10,18 216:12 217:11,15 218:23 219:2,11,15,19,24 221:12 223:22 225:25 226:7,11,22 227:6,23 228:4,9 230:21 231:7 232:6 233:1 235:24 237:20 260:9 267:12, 15,23,24 282:16 284:5, 7,9,20 285:1,2,6 286:3, 4,7 287:22 288:5 289:15 290:4,11 292:23 300:24 307:13,14,24 322:24 324:16,20,24 325:4,6,23 330:2	283:24 285:17 286:14 287:12 294:12 298:6 301:8,9,13 313:7 323:11,15,17 324:2 325:1 road 33:4,13 35:18 36:14,15,16 40:24 41:7, 9 49:12,25 50:2,22 51:4,6,7 83:2,3,23 86:25 89:14,15,20,21, 22 102:3 111:10 132:22 136:8 159:22 160:2 164:14 170:15 199:16 205:23,24 206:7,10,12 207:4,5,16 210:3 224:23 225:16,18,19,24 228:1,2,4,7 231:1,5,18 232:5 233:24 245:19 282:20 283:24 285:18 286:14 287:12 290:12, 14 291:13 293:14,21,24 294:12 298:6 301:8,9, 13 310:13,18 313:7 315:4 324:2 roads 201:6,7,9,21 203:7 226:16 roadway 56:7 rock 86:17,18 89:11 90:2,10,19 95:5 104:11, 13,14 116:10,11,14 118:14,18,21,24 121:16 139:23 161:21,22 162:5 166:14,19,25 167:1 169:2,3,6 170:18 171:9, 15 173:15 182:11 184:17 188:3,14 192:19,20 193:17 197:19 198:1,5,8,15,18 199:5,6,7,10,14 201:1 211:22 rocks 45:8 166:21 198:24 rod 70:5,6 roll 99:4 194:13,16 roller 99:5 101:11 180:2 rollers 99:11,12 rolling 180:2	room 83:19 Rose 109:14,16,18,19, 22 110:1,2 115:5,7,20, 22 116:8 120:6,8,9,10 121:12 158:23,24,25 167:7,17,18,20 168:17 180:25 182:14,16 293:4,5,6 rotate 156:24 route 230:24 232:4 Royal 172:21,23,24,25 296:14,16,22 rude 11:17 78:19 267:18 ruined 308:12 rule 76:21 rules 9:11,25 244:7 run 40:16 91:14,15,16 169:4 175:19 190:7,9, 10 192:8,9,12,13,14 195:14,15 196:3,12 198:11,14,15 199:22 200:18,21 201:1,20,21 203:13 207:8 208:4 209:19 211:4,16 212:8 271:7 310:13 running 100:16 253:20 334:16 runs 85:6 rush 12:5 55:17 RV 201:17 203:5 228:18 230:7 233:22,25 234:1 235:11 236:1,11 237:6, 10,23 Ryan 318:23
rich 300:22	169:14,16,20 170:2,9, 12,15,21 171:3,5,7,8, 13,16,17 172:1,2,7,19 173:18 174:18 175:23 176:2,5,10 178:4,10,24 179:1,4,7,14,22 180:4, 22 181:2 182:9,10,12, 13,25 183:4,9,11 184:12,14,15,19,21,24 185:5,11,13,19,24 186:3,8,14 187:21 188:1,5,9,12,18 189:9, 17,18,22,25 190:9,13, 14,19 192:19,24 193:6, 19 194:2,7,12,21,24 195:3,8,13 196:6,13,22 197:16,23 198:1,6,9,12 199:10,24 200:19,22 201:3,11,12 202:20,21 203:15,21 204:1,21,23 205:19 206:22 208:7,11 209:17,21 210:1,16,22 211:5,23 212:2,8,9,14, 20 213:1,16,25 214:7, 22 215:1,10,18 216:12 217:11,15 218:23 219:2,11,15,19,24 221:12 223:22 225:25 226:7,11,22 227:6,23 228:4,9 230:21 231:7 232:6 233:1 235:24 237:20 260:9 267:12, 15,23,24 282:16 284:5, 7,9,20 285:1,2,6 286:3, 4,7 287:22 288:5 289:15 290:4,11 292:23 300:24 307:13,14,24 322:24 324:16,20,24 325:4,6,23 330:2	283:24 285:17 286:14 287:12 294:12 298:6 301:8,9,13 313:7 323:11,15,17 324:2 325:1 road 33:4,13 35:18 36:14,15,16 40:24 41	

Savannah 17:17,18	Sea 126:15,19,20,24 127:14 128:9,13,16,19, 24 129:7,8 130:23 131:19 144:22,23 145:4 148:19,21 180:10,11 183:14,18 184:6 211:21 212:1,4 294:21,22,24 295:7 300:16,21	246:19,21,25	11 249:15 253:3 280:9 333:1
save 51:9 89:11	seal 65:21,23	sequence 104:9 111:17 137:11 140:22 178:17,18 254:18	showed 73:1 238:13
saved 292:17 311:25 315:7,8	searched 259:15 274:14	service 76:7,10,18,21, 23 77:3 262:7	showing 46:6 69:10 78:12 82:12 148:10 221:16
scales 250:20	searches 232:24	shaft 64:18,20 69:15,17	shows 65:18 69:23 72:5,6,21 73:15 74:19 77:25 83:25 84:16,20 85:5 275:25 331:15
scanned 126:5 139:12, 13	seat 53:22 54:24 60:6 314:9	shape 55:2	shrug 10:21
scene 47:20 62:7 326:11	seatbelt 53:23 248:14, 15,23 249:1 251:17	share 269:10	sick 193:13
school 13:14 16:5,6,7, 16 17:20,21 238:6,16 239:1,19,21 240:1	Secretary 259:15 262:3	shared 255:2	side 35:21 46:3 50:25 51:2,6,14 52:17 53:8,9, 22 63:15 65:18,21 66:10,11 69:23 70:2,3, 5,8,11,22 71:1 72:5,21 73:15 74:5,6,7,13,17 134:3 136:1,3,6,7 164:14 175:11 201:15 206:1 231:7,8,9 233:5 234:14 267:3 311:10 312:11 314:9
Scot 57:14	securely 70:23	sheets 200:9,12 332:10,15	sides 184:24,25 236:18,19,20
Scott 24:25 25:3,8 26:16 27:12 33:12,16, 21,25 34:3,6,14,21 36:2 37:8 39:5,10,13 40:2 45:18,22 63:10 81:9 82:19,24 86:20 87:4 91:19,25 94:8 100:14, 19 109:6,7,8 117:18,25 139:10 149:18 184:4 201:8 202:7 210:12 222:16,17 223:18 229:16 237:15 247:3 248:6 263:18 265:7 272:23 282:23 283:17, 18 285:17 287:11 288:10 292:23 293:16, 23 295:1,25 296:18 297:7,18 298:17 299:1, 13,24 300:7,12,24 301:10,11,22 305:4 307:11 318:24 319:8,15 320:5,18 321:6 322:11 323:22 325:12 327:22 328:17 331:12 332:2 334:9,19,23	Security 277:12	Shelton 8:8 9:15 12:10, 12 14:11,14,23 15:2 54:2,5 60:12,15 62:9,14 64:6,9 67:11,17 68:19 71:7 72:15,19 73:19,23, 25 74:12,24 75:23 76:2, 15,16 79:7,11 129:19 130:7 136:24 145:7 155:2 162:14 163:15,20 168:11,14 186:12,22 212:23 213:4,5,8,9,20, 21 273:1 280:7,13 281:20 284:17 287:25 291:16 300:18 329:3 332:25 335:14	sideways 156:23
Scott's 209:3	select 109:15 127:2,3, 4,5,6,7 128:1,3,6,20,21 129:14 130:3 131:2,4, 18 174:18,20,21 206:21	Sheridan 161:24 162:1,16,17,18,20 163:4,8,12,23 164:2,6 165:1,10,11,14,20,25 181:5,7 183:14 190:25 191:2,11,24	sign 95:16,17 135:8 234:3,5 335:6
scratch 56:2	sell 109:2 116:11 133:23 167:1 193:1 195:15 204:11,13 269:2 275:12 299:12,20,21	shift 53:20 59:22 326:3, 4	signature 31:7 86:16 95:7,9,15 97:1,2 131:9, 12 335:21
scratched 173:3	seller 275:12	shock 56:20 283:11	signatures 110:19 114:12
screen 30:15	selling 117:24 164:16 253:12 299:18	shop 22:8 271:14	signed 9:10 31:10 32:3 95:18
scroll 30:22 62:25 82:25 329:23	send 148:15 204:15 256:11 281:16,19 282:3,4 291:21 293:11 308:23 335:10	shorter 72:9	significance 77:17
scrolled 63:22	sense 32:15 97:24 190:15 313:25 316:14	shortly 17:20 23:23	silt 99:18
scrolling 255:1	senses 314:8	shoulders 10:21	similar 90:21 98:15 116:19,25 175:21 176:21
	separate 242:13,15 304:22	show 35:8 41:24 65:7 66:23 71:3 72:10 73:11 82:15 85:15 100:10 126:9 152:22 228:5 231:2 232:9 240:22 242:21 243:21 246:3,9,	single 62:24
	separated 83:15 242:14	September 85:5 180:9, 17 181:9,18,19,23 182:1,7,22 243:19	sinking 194:17
			sir 9:13 11:13 12:9 14:2, 6,10,19 16:24 19:25 21:16 22:16 24:2 26:9



29:19 30:8,18 32:22
33:2,6,10,14,23 34:2,5,
10 37:7,17 38:6 39:3,
12,22 41:14 42:11
43:24 46:5 47:16,19,25
49:6 59:10,21 61:10,14,
16,19,22 62:3,5 64:1
67:22 68:6,10,13,17
69:5 71:18,23 73:5
74:3,18 75:5,22 76:11
78:5,9 79:17 82:20
84:9,25 91:2,6 93:18
94:17 96:25 98:19
102:1 106:4 109:12
110:3 111:22 112:2,5
113:2,9,15,24 114:1,4,
7,23 115:3 116:6,24
117:3,6,10,12 119:1,12
122:25 125:11 126:12
128:17,22 129:2,5
130:17 133:16 137:3,14
138:6,20,24 139:21
140:12 141:19 142:7
143:10,21 144:1,3,9,12,
18,20 146:4 147:4
148:18 151:12 152:4,
12,20,25 153:4 154:11
155:13,24 157:3,16,20,
22 158:1,9,12,16,21
159:2,5 160:10 161:1
163:6,13,24 164:4,9,21
165:2,16,23 166:1
168:19 169:11 170:10,
21,25 171:3,8,14,22
172:8,10 173:13,22
175:14 176:6,8,20,25
178:8 179:1,5,8,10,16,
20 180:6,8,16 181:22,
25 182:3,21 183:12,23
184:9,22 185:6,10,15,
18,25 187:1 188:7
189:25 190:5 191:3,12
192:15 193:7 194:22
195:1,6,9,11,18,22
196:15,19 198:3,7,10
200:4 203:7,17,19,23
205:15 206:14,19
207:2,7,24 208:12
209:5,24 210:18,23
211:8,14,19 212:11,16
213:14,17 214:2,9,20,
23 215:2,13,21 217:7,
13,18 219:4,16 222:17,
21 223:8,13,20 224:7,

10,21 225:11,15 226:4
227:24 229:22 230:12,
16 231:16 233:1,18
234:2 235:10,16 237:7,
13,21 239:22 240:6,11
242:12 243:2,7,25
245:5 246:23 247:1,4,
12 248:5 249:1 250:16
251:13 252:13 253:1,18
254:6 255:11 256:24
257:22 262:5 263:5,7,
13,17 265:20,23
266:13,16,21 267:25
268:7,10 269:12,15
271:16,25 272:21
277:18 279:24 281:3,7
282:12,17,21 283:12,15
286:5,16 288:15 293:1
294:3,10,22 295:10
296:1 297:14 299:4
300:14 301:14 302:20,
22 304:7 307:11,15
308:7,10 309:19 310:6
311:11 315:19,21
317:2,23 318:5,7,18,20
320:8,20 321:2,6,18
322:7,13,16,19,22
323:1 324:13 325:2,22
329:19 333:5 334:22

sister 18:7 273:7,8

sisters 17:23 18:16

sit 54:19 55:12,14
218:21 229:20

site 27:8 28:25 29:4,10
35:18,20 38:4 46:20
58:7 59:12,16 64:23
65:5 66:6 69:9 75:15
93:17 95:21 97:21,22
100:8,15,18 102:25
110:22 122:19 168:9
187:8,9 188:20 197:11
204:9,10 215:10 216:11
217:15 226:6,7 227:8
228:15 229:1 231:13
236:21 237:16 283:3
285:1 286:18 287:12,
16,19 293:9 294:3,5,8,
15,25 295:12,15 296:2,
6,15,21 297:6,9,12,17
298:5,18 299:2,6,7,25
310:15 317:21,22
322:24 323:11,17 324:2

325:8,16 330:2

sites 97:20 198:23
292:24 301:1,4 302:11

sitting 65:4 258:7
317:18

situation 73:6

size 250:2

skid 311:12

skip 254:17 295:21

slack 70:9,24 71:1,9,
10,15,19,24 72:7,22
73:17 74:8,20 75:3,8

slip 91:7,25 156:9,20

slips 99:2 100:24 101:7
110:16

slow 49:19,22 50:19

slowly 62:25

SLT 278:11

small 53:4 56:2 310:18

smaller 312:8

smash 55:7

smashed 53:19 63:17

smoke 314:11

snacks 11:23

soccer 49:13,15 238:9,
10

Social 277:11

soil 105:17,19 122:9,14,
18 123:12 150:24 156:6
157:5 158:9 160:23
166:19 170:21 182:8
236:22

sold 117:17,20

solely 319:13

someone's 173:24

sort 164:12 263:12

sound 238:12 284:23
289:23,24

Sounds 37:4

sources 292:20

south 12:22,23 49:2
77:15 252:19 258:18
316:19

Southeast 190:17,18,
20,21 191:18,24 192:16
193:4,23 195:8,14
196:3,12 198:12 199:23
200:21 203:14,21 207:8
208:4 209:20 211:4,22
212:9 302:21

Southeast 200:18

Spanish 13:20

speak 10:14,15,24
60:22

speaker 13:20

speaking 10:2 13:18

specific 186:24

specifically 25:2 37:12
263:3

speed 240:8,14,17
242:17,19 243:4,18
246:18

speeding 50:21 240:7,
13,17 243:3,17 244:1
245:25 246:4,17,22
248:10

spell 8:10,12 12:19
19:17

spoke 21:6

sport 49:14

spot 29:2 86:22

spots 319:19

spray 46:15,17

spring 70:11

sprint 12:5

squiggly 86:14

SR 224:11,13

stage 201:1,3

stages 98:16

stamp 82:23 109:13
110:9 113:16 114:20



115:1 116:17 119:17,25 122:5 123:10 125:5,6 126:5 133:17 137:4,5 138:13,14 140:6,13 141:20 152:14,22 153:11,23 156:10 158:10 163:22 165:13, 19 172:15 179:3,11 182:24 184:5,10,23 185:7 186:1,2 188:8 189:20 191:15 193:3 194:4 195:2,7 196:7 199:21 200:19 206:20 207:25 210:14,24 211:15 212:17 219:7,8	states 13:9 112:14,24 117:15 127:18 142:23 176:21 241:19 255:4 stating 70:13 84:12 143:1 147:25 148:2 station 27:21 136:4,5 323:7 status 241:20 stay 45:10 46:20 291:9 292:15 324:24 stayed 29:5 69:8 147:11 268:4 279:3 303:7 steering 52:21 60:1 stick 53:20 59:22 sticker 317:9,11 stickers 330:16 Stone 100:5 stop 24:16,17 50:16,17 51:18 53:5 60:10 63:4 135:8 218:3,13,14 270:9 310:19 313:12 316:7 stopped 24:15 31:16 39:4 50:15 51:21 112:8, 9 244:13 310:9,22,25 stopping 53:6 311:9 313:11,17 stops 250:21 storage 228:18 store 26:1 124:8 134:13,14 stores 37:6 straight 70:7 134:11 135:12 233:24 310:4,5 stress 272:15 stretcher 55:15 strictly 106:13,23 strike 303:1 struck 51:14 314:7 structure 263:22	structured 262:21 stuff 67:10 90:17 97:21, 23,24 107:8 109:2,4,25 121:2 132:15 133:8,23 136:18 160:16 167:24 168:4 189:3 222:9 230:1 236:10,23 252:17 256:7 260:6 261:24 269:3 282:11 287:2 292:2 326:21 stupid 214:11 submit 62:19 65:10 76:5 77:9 82:18 139:9 331:11 submitting 84:14 Subpoena 63:9 254:19 281:16,19 282:3 suck 199:15 sucking 199:14 suddenly 50:15 sued 281:6 309:18 suggest 29:21 Sunday 220:23 superintendent 100:23 supervisor 33:22 supervisors 325:24 supplier 299:23 302:8 suppliers 301:16 supposed 28:24 38:18 121:5 146:16 177:8 255:16 258:20 324:14, 18 325:5,11 supposedly 313:13 surprise 77:1 surprised 53:10,12 56:10 survive 264:4 survived 56:10 suspect 64:2 suspended 15:10	suspension 15:20 switched 40:16 sworn 8:5 31:2 sys 190:7 system 269:17 T Tacoma 317:16 tag 197:19 tags 78:7 tail 50:24 tailed 50:24 takes 189:1 210:8 taking 10:12 40:17 54:21 97:21,22 120:13, 18 127:13 131:13 135:3,9 141:9 218:13 230:24 305:20 309:12 Talberts 328:8 talk 28:3 29:13,15 30:1, 4,6,9 41:16 49:7 65:6 133:9 253:13 309:24 323:21,22 talked 27:22 28:6,19 37:10 56:9 148:23,24 223:21 252:6 283:12 300:15 302:24 308:23 323:20 talking 15:24 26:16 45:17 52:2 61:18 66:17 67:19 95:12 121:7 129:15 136:10 137:23 163:23 179:18 201:11 206:8 208:19 228:2 233:12 263:3 311:23 328:9 329:6 tandem 316:16 task 177:12 taught 103:13,23 tax 265:18 taxes 321:23 322:1,4 teach 103:24
---	--	---	--



Technical 17:17
telling 306:17 334:15
tells 58:17
ten 92:13 141:3
term 76:17
terminate 40:3
terribly 308:9
test 194:6,10,11,13
testified 8:6 64:11
75:10 164:10 188:4
231:19 282:10 283:2
326:2
tests 21:24,25
theme 241:2
thing 28:23 29:25
46:24,25 53:3,5 55:24
59:11 90:22 99:19
104:5 106:4 107:21
109:6 112:19 114:10
120:10 122:5,13 128:21
130:11 138:15 152:15
153:10 155:5,23 163:3
169:13 181:24 187:16
189:12 192:11,15
197:1,24 198:4 219:13
242:10 251:8 280:9
281:22 292:18 300:21
303:6 304:16 306:10
309:5 314:3,8 315:9
things 11:25 29:14
31:16,17,23 50:10,11
94:3 102:7 103:15
107:11 108:24 109:4
130:10 137:24 145:18
146:15 173:23 174:3
199:8 220:19 254:16
257:17 263:19 264:2
270:20 271:9 272:15
275:5 291:16 292:19
301:4 326:23 327:10
thinking 52:16 53:2
55:3 112:23 162:19
264:8 294:20 312:21
313:10,23,24 314:24,25
316:6
thought 43:16 63:16
95:11 146:19 227:5

259:22 260:25 274:16
279:14,15 309:1 326:19
327:21 328:12,19
throw 201:22
TIA 243:8
tick 291:19
ticket 89:25 90:1 96:19
106:15 119:6 126:22
127:15 128:12 129:2,3,
9,14 130:5,14,16,22,25
131:5,17,20 133:13
136:19 140:14,21
142:19 145:2,12,14,16
148:17 151:8,11 154:19
155:4 174:5 176:22
240:10 242:25 243:18,
24 245:25 246:5,24
247:13,20 249:10
250:23 284:24 285:3,20
291:24 294:17 299:8
329:9 332:21
tickets 90:20 107:7,14
145:19 146:2,3 147:15
148:10,11 149:2,11
175:24 186:25 222:23
248:10 298:24 304:9
305:15,17,23 306:9
330:6 331:16
ticks 284:16 296:9
297:13 298:23 305:13
tight 58:10
tightened 70:12
tilt 53:8
Tim 100:5
time 10:25 11:21 13:2
22:18 23:10,18 27:4
28:7,11 31:1 33:11,19
34:4 39:1 40:20 41:7,13
42:20 44:19 45:3 47:3,7
48:5 55:10 57:19 58:23
77:5,7 79:24 80:1,5
82:7 83:17 88:4,5,6,9,
18,19,25 94:20 95:7,18
96:20 99:1,2 102:4,12,
23 105:15 106:18,19,25
107:22 108:2,3,4 112:6
115:8,9 131:13,24
132:1,2 137:9,16,18
140:5 161:8 166:2,7

167:7 168:3,17 169:2
177:6,12,22,23,24
182:4 183:24 195:19,24
199:10 200:1,9,12
214:16 218:14 222:12,
14 226:24 229:11 232:7
244:14,21 247:2 254:15
256:17 258:5,24 260:4
266:3 271:24 278:16,17
279:23 283:14 284:20,
25 285:2 286:20
290:10,16 292:22
293:18 295:9 301:15
303:16 304:4,5,6
305:11 307:23 309:10
311:6,9 312:7,10
317:15 321:10,11
325:22 328:21 329:11
332:2
timeline 29:13
times 29:21 85:23
94:22 102:24 106:14
114:11 124:15 174:14
175:9 200:6,8,13,14
215:3,5 218:4 291:23,
25 295:13 323:6
timing-wise 88:11
tire 46:14 47:24 51:20,
23 61:15,17,25 62:2,4,6
312:5
tires 47:4,6,9 52:14
64:12 271:17
Title 250:3
today 11:24 14:5,18
15:4 20:7 58:22 258:7
269:19,21 277:19,23,24
281:4 286:25 308:5
told 37:9,11,15,25 38:1
40:14 56:15 81:20
86:22 87:8 90:15
106:22 110:23 253:11
264:6 282:8 305:1
308:24 309:2 321:19
323:19,23,24 327:25
328:6
tomorrow 132:14
193:10 323:23
tons 166:22 168:20
169:5 193:17

tools 268:11,13
top 35:11 51:7 63:14
97:5 105:17,19 122:9,
14,18 123:12 131:10
150:24 156:6 157:5
158:9 160:22 161:16
166:19 170:21 182:8
201:22 216:21 236:22
304:14,16 330:13
Tosky 27:14,16 28:18,
19 30:2,5 33:21 37:14
57:14 79:21,25 80:8
81:9 84:8 90:15 95:16
103:7,19,23 104:1
105:12 139:3 174:2
188:21 260:7 271:2
319:8 321:5 325:20
332:14
Tosky's 160:3
total 141:3 142:4
156:14 166:22
touch 253:9
tough 41:18 49:10,11
272:11 323:4
tow 177:2
Town 89:16 247:16
townhouses 228:22
Toyota 317:16
track 81:25 90:11,16
97:18 101:2 105:15
107:9 110:20,21 111:3
124:24 132:4
traffic 238:3 240:3,4,21
241:10,15 242:17
243:18,21 246:17 249:8
251:23
training 22:4 68:15
Transportation 78:4
316:10
trapped 272:23
treat 115:12 238:24
tree 51:7,10 56:1,2
311:22 315:2
trees 51:4,5 56:9
276:18 311:10



trial 18:5 67:13 243:8
281:20 282:2,3

trick 11:9 227:17

tricking 278:13

trip 183:19 284:15
291:19 296:9 297:13
298:23 303:4 304:8
305:12 306:8

truck 24:24 25:1,2,5,12
26:4,11,18,24 27:2,6
28:11 29:3,10 33:5,7
34:12 36:3 39:17 40:18
42:5,7,9,13,18 43:15,
18,23 44:15 45:4,15,19,
23 46:4,13,16,17 47:4,
7,11,22 48:6,12,13,15,
19 49:4 50:17,20,23
51:12,18,19 52:9,11,13,
24 53:10,21 54:9,12,14
55:21 59:6 61:8,11,12,
21 64:3,13,15,25 68:12
69:8 71:14 72:1 75:11
76:6 93:15,16,20,21
100:10,11 101:9 103:8
111:10 132:13 146:7
147:13 149:4,5 160:1,2,
4 177:10 194:15
215:22,25 216:2,4,7,10,
14,19,21,25 217:4
231:4,14 233:3 244:12
245:1 248:2,19 250:6,
15,22 252:7,10,11,15,
19 253:12,14 256:3,8
258:21 259:22 260:1
261:19,21 263:25
265:21,25 266:1,22
267:2,6,12,14,22 268:5,
8,12,14,16,18,21
269:14 270:20,21,24
271:7,12,14,17 278:19
279:7,23 282:16 284:7,
20 286:7 290:12,14
291:13,14 292:5,12
296:19 300:6,12 301:4
304:9,12,19,22 305:1,
13 308:2 312:3 313:4
314:7,12,15 315:18,20,
23 316:22 317:11,14,
15,19,23 318:6,9 320:6,
15,18,22 322:15,23
329:13,17,22,23 330:9,
13,20,22,23

truck's 48:11

trucker 156:21

truckers 124:18,19
148:23 156:15

trucking 22:14 23:7,14
24:7,16,17,21 26:17
33:8 39:10 69:4,6 77:11
83:2 84:16,21 85:11,13
107:5 144:7 149:17,25
150:1 260:18,23 262:3
263:2,15 269:11,17
270:15 278:11,18
279:13,18 280:1 281:6
289:6,8,12,19 304:15
319:10 327:13 329:8
332:7 333:4 334:23

truckloads 123:19

trucks 48:10 100:7
115:9 123:18 132:14,18
137:9 148:15 149:1
168:4 177:2 183:22
199:19 255:24 258:4
288:11 290:9,19,25
291:6 302:10,14 316:13
329:10 330:7 331:21
334:16,17

true 32:21,24,25 33:5,9,
19 34:15 40:7,15 87:18
139:2 211:13 223:17
311:25

trust 82:5 273:20
305:19

truth 292:15

Tucking 279:19

Tuesday 221:4 285:21,
24

turn 135:3 149:11
234:11 235:24 311:1,6
313:14

turned 311:18 313:9,22
314:18

two-and-a-half 20:13

type 40:13 68:16 78:4
82:12,13 90:2 99:14
102:19 111:2 115:12
126:25 128:1 132:12,18
133:5 145:11 164:11

226:23 248:11 250:8
255:17 258:23 259:6
263:15 296:23 326:21

types 288:21

typical 98:22,24

typically 145:18 150:6,
9 196:20 197:14

typo 32:14 125:8

U

U-R-I-O-S-T-E-G-U-I
8:13

uh-huh 10:20 11:11,14
61:24 90:24 98:12
101:24 113:18 123:13
139:4,19 150:20 171:11
173:19 175:6 178:25
186:4 190:2 198:13
200:23 204:3 205:20
211:24 214:5 215:16
218:25 221:23 254:21
259:19 262:9 301:18
329:16 330:3

uh-uh 10:20

Ulmer 86:21 89:5,6,7,
12,13,21,22 90:4,22
91:3,4,9,25 92:8,19,22
93:1 95:24 104:10,17,
18 118:14,18,21,24
139:22 154:18,21,25
155:6,25 156:13 157:2,
17 162:6 167:3 168:21,
23 170:18,22 171:10,15
172:22 173:1,14,17
174:17 175:4,18 176:5
178:1 182:11 184:17
188:4 189:21,24 192:23
193:17 197:21 198:1,5,
9 208:14 210:20 211:1
301:19,20 302:6,7,13

Ulmer's 92:6,7,10,19
93:10,11 108:12,15,17,
20,23 155:17 161:22
162:5

understand 9:12 11:7
15:25 28:12 29:17
30:13 44:9 70:18 72:15
148:2 256:16,18 258:24

306:4 308:5,8,10 309:1,
16

understanding 9:19
13:23 142:9 258:16

uninsured 249:8

United 13:9 241:19

units 228:19

unload 183:22,23

upward 70:6

Uriostegui 8:4,11,20
18:12 260:15,17,18
262:8 273:6,21,23,25
335:24

V

van 310:21

Vania 273:6

Vaux 31:14 328:9,10

vehicle 22:4,8 54:8
62:21 63:2,19,25 64:3
65:11,16,25 66:3 68:1,
5,8,16 69:4,7,16 73:4,
13 74:2 77:9 78:3,7,8,
10,15,21 79:1 147:20,
23 195:21,23 241:11,24
242:5,7 247:8 249:3,9
251:6,9 255:13 258:8,
17

vehicles 21:15,20
22:24 23:2,9,14 68:3
279:21,22

vehicular 266:5

vendor 85:11

verbally 10:20

video 66:24 67:7,16
68:18 70:17,22 71:4,6
72:5,11,12,25 73:2,15,
24 74:7,10,11,19,22,23

videos 72:9

view 43:21 72:7,23

violation 76:10,18
244:6 245:3 248:14,16,
23 249:9 250:17,18



MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI 368Index: violations--yellow

ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

251:18
violations 70:18 76:7,
23 78:10 250:2

W

W-2 322:4
wait 61:5 177:1
waited 183:21
waiting 177:11
Walk 263:23
walked 27:22
walking 238:14
Walmart 245:19
wanted 23:5 53:2 97:17
271:3 273:14 303:9,14,
17 309:6 314:6 329:7
warning 247:21 250:20
watch 49:15,16,17 67:7
95:16
Watching 70:17
water 11:22 199:7,13,
14 276:18
weapons 239:19
wear 249:1
wearing 53:23
weather 196:24 197:9
wedding 220:9,12
285:11
week 87:12 110:17
129:25 242:14 255:2
323:6
weekend 275:5 281:25
weekends 220:14
Weekly 80:11
weeks 51:21 333:25
weigh 250:21
weight 250:2
Wexford 173:17,21
174:11,12,13,17 175:3,

4,19 176:2,15,18,22
178:1 182:8 297:7,8,10
wheel 60:1 73:3
white 203:2 236:10
276:5 310:21
wife 19:13,15 20:24
56:22,23 57:2 272:7,8
274:20,24
Wiggly 36:13,19
298:12
window 53:18,20 55:7
326:10
windows 314:13,14
windshield 326:7
wives 20:18
woke 53:21 309:3
Woods 83:2,3,11,23
words 27:25 28:5
104:21 141:6 148:1
219:22
work 25:2 26:17,25
27:7 28:24 29:6 30:5
34:4 38:5,16,19,24
47:11 64:15 68:5 69:4,6
75:11,20 81:24 82:13
85:12 87:9,13,16 99:14
103:11,24 106:11
122:19 132:17 133:2,7,
8 149:5 167:12 168:17
176:9 193:10 195:12
197:6 200:25 201:24
202:12 204:14 216:6
220:21 221:8,12
222:22,24 223:21
233:14 234:1,4 237:14
250:8,25 260:3,4,7,9
268:9,11 277:21 278:1,
5,14 279:25 280:2
284:6,9,11 287:23
288:5 290:3,19 293:24
301:12 303:3,12,21
304:1 305:2 306:12,23,
25 307:8,24 308:13
321:13 324:24 325:3
327:5,6 330:10,19
work-wise 58:15

worked 22:7 23:13
27:10 29:4 39:23,25
42:10 65:1 68:9,11
85:24 95:25 97:15 99:9
103:18,19 124:19 125:9
214:21 215:5 220:19
228:12 230:6,10 268:5
288:23 303:25 304:6
307:10 332:11
worker 287:3 320:13
Worker's 326:14 328:4
Workers' 259:1
327:14,19 328:18
working 22:11,12,13
23:6 24:15,17,25 25:7,9
28:8,14 30:2 33:11,25
34:17,23,24 35:19
45:21,24 57:20 58:2,18
59:12 64:21 66:5 75:21
79:20,25 87:3 97:13,17
98:23,24 100:25 101:8,
10,22 102:8,25 104:7
106:6,7,18 108:8
111:25 112:8,9,24
113:11 114:5,22
115:11,21 118:7 119:9,
21 121:25 122:19 125:2
133:1 138:3 141:9
148:3 159:23 166:3
167:21 168:3,7,18
172:6 175:16 179:21
184:20 186:9,16 187:15
194:1 196:21 197:15
200:15 201:3,14 218:3,
16,19,20 222:25 228:15
229:23 235:8 244:21,22
247:3 263:18,24,25
266:23 267:1,11,23
269:7 270:9,20,21
272:23 280:3 283:13
287:11 288:6,21 289:15
290:11 292:24 294:15
295:1,25 297:7,18
301:1 303:8 304:9
305:17 320:18 323:5
330:15,22 331:4 333:25
works 115:18 188:25
world 50:10
worried 327:7
Wow 92:13

wreck 24:24 26:13
30:7,9,11 32:10,12
44:24 57:20
write 9:9 10:25 88:5
90:14,15,17 96:25
108:1,2 111:12 132:1
141:14 148:22 188:16
200:15 291:25 304:13
writing 87:21,23,25
102:16,18 105:7 111:23
written 39:9 136:13
138:2 223:6 329:9
wrong 70:9
wrote 66:20 88:4 96:23
119:7 123:18 124:13
130:3 131:6 140:3
146:3 177:5 284:19
293:2 300:16
ws 55:15

X

X-FIT 159:7

Y

Y-A-M-I 289:8
Y-I-L-I-- 302:1
Y-I-L-I-N-G-T-O-N
302:2
Yami 289:6,7,12 306:24
333:4 334:12,13,14
Yannina 57:10 272:9
yard 133:8 266:18,19
yea 148:11
year 16:15,16,17 17:10
21:9 23:16,19 57:5,6
65:4 239:21 292:6,7
years 13:16 20:13
22:21 23:16 26:12
30:10 32:17 73:9 75:17
92:13 119:7 261:18
278:22 306:3 314:4
yellow 159:25 160:4
290:14



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MARK W. McGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI 369Index: yesterday-zoom

ELECTRONICALLY FILED - 2025 Feb 24 3:58 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

yesterday 239:11

Yilington 301:24 302:1

young 238:4

Yup 222:1

Z

Zelaya 307:7 333:17,
18,19 334:8

zoom 30:19 226:2
232:13 235:6

MARK W. MCGILTON vs 1223 May River Road, LLC
2021-CP-27-00069 - ALFREDO URIOSTEGUI

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EXHIBIT 4

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December 23, 2024

Via Email Only

SHELTON LAW FIRM, LLC
Benjamin T. Shelton, Esq.
ben@sheltonlawsc.com

Re: *Mark W. McGilton v. D.R. Horton, Inc., et al.*
CA No.: 2021-CP-27-00069

Dear Ben,

We have received additional materials from our client that we have been reviewing for confidentiality and privilege. We are in the process of preparing a supplemental production that we expect to have ready soon.

The client has also collected additional documents—approximately 46,000 emails—that we are preparing to receive. After our review, we can proceed with producing responsive, non-privileged documents.

However, in light of Judge Murphy's indication that she will grant your Motion for Rule to Show Cause, we are conferring to see if you still wish to receive these documents. If so, we are willing to move forward with our planned productions.

Please let me know how you would like to proceed.

Sincerely,



John T. Crawford, Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking,	)	DEFENDANT D.R. HORTON, INC.'S
LLC f/k/a Ramos Trucking, LLC,	)	REPLY IN SUPPORT OF MOTION TO
	)	RECONSIDER, ALTER OR AMEND
Defendants.	)	THE ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR RULE TO SHOW
1223 May River Road, LLC,	)	CAUSE, TO STRIKE AND FOR
	)	CONTEMPT
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	

Defendant D.R. Horton, Inc. ("D.R. Horton"), by and through the undersigned counsel, hereby submits this Reply in Support of Its January 27, 2025 Motion to Reconsider, Alter or Amend ("Motion to Reconsider") the Court's January 15, 2025 Order (the "Order") granting Plaintiff's Motion for Rule to Show Cause ("Plaintiff's Motion") and striking D.R. Horton's Answer.

BACKGROUND & PROCEDURAL HISTORY

D.R. Horton respectfully reiterates its argument that the Court erred because Plaintiff's counsel did not accurately recount the facts of this case to the Court; the Order does not reflect a complete procedural history of Plaintiff's claims; and Plaintiff overstated the nature and significance of the discovery at issue. Additionally, the Order—drafted by Plaintiff's counsel—misstates and overlooks significant, relevant law. As discussed again below, the Order is devoid

of a prejudice analysis, which is required before the Court imposes a discovery sanction as severe as striking an answer. The effect of the Court's Order is to grant Plaintiff a multi-million-dollar windfall against a defendant that had no role in the underlying car accident, is not liable, and was mousetrapped by Plaintiff's counsel distorting what has occurred during discovery. For these reasons, D.R. Horton asks the Court to reconsider its present Order and enter an order denying Plaintiff's Motion for Rule to Show Cause in its entirety.

D.R. Horton incorporates its prior briefing on this dispute and addresses only the matters brought up by Plaintiff in his February 24, 2025 response in opposition to the Motion to Reconsider ("Plaintiff's Response").

Plaintiff's Response divides D.R. Horton's arguments into three categories: things that D.R. Horton failed to mention; arguments by D.R. Horton that the Court has already rejected; and new arguments that the Court should not consider. D.R. Horton follows this structure in this reply, although in many cases the arguments overlap.

I. Things D.R. Horton Did Not Address

Plaintiff's Response addresses the history of this case and the parties' prior discovery disputes. (Pl.'s Resp. at 2–3.) Plaintiff focuses on the number of times he filed discovery motions or the parties have appeared before the Court on discovery issues. (*Id.*) Plaintiff misrepresents the parties' resolution of the first discovery dispute, which resulted in a consent order and no finding of wrongdoing by D.R. Horton. (Consent Order, Sept. 20, 2022.) Plaintiff characterizes D.R. Horton's consent as a last-minute concession to avoid imminent sanctions for "blatant discovery abuse." (Pl.'s Resp. at 2.) Plaintiff repeats this use of dramatic, inflammatory language throughout the response.

Moreover, the third dispute related to expert disclosures and had nothing to do with the

production of documents. (Order Amending Scheduling Order, June 13, 2024.) The Court issued the order after D.R. Horton filed a motion to amend the scheduling order, the need for which arose out of difficulties identifying experts and timely scheduling depositions. (*See* D.R. Horton's Mem. Supp. Mot. Extend Scheduling Order, June 10, 2024.)

Plaintiff also glosses over the extensive discussions between the parties that preceded *and followed* these events. (*See, e.g.*, D.R. Horton's Mem. Opp'n Pl.'s Mot. Rule Show Cause at 4–5, Oct. 16, 2024; Mot. Reconsider at 9–10.) The existence of prior orders related to discovery does not change the fact that D.R. Horton attempted in good faith to comply with its discovery obligations here.

II. Arguments Already Rejected by the Court

Plaintiff states that “D.R. Horton repeats arguments which have already been made to the Court and rejected by the Court multiple times.” (Pl.'s Resp. at 3.) However, Plaintiff also appears to recognize that “a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004); (*see* Pl.'s Resp. at 1 (citing *Elam*, 361 S.C. 9, 602 S.E.2d 772).) Therefore, there is nothing improper about D.R. Horton raising issues that have already been considered by the Court.

On the merits, Plaintiff argues that the documents D.R. Horton did not produce were relevant and, if D.R. Horton believed otherwise, the burden was on D.R. Horton to file objections and a motion for protective order. (*E.g.*, Pl.'s Resp. at 4, 7.) Plaintiff rejects D.R. Horton's reliance on the negotiations and agreements between the parties, saying it places the burden on a requesting party to find documents on its own. (*Id.* at 8–10.) In so doing, Plaintiff misrepresents the scope of relevance in this case and mischaracterizes D.R. Horton's reliance on

the parties' agreements. Importantly, Plaintiff omits that he failed to provide a Rule 11¹ letter bringing this alleged deficiency to D.R. Horton's attention, which would have provided D.R. Horton an opportunity to explain and, if necessary, cure its deficiency or seek protection from the Court.

Plaintiff also argues that the Court has properly construed all relevant case law (*id.* at 12–13), and that although Plaintiff does not have to prove prejudice, Plaintiff has done so (*id.* at 10–12).

a. Relevance of Documents and the Parties' Negotiations

D.R. Horton acknowledges that “the scope of discovery is broad,” but it is not without limits. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010). Discovery should not be used in such a way that “the merits of a claim are . . . relegated to a secondary status.” *Id.* at 388, 692 S.E.2d at 924. Rather, party's “requests must show a reasonable expectation of obtaining information that will aid the dispute's resolution.” *Id.* (citation omitted).

As D.R. Horton noted in its Motion to Reconsider, “Plaintiff's initial discovery requests were incredibly broad, essentially asking for ‘all documents’ related to Cypress Ridge or this case.” (Mot. Reconsider at 9.) However, a request for “everything” is about as about as useful as a request for nothing, especially in the context of a 1,400-acre development constructed over fifteen years in nineteen phases. (*See id.*) This is the context in which the parties engaged in extensive negotiations so that D.R. Horton could determine which documents Plaintiff was

¹ “All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.” Rule 11(a), SCRCP.

requesting. (*See id.* at 9–10.) D.R. Horton continued to believe the parties had an agreement as to the scope of discovery—and that Plaintiff had received all the documents it sought—until the filing of Plaintiff’s Motion. (*Id.* at 10–11.) Plaintiff did not even send a Rule 11 letter to put D.R. Horton on notice of this alleged deficiency, despite sending a letter related to a different issue, which D.R. Horton promptly addressed. (*Id.* at 10.) Plaintiff fails to explain why it would have “serve[d] no useful purpose” to consult with D.R. Horton on this matter, when he had recently done so on a different issue. (Pl.’s Mot. at 9); *see* Rule 11, SCRCP (stating that, with limited exceptions, “[a]ll motions filed *shall* contain an affirmation that the movant’s counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter” (emphasis added)). Plaintiff faults D.R. Horton for not filing a motion for protective order. (Pl.’s Resp. at 4.) Until receiving Plaintiff’s Motion, D.R. Horton did not think that was necessary.

Plaintiff accuses D.R. Horton of relying on “a false legal distinction between horizontal construction and vertical construction” to justify its failure to produce certain documents. (*Id.* at 5.) There is nothing “false” about this distinction, nor do the permits that Plaintiff cites, held by D.R. Horton and Kenneth Scott Builders (“KSB”), (*see id.* at 5 & Exs.1–2), contradict D.R. Horton’s arguments. Plaintiff produced general contractor licenses held by D.R. Horton and KSB classified as “Building-BD5.” (*Id.* Exs. 1–2.) Plaintiff does not explain what these designations mean, nor does he explain how they relate to the relationship between D.R. Horton and KSB. More importantly, he does not explain how these relate to the relationship between D.R. Horton and Jacob-AU Trucking, the owner and operator of the truck that injured Plaintiff.

“Horizontal construction” includes things such as “construction of roads, curb[s] and gutter[s], concrete sidewalks, and associated grading[] and landscaping.” *Protest of Cannon*

Constr. Co., Project H59-N703-MJ2012, SC CPO LEXIS 18, at *4 (S.C. Budget & Control Bd. June 29, 2012) (admin. review by Chief Procurement Officer for Construction); *see also Okatie River, L.L.C. v. Se. Site Prep, L.L.C.*, 353 S.C. 327, 332–33, 577 S.E.2d 468, 471–72 (Ct. App. 2003) (discussing the terms of a loan given in anticipation of “site preparation” or “horizontal” construction). Horizontal construction also includes infrastructure work, such as the installation of sewer and water lines. Deena ElGenaidi, *What Is Horizontal Construction? Development 101*, Lev (Mar. 31, 2022), <https://www.lev.co/blog/horizontal-construction>.

A “General Contractors-Building” license, which D.R. Horton possesses, is for “commercial, industrial, institutional, modular, and all other types of *building* construction.” S.C. Code Ann. § 40-11-410(1) (emphasis added). A general contractor with this license is allowed to perform certain grading and excavation activities if they are “ancillary” to the building project, meaning “directly associated with the building or structure which the licensee has been engaged to construct.” S.C. Code Ann. § 40-11-410(1); *see also id.* § 40-11-20(1) (defining “[a]ncillary work” identically to how it is used in section 40-11-410).

However, this “ancillary work” exception specifically excludes activities that fall under the “Water and Sewer Lines” subclassification. *Id.* § 40-11-410(1). That subclassification pertains to “work on water mains, water service lines, water storage tanks, sewer mains, sewer lines, . . . backfill, and erosion control as a part of construction,” as well as “excavation and backfilling, and concrete work incidental thereto.” *Id.* § 40-11-410(3)(c). To perform such work, a general contractor must either have a license to do the work itself or subcontract with a contractor that does. *Id.* § 40-11-410(1).

D.R. Horton is a residential homebuilder. (Mem. Opp’n Mot. Rule Show Cause Ex. A., O’Sako Aff. ¶ 8.) D.R. Horton is not licensed in the “Water and Sewer Lines” subclassification

and therefore could not—and does not—complete horizontal construction or “site development” work. *See* S.C. Code Ann. § 40-11-410(1); (O’Sako Aff. ¶ 9.) D.R. Horton hires third parties, such as KSB in this case, to act as general contractors to oversee and complete *all* horizontal construction work. (O’Sako Aff. ¶ 11.) This is reflected in the relevant Scope of Work, which includes, *inter alia*, “Asphalt surface and binder,” “Concrete curb,” “Utility layout and record drawings,” “Installation of water,” and “Installation of sewer.” (KDC_000269–71), attached as **Exhibit A**.

Nor does KSB having the same license as D.R. Horton suggest that D.R. Horton hired an unlicensed contractor to perform site work. (*See* Pl.’s Resp. at 5–6.) For one, contrary to Plaintiff’s assertion, KSB is not a “subcontractor.” (*Id.* at 5.) D.R. Horton hired KSB as the *general* contractor for site work at Cypress Ridge. (O’Sako Aff. ¶ 11.) The agreement between D.R. Horton and KSB clearly refers to D.R. Horton as the “Owner” of the project and KSB as the “Contractor.” (S.C. Independent Contractor Agreement, KDC_000255–61), attached as **Exhibit B**. KSB was then responsible for choosing the appropriate subcontractors to complete the work. *See* S.C. Code Ann. § 40-11-20(20) (describing a prime contractor as “an entity that contracts directly with an owner to perform general . . . construction”); *id.* § 40-11-20(25) (defining a subcontractor as “an entity who contracts to perform construction services for a prime contractor”). D.R. Horton acknowledges that it may have misspoken by stating that it “could not” have been the general contractor for the site development work that it hired KSB to oversee. (Mot. Reconsider at 12–13.)² However, D.R. Horton *could not* have self-performed all the horizontal construction work, S.C. Code Ann. § 40-11-410(1), and the point remains that D.R.

² A contractor with a “General Contractors-Building” license “may act as a sole prime contractor on a project if forty percent or more of the work . . . falls under one or more of the licensee’s license classifications or subclassifications.” S.C. Code Ann. § 40-11-340.

Horton *does not* serve as the general contractor for such projects and *was not* the general contractor for the work that was being *overseen by KSB* and *performed by Jacob-AU Trucking* (see, e.g., O’Sako Aff. ¶¶ 8–12). The sufficiency of KSB’s license and the licenses held by KSB’s chosen subcontractors is not at issue before the Court.

b. Prejudice Is Required and Relevant Law

Plaintiff maintains that no showing of prejudice is required but that, in any event, prejudice is “clear” in this case. (Pl.’s Resp. at 10–12.) Plaintiff also maintains that the Court has properly considered all relevant law in issuing the Order. (*Id.* at 12–13.) The absence of any discussion of prejudice shows otherwise.

As D.R. Horton previously noted, “In determining the appropriateness of a sanction, the court *should consider* such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and *degree of prejudice.*” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 82, 716 S.E.2d 877, 885 (2011) (emphasis added) (citation omitted); (Mot. Reconsider at 6 (quoting *CFRE, LLC*, 395 S.C. at 82, 716 S.E.2d at 885).) Here, Plaintiff argues that it “defies logic” to suggest that he did *not* suffer prejudice and appears to put the burden on D.R. Horton to show the lack of prejudice. (Pl.’s Resp. at 12.) Prejudice can be presumed only where the “rights of discovery” that allow a lawyer to prepare for trial have been denied. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). A presumption of prejudice requires more than a violation of a discovery rule and the potential for *future* harm, particularly where the failure to provide discovery results from a good faith dispute as to the proper scope of discovery.

For example, in *Downey v. Dixon*, a defendant failed to respond to interrogatories or attend a deposition yet was allowed to testify at trial. 294 S.C. 42, 44–46, 362 S.E.2d 317, 317–

19 (Ct. App. 1987). The court of appeals reversed and remanded for a new trial but recognized that the situation did not necessarily justify striking the defendant's answer or excluding him from testifying because "[i]t may very well be that [the plaintiff] can have her interrogatories answered and be given the opportunity to take the deposition of [the defendant] *before the new trial takes place.*" *Id.* at 294 S.C. at 44, 46 & n.4, 362 S.E.2d at 318–19 & n.4 (emphasis added). Similarly, in *Samples v. Mitchell*, the court of appeals reversed for a new trial where a defendant was allowed to introduce at trial a video of the plaintiff that he failed to produce until a week before and that his lawyer knew about for years. 329 S.C. 105, 108, 113–15, 495 S.E.2d 213, 214, 217–18 (Ct. App. 1997).

On the other hand, in *Griffin Grading & Clearing, Inc. v. Tire Service Equipment Manufacturing Co.*, the court of appeals acknowledged the need to consider the prejudice to both the moving party and the party whose answer would be struck. 334 S.C.193, 198–200, 511 S.E.2d 716, 718–19 (Ct. App. 1999). The court affirmed the striking of an answer where a party violated *four* court orders, and the party's counsel admitted that its actions were "indefensible." *Id.* at 199–200, 511 S.E.2d at 719.

The facts here are easily distinguishable. *Downey* and *Samples* are inapplicable, as no trial has taken place, nor is one scheduled. Plaintiff complains about the number of documents that D.R. Horton has indicated it still has to produce³ and the amount of time it will take to

³ Plaintiff identifies 3,729 pages of documents produced by D.R. Horton, as opposed to the 4,600 that D.R. Horton claimed in the Motion to Reconsider. (Pl.'s Resp. at 11; Mot. Reconsider at 8.) The figure recounted by Plaintiff is correct. D.R. Horton has an additional 874 pages of commercial documents it was preparing to produce after reviewing for confidentiality and privilege, which would bring the total production to more than 4,600 pages. However, after the Court issued the Order, both parties stayed activities in this matter with the exception of Plaintiff's filings and production related to a damages hearing.

review those documents. (Pl.’s Resp. at 11–12.) Under the most recent scheduling order, discovery was not due to be completed until today, (Consent Scheduling Order, Dec. 13, 2024), more than seven months after the filing of Plaintiff’s Motion, (Pl.’s Mot., Aug. 19, 2024), and two and a half months after the Court’s Order (Order, Jan. 15, 2025). Accordingly, with no trial imminent, Plaintiff will have plenty of time to review any document production and take additional depositions.

Moreover, it is hard to see how Plaintiff can complain about being unprepared for trial when Plaintiff’s *own* witnesses were unable to offer opinions at their depositions and indicated that they were still waiting to receive documents from Plaintiff. (*See* D.R. Horton’s Mem. Supp. Mot. Sanctions at 2–5, Oct. 16, 2024.) In reality, Plaintiff’s Motion is simply an attempt “to accomplish what he could not achieve with arguments on the merits.” (Mot. Reconsider at 8.)

Griffin Grading, meanwhile, involved “six different motions to compel discovery” and “four court orders directing [the defendant] to comply with discovery.” 334 S.C.at 198, 511 S.E.2d at 719. The defendant’s original counsel was also “suspended from the practice of law for ninety days” while the case was pending, and its new counsel admitted that the responses “indefensible.” *Id.* at 197, 200, 511 S.E.2d at 718–19. In contrast, here D.R. Horton has maintained that any deficiency in its responses has been the result of a misunderstanding between it and Plaintiff regarding the scope of Plaintiff’s requests, not any willful misconduct. (*E.g.*, Mot. Reconsider at 2–3.)

Prejudice considerations are particularly relevant here where, *even if* D.R. Horton was the relevant general contractor, its liability would be tenuous at best. “Generally, an employer is not liable for the torts of an independent contractor.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 116, 512 S.E.2d 510, 520 (Ct. App. 1998); *cf. Pruitt v. Bowers*, 330 S.C. 483, 487, 499

S.E.2d 250, 252 (Ct. App. 1998) (per curiam) (stating that “joint venture or enterprise liability between a driver and passenger” requires “a common purpose or community of interest” and “an equal right to control the direction and management of the vehicle”). The key element that distinguishes between an employee and an independent contractor is “the degree of control.” *Creighton*, 334 S.C. at 116, 512 S.E.2d at 520. In addition to “(1) direct evidence of” control, courts take into account “(2) method of payment; (3) furnishing of equipment; and (4) right to fire.” *Cherry v. Myers Timber Co.*, 404 S.C. 596, 601, 745 S.E.2d 405, 408 (Ct. App. 2013).

There is no evidence that any of these factors apply to the relationship between D.R. Horton and KSB, much less D.R. Horton and Jacob-AU Trucking. Alfredo Uriostegui (“Uriostegui”) is the owner of Jacob-AU Trucking and was driving the truck that injured Plaintiff. (Uriostegui Dep. 33:3–10, July 18, 2024.) Uriostegui alone was responsible for making sure the truck was in good working condition and properly insured. (*Id.* 315:20–21, 318:8–17.) Uriostegui testified that he never had any interaction with D.R. Horton employees. (*Id.* 99:22–24.) According to Uriostegui, he was working for KSB, which paid him by the hour and exercised control over where and when he worked. (*Id.* 33:11–34:10, 39:4–40:5.) In short, D.R. Horton had nothing close to a relationship with Uriostegui that would support a finding of liability for his actions. *See, e.g., Richitelli v. Motiva Enters., LLC*, 389 S.C. 184, 189–90, 697 S.E.2d 667, 670–71 (Ct. App. 2010) (holding that an oil company and a distributor could not be held liable for the negligent driving of a retailer’s employee because there was no evidence that either “had the right to control the operation of the [retailer]” and there can be no liability unless there is “a master-servant relationship . . . at the time and in respect to the very transaction out of which the injury arose” (emphasis in original) (citation and internal quotations marks omitted)).

III. “New” Arguments

Finally, Plaintiff urges the Court not to consider two arguments because D.R. Horton first raised them in its Motion to Reconsider. (Pl.’s Mot. at 16–19.) Plaintiff first challenges D.R. Horton’s argument that the withheld documents were not responsive to any identified discovery requests, and specifically mentions D.R. Horton’s challenge to the request for documents related to “210 Hulston Landing Rd.” (*Id.* at 16–18.) Plaintiff also challenges D.R. Horton’s discussion about Plaintiff’s prior settlements. (*Id.* at 18–19.) In so doing, Plaintiff misconstrues the reason D.R. Horton raised these issues.

a. Scope of Discovery Requests

D.R. Horton specifically mentioned the request identifying Hulston Landing Rd. in its Motion to Reconsider because it was the *only* discovery request identified by the Court in the Order. (Mot. Reconsider at 11; *see* Order at 4.) This is not an issue that D.R. Horton failed to raise sooner; it is an issue that D.R. addressed in the first opportunity it had to do so.

Plaintiff also states that the identification of a single discovery request is irrelevant because the Order incorporates *all* of Plaintiff’s discovery requests. (Pl.’s Mot. at 16–17.) To the extent that is the case, this is hardly a “new” argument. D.R. Horton has discussed the problems with those overbroad requests, and the parties’ attempts to narrow those requests, above. *See supra* pp.4–5. Plaintiff’s argument here fails for the same reasons. As already noted, to the extent D.R. Horton did not produce documents, it was because it was under the impression that Plaintiff was not seeking them.

b. Settlements with Others

Plaintiff’s last argument relates to D.R. Horton’s discussion of Plaintiff’s previous settlements. (Pl.’s Mot at 18–19.) In the Motion to Reconsider, D.R. Horton noted that Plaintiff had already received a seven-figure settlement in this case. (Mot. Reconsider at 2.) D.R. Horton

mentioned this by way of background not, as Plaintiff suggests, to challenge the Court's jurisdiction or venue in Jasper County. (*See* Pl.'s Resp. at 18.)

However, D.R. Horton emphatically rejects Plaintiff's characterization that it negligently "allowed" the at-fault truck driver to do anything. (*See id.* at 19.) D.R. Horton had no relationship with Jacob-AU Trucking or Uriostegui. (Uriostegui Dep. 99:22–24.) Uriostegui and Jacob-AU Trucking were neither employees nor contractors of D.R. Horton, and D.R. Horton exercised no control over them. (*See id.* 33:11–34:10.) If any party exercised such control, it was KSB. (*E.g., id.* 39:4–40:5.)

CONCLUSION

For the reasons discussed above, D.R. Horton reiterates its belief that the Court misapprehended relevant facts and law, and requests that the Court revise its prior Order and deny Plaintiff's Motion.

KENISON, DUDLEY & CRAWFORD, LLC

s/ John T. Crawford, Jr.

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March 31, 2025
Greenville, South Carolina



Exhibit "A" Part I-General Scope Of Work

General & Miscellaneous

- Mobilization
- Layout and staking
- Build construction entrance
- Asbuilts
- Installation of stop and street signs
- Installation of conduit

Clearing and Demolition

- Clear and grub site

Drainage

- Installation of RCP
- Insulation of HDPE
- Install catch basins, curb inlets, and junction boxes

Erosion Control

- Tree protection
- Temporary gravel
- Silt fence
- Seeding and sod
- Rip-rap sediment basin

Initials: Contractor

A handwritten signature in black ink, appearing to be "J. J. J.", written over a horizontal line.

DR Horton

A handwritten signature in black ink, appearing to be "JH", written over a horizontal line.

Earthwork

- Strip/respreads topsoil
- Off-site fill
- Demucking and backfill
- Rough grade

Grading

- Fine grade for curb and base
- Fine grade shoulders and easements

Asphalt Paving & Pavement Marking

- Asphalt surface and binder

Concrete

- Concrete curb
- Installation of handicap ramps

Utilities

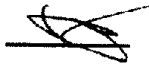
- Utility layout and record drawings

Sanitary Sewer

- Installation of sewer
- Pump stations

Water Distribution

- Installation of water

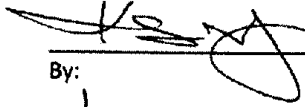
Initials: Contractor 

DR Horton 

Contractor

Owner

Kenneth Tasly DBA Kenneth Scott Builders D.R. Horton, Inc.
Company Name:


By:

Ken S. Tasly
Name:

owner
Title:

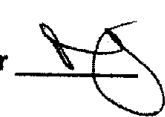
2/12/16
Date:


By:

Ron Bunn
Name:

A.V.P
Title:

2/22/16
Date:

Initials: Contractor 

DR Horton 



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kenneth Tesley DBA Kenneth Scott Builders ("Contractor")
 Sole Proprietorship ☐ Partnership ☒ Corporation ☐ L.L.C. ☐ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: [REDACTED]
 Name of Owner(s)/Officer(s): Kenneth S. Tesley
 Division Name: COASTAL CAROLINA Area Name: HILTON HEAD / SAVANNAH Assigned Vendor No.: 2016181
 Address for All Notices: PO Box 1590
 City: Bluffton State: SC Zip Code: 29910
 Telephone: 843-247-1025 Fax: 843-813-3491 E-Mail Address: Ken@KennethScottBuilders.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 17 day of February 2016 between DR Horton, INC ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 29-4-30 AND 29-6-50 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTROL AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 17 day of February 2016

Owner:
By: [Signature]
Name: RON BURRILL
Title: ASSISTANT VICE-PRESIDENT

Contractor:
By: [Signature]
Name: Kenneth Tesley
Title: Owner

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and those joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which

INITIALS: OWNER  CONTRACTOR 

the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

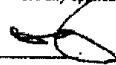
8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers; (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home; and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners' Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners' Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

INITIALS: OWNER  CONTRACTOR 

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

INITIALS: OWNER  CONTRACTOR 

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc. (collectively "Horton") as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001). Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise; (b) did not pay the insurance premium directly or indirectly; and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens

INITIALS: OWNER  CONTRACTOR 

are filed against the job location as a result of Contractor's acts or omissions, (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

INITIALS: OWNER  CONTRACTOR 

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

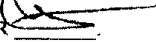
16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

SOUTH CAROLINA VERSION (REV. 22 JUNE 2015)

INITIALS: OWNER  CONTRACTOR 

Page 7 of 7

KDC 000261

1964

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC, D.R.
HORTON, INC., AND LOTTY TRUCKING,
LLC F/K/A RAMOS TRUCKING, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-27-00069

**PLAINTIFF MARK W. MCGILTON'S
OFFER OF JUDGMENT**

1223 MAY RIVER ROAD, LLC,

Third-Party Plaintiffs,

vs.

KENNETH SCOTT BUILDERS, LLC,

Third-Party Defendants.

TO: JOHN T. CRAWFORD, JR., ESQ., AMELIA M. FARMER, ESQ., WILLIAM J. HENEREY, ESQ., KIMILA L. WOOTEN, ESQ., AND JASON M. IMHOFF, ESQ., ATTORNEYS FOR D.R. HORTON, INC.:

The Plaintiff, Mark W. McGilton, makes, pursuant to Rule 68(a), SCRCP, an OFFER OF JUDGMENT in favor of the Plaintiff against Defendant D.R. Horton, Inc., only, in the amount of Fifteen Million and 00/100 (\$15,000,000.00) Dollars. Said amount is an offer to allow judgment to be taken against the Defendant D.R. Horton, Inc., only, and no other Defendants, immediately upon the acceptance of this offer.

I SO OFFER.

[Signature Page Follows]

Respectfully submitted,

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

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June 4, 2025

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Columbia, South Carolina
June 4, 2025

Attorneys for Plaintiff Mark W. McGilton

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM JASPER COUNTY

Court of Common Pleas

The Honorable Maite Murphy

Case No. 2021-CP-27-00069

Mark W. McGilton,

Respondent,

v.

1223 May River Road, LLC,
D.R. Horton, Inc., and Lotty
Trucking, LLC f/k/a Ramos
Trucking, LLC,

Defendants,

of Which D.R. Horton, Inc. is the

Appellant.

1223 May River Road, LLC,

Third-Party Plaintiff,

v.

Kenneth Scott Builders, Inc.

Third-Party Defendant.

NOTICE OF APPEAL

D.R. Horton, Inc. (“Appellant”) appeals the Honorable Maite Murphy’s Orders granting Plaintiff’s Motion for Rule to Show Cause, filed January 15, 2025, attached as **Exhibit 1**, and denying in relevant part D.R. Horton’s Motion to Reconsider, Alter, or Amend the Order, attached as **Exhibit 2**. Appellant received notice of the denial of its motion to reconsider on June 3, 2025.

s/ John T. Crawford, Jr.

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June 5, 2025

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EXHIBIT 1

ELECTRONICALLY FILED - 2025 Jan 15 2:19 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069
ELECTRONICALLY FILED - 2025 Jun 05 3:24 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

STATE OF SOUTH CAROLINA	)	
COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
MARK W. MCGILTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2021-CP-27-00069
	)	
1223 MAY RIVER ROAD, LLC, D.R.	)	
HORTON, INC., AND LOTTY	)	
TRUCKING, LLC F/K/A RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
KENNETH SCOTT BUILDERS, Inc.,	)	
Third-Party Defendants.	)	
	)	

ORDER

This matter was before the Court on October 17, 2024, to resolve two pending motions. The first was a Motion for Rule to Show Cause filed by the Plaintiff, Mark W. McGilton. The second was a motion Defendant D.R. Horton filed seeking sanctions against Plaintiff pursuant to Rule 37, SCRCF. Appearing for the Plaintiff were Benjamin T. Shelton, Esquire, and S. Harrison Williams, Esquire, of Hilton Head Island and John S. Nichols, Esquire of Columbia. Appearing for the Defendant D.R. Horton was John T. Crawford, Jr., Esquire, and Jason Imhoff, Esquire, of Greenville. Appearing for Kenneth Scott Builders, Inc. was Ryan W. Conner, Esquire, of Charleston. After reviewing the record and hearing arguments of counsel the Court GRANTS the Plaintiff's Motion for Rule to Show Cause. The Court DENIES the Defendant's motion for sanctions.

DISCUSSION

This is the fourth time the Court has addressed discovery issues involving D.R. Horton, who was previously held in contempt for discovery abuse in this matter. As the Court of Appeals explained, “[a]n abiding maxim of the successful trial lawyer, like the motto of the Boy Scouts, is ‘Be Prepared.’” *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). The Court of Appeals later explained:

The entire thrust of the discovery rules involves full and fair disclosure, “to prevent a trial from becoming a guessing game or one of surprise for either party.” *State Highway Dep’t v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (quoting *Hodge v. Myers*, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 217 (1997).

The imposition of sanctions for discovery abuse is generally entrusted to the sound discretion of the circuit court. *Downey v. Dixon*. In deciding on an appropriate sanction, the court should consider a sanction that will “serve to protect the rights of discovery provided by the Rules.” *Id.* (citing *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir.), *cert. denied*, 400 U.S. 878 (1970) (“[O]ver-leniency [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery.”); C. Wright, *The Law of Federal Courts* § 90 at 596 (4th ed. 1983) (“Without adequate sanctions, the procedure for discovery would be ineffectual.”); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976) (dictum) (“[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those

whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.”).

Rule 37, SCRCP, “expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party’s failure to respond to certain discovery requests.” *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C) and (d), SCRCP). *See, also, Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003) (“[p]ursuant 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.”); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-199, 511 S.E.2d 716, 718-719 (Ct. App. 1999) (affirming trial court’s order to strike and render default judgment where the record was full of multiple egregious discovery abuses that blocked the opposing party’s attempts to conduct meaningful discovery).

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A. Plaintiff’s Rule to Show Cause

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Defendant D.R. Horton has based its defense in this case on the premise that it is merely an owner of the development and did not have a hand in the construction or act as a general contractor. (See Def. D.R. Horton, Inc.'s Mtn. for Summary Judgment as to Pl. Mark W. McGilton, and Def. D.R. Horton, Inc.'s Mtn. to Reconsider, Alter or Amend Order on its Mtn. for Summary Judgment). Defendant deposed the Plaintiff's safety and compliance expert, highlighting the contention that D.R. Horton was purportedly merely an owner of the land and not a General Contractor. Plaintiff's safety and compliance expert testified that D.R. Horton's responsibilities over the land and development merely as owner and not acting as contractor would be very limited if existent at all.

After Plaintiff's Safety and Compliance Expert testified, in a subsequent deposition Mr. Alfredo Uriostegui, the driver of the dump truck involved in the collision in this matter, testified that he regularly worked on a site in Cypress Ridge where D.R. Horton was building its regional office building. (Uriostegui Dep. 235:14-237:23). He also testified that he loaded and removed dirt from the site where D.R. Horton was building its regional office building both across Hulston Landing Rd. to another phase of the Cypress Ridge development as "good dirt." (Uriostegui Dep. 235:14-237:23). He testified further that he removed dirt from the site where D.R. Horton was building its regional office building and hauled it off site for use at other construction sites. (Uriostegui Dep. 235:14-237:23). Finally, Mr. Uriostegui testified he regularly worked all day hauling dirt from the office building site to the townhome site at Cypress Ridge. (Uriostegui Dep. 184:23-185:3).

Based upon the later deposition testimony of Mr. Uriostegui, Plaintiff's counsel searched for any permits or plans relating to what is known as the "Commercial" phase or Office/RV Lot phase of the Cypress Ridge development within material produced by Defendant D.R. Horton. While Defendant had produced invoices and payment requests from Kenneth Scott Builders, Inc. relating to the Office/RV Lot phase (showing that Kenneth Scott Builders invoiced D.R. Horton over \$300,000.00 for work), D.R. Horton produced no permits or plans relating to the Office/RV lot phase.

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2. Documents showing that plans for the site of D.R. Horton's regional office and the R/V Lot phase were one and the same;
3. Volumes of communications (hundreds if not thousands of pages) between D.R. Horton's 30(b)(6) deponents, the Town of Bluffton concerning the control, methods, permitting, and means of the development of Cypress Ridge, and several communications between Kenneth Scott Builders, Inc. and D.R. Horton's employees; and

4. Several notices of inspection and notices of violations relating to grading, surface and wastewater rules and regulations from the Town of Bluffton directed to Defendant D.R. Horton.

These documents tend to show that D.R. Horton was the general contractor of record for the very phase of work which was being completed by the Dump Truck Operator (as defined in Plaintiff's Complaint) when the Dump Truck Operator collided with the Plaintiff on his way back to Cypress Ridge to perform more work for D.R. Horton. The documents support Plaintiff's contention that D.R. Horton was the General Contractor over the phase of development from which the Dump Truck Operator mined dirt and regularly hauled loads of dirt off site. That is, these documents are evidence that Defendant D.R. Horton was acting as the General Contractor over the Dump Truck Operator, having power, control and responsibility over him.

The documents support Plaintiff's contention that D.R. Horton allowed an uninsured and un-maintained dump truck to operate on its construction site and the Operator to keep its truck on its construction site for well over a year. D.R. Horton concealed these facts from the Plaintiffs and failed to disclose these facts to the court in its motion for Summary Judgment. D.R. Horton was in possession of these very same documents but failed to produce them for over three years after Plaintiff's discovery requests to which these documents would have been responsive.

As mentioned above, this is the fourth time the parties have been before the circuit court regarding the Defendant D.R. Horton's failure to cooperate fully with discovery. On September 20, 2022, the Honorable Bentley Price entered an order on Plaintiff's motion to compel and for sanctions, noting the parties had reached an agreement such that "the Motion to Compel would be withdrawn without prejudice with leave to Plaintiff to file the motion again and seek sanctions should Defendant D.R. Horton not comply with Plaintiff's outstanding discovery requests, comply

with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes.” (Sept. 20, 2022 Consent Order at p. 1-2).

On March 4, 2024, the Honorable Diane Goodstein sanctioned Defendant D.R. Horton, held the Defendant in contempt, and ordered:

[Defendant] may purge the contempt before trial by engaging in no more willful discovery violations. It shall strictly abide by time deadlines. It shall cooperate fully and timely answer and respond to discovery requests. It shall cooperate fully with Plaintiff in scheduling and producing witnesses for depositions. It shall otherwise strictly comply with this court’s September 22, 2022 Order and with this Order.

(Mar. 5, 2024 Order Granting Pl.’s Mtn. to Compel, for Sanctions, and Holding D.R. Horton in Contempt at 7). Importantly, Judge Goodstein added “*I am providing D.R. Horton with a clear and explicit warning that upon a finding of any further discovery violations by any judge, that its pleadings will be subject to being struck.*” (emphasis added).

On June 13, 2024, the Honorable Robert Bonds granted D.R. Horton leave to disclose experts in this matter after D.R. Horton failed to comply with the previous scheduling order and failed to disclose experts within the time frame set forth in the scheduling order. Judge Bonds specifically found “[D.R. Horton] failed to comply with the scheduling order and has not shown good cause for such violation.” (Jun. 13, 2024 Order at 1).

I find Defendant D.R. Horton has engaged in willful disobedience as well as gross indifference to the prior orders of this Court. *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008). Judge Price’s order was direct; Judge Goodstein’s order held D.R. Horton in contempt and provided a clear warning; and Judge Bonds’ order found D.R. Horton failed to demonstrate good cause for continuing to violate prior orders. I find the appropriate sanction for D.R. Horton’s repeated violation that will “serve to protect the rights of discovery provided by the Rules” is to strike its Answer and declare Defendant D.R. Horton in default. *Downey v. Dixon*, 294

S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987); *Davis v. Parkview Apartments*, 409 S.C. 266, 762, S.E.2d 535 (2014). Accordingly, I grant Plaintiff's Motion, strike Defendant D.R. Horton's answer, and declare D.R. Horton in default.

B. Defendant's Motion for Sanctions

Defendant D.R. Horton moved for sanctions against Plaintiff after Plaintiff filed his Rule to Show Cause, contending Plaintiff engaged in discovery abuse by producing three expert witnesses for depositions who were not prepared to give complete testimony. The Court rejects these arguments.

With regard to Lindsay Moore, the life care planner, D.R. Horton was aware that her report disclosed potential medical costs which were not certain at the time of the report and were dependent upon future recommendations by Plaintiff's treating physicians when D.R. Horton scheduled her deposition. Ms. Moore's deposition testimony merely removed the potential future medical costs which were uncertain from a table at the end of her report, and reserved leave to incorporate those amounts should Plaintiff and his physicians determine that medical costs indeed are necessary (and not potential) in the future. Furthermore, any issue regarding her failure to attend in person is moot since in response to Plaintiff's offer to have Ms. Moore drive to the deposition site, D.R. Horton's counsel agreed to proceed with the virtual deposition (and attended the deposition virtually himself).

With regard to Michael Fryar, Plaintiff's vocational rehabilitation assessment and earning capacity expert, D.R. Horton was aware that his report was preliminary because Mr Fryar's written report specified that his findings were preliminary. Mr. Fryar reserved the opportunity to modify and/or supplement his findings, and at the time of the deposition and the time of his report, Mr.

Fryar did not have the final disability conclusion from Plaintiff's physicians regarding Plaintiff's ability to work.

With regard to Andy Rowland, D.R. Horton insisted upon taking Mr. Rowland's deposition before D.R. Horton's Rule 30(b)(6) deposition, after being informed that many of Mr. Rowland's opinions might not be final or conclusive without being able to review the same. D.R. Horton was fully aware that Mr. Rowland needed additional information prior to formulating final conclusive opinions, some of which turned out to be the very documents D.R. Horton failed to produce in discovery.

I find there is no discovery abuse on Plaintiff's part regarding these three witnesses. I therefore deny D.R. Horton's request that the Court enter sanctions against Plaintiff pursuant to Rule 37, SCRCP.

CONCLUSION

For the reasons stated, the Court GRANTS the Plaintiff's Motion and finds the Defendant failed to show cause why its Answer should not be struck as a sanction for repeated discovery abuse. Accordingly, the Court strikes the Defendant's Answer as permitted by Rule 37(b)(2)(C), SCRCP, and declares Defendant D.R. Horton in default.

The Court DENIES the Defendant's Motion for Sanctions.

SO ORDERED.

Honorable Maité Murphy
Circuit Court Judge

January __, 2025



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Sanctions

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2025-01-15 12:15:46 page 11 of 11

ELECTRONICALLY FILED - 2025 Jan 15 2:19 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069
ELECTRONICALLY FILED - 2025 Jun 05 3:24 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

EXHIBIT 2

ELECTRONICALLY FILED - 2025 Jun 03 10:42 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069
ELECTRONICALLY FILED - 2025 Jun 05 3:24 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069

STATE OF SOUTH CAROLINA	)	
COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
MARK W. MCGILTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2021-CP-27-00069
	)	
1223 MAY RIVER ROAD, LLC, D.R.	)	
HORTON, INC., AND LOTTY	)	
TRUCKING, LLC F/K/A RAMOS	)	ORDER GRANTING IN PART AND
TRUCKING, LLC,	)	DENYING PART DEFENDANT’S MOTION
	)	TO RECONSIDER, ALTER, OR AMEND
Defendants.	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
v.	)	
	)	
KENNETH SCOTT BUILDERS, Inc.,	)	
Third-Party Defendants.	)	
	)	

This matter comes before the Court on Defendant D.R. Horton’s Motion to Reconsider, Alter, or Amend the Order Granting Plaintiff’s Rule to Show Cause, striking Defendant’s Answer, and Denying Defendant’s Motion for Sanctions. This Court Amends its previous Order as follows:

DISCUSSION

This Court has addressed discovery issues involving D.R. Horton numerous times; D.R. Horton was previously held in contempt for discovery abuse in this matter. The Court of Appeals has explained:

The entire thrust of the discovery rules involves full and fair disclosure, “to prevent a trial from becoming a guessing game or one of surprise for either party.” *State Highway Dep’t v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (quoting

Hodge v. Myers, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

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(Mar. 5, 2024 Order Granting Pl.'s Mtn. to Compel, for Sanctions, and Holding D.R. Horton in Contempt at 7). Importantly, Judge Goodstein added "*I am providing D.R. Horton with a clear and explicit warning that upon a finding of any further discovery violations by any judge, that its pleadings will be subject to being struck.*" (emphasis added).

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This Court finds Defendant D.R. Horton has engaged in willful disobedience as well as gross indifference to the prior orders of this Court, resulting in prejudice to the Plaintiff and justifying said sanctions. *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008); *see also Davis v. Parkview Apartments*, 409 S.C. 266 (2014). Judge Price’s order was direct; Judge Goodstein’s order held D.R. Horton in contempt and provided a clear warning; and Judge Bonds’ order found D.R. Horton failed to demonstrate good cause for continuing to violate prior orders. Defendant D.R. Horton’s repeated disregard for the discovery process and subsequent court orders has caused prejudice to the Plaintiff.

The Court find the appropriate sanction for D.R. Horton’s repeated violation that will “serve to protect the rights of discovery provided by the Rules” is to strike its Answer and declare Defendant D.R. Horton in default. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987); *Davis v. Parkview Apartments*, 409 S.C. 266, 762, S.E.2d 535 (2014). Accordingly, the Court GRANTS Plaintiff’s Motion, strikes Defendant D.R. Horton’s answer, and declares D.R. Horton in default.

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With regard to Lindsay Moore, the life care planner, D.R. Horton was aware that her report disclosed potential medical costs which were not certain at the time of the report and were dependent upon future recommendations by Plaintiff's treating physicians when D.R. Horton scheduled her deposition. Ms. Moore's deposition testimony merely removed the potential future medical costs which were uncertain from a table at the end of her report, and reserved leave to incorporate those amounts should Plaintiff and his physicians determine that medical costs indeed are necessary (and not potential) in the future. Furthermore, any issue regarding her failure to attend in person is moot since in response to Plaintiff's offer to have Ms. Moore drive to the deposition site, D.R. Horton's counsel agreed to proceed with the virtual deposition (and attended the deposition virtually himself).

With regard to Michael Fryar, Plaintiff's vocational rehabilitation assessment and earning capacity expert, D.R. Horton was aware that his report was preliminary because Mr. Fryar's written report specified that his findings were preliminary. Mr. Fryar reserved the opportunity to modify and/or supplement his findings, and at the time of the deposition and the time of his report, Mr. Fryar did not have the final disability conclusion from Plaintiff's physicians regarding Plaintiff's ability to work.

With regard to Andy Rowland, D.R. Horton insisted upon taking Mr. Rowland's deposition before D.R. Horton's Rule 30(b)(6) deposition, after being informed that many of Mr. Rowland's opinions might not be final or conclusive without being able to review the same. D.R. Horton was fully aware that Mr. Rowland needed additional information prior to formulating final conclusive

opinions, some of which turned out to be the very documents D.R. Horton failed to produce in discovery.

The Court finds there is no discovery abuse on Plaintiff's part regarding these three witnesses. This Court therefore deny D.R. Horton's request that the Court enter sanctions against Plaintiff pursuant to Rule 37, SCRCP.

CONCLUSION

For the reasons stated, the Court respectfully GRANTS in part and DENIES in part Defendant's Motion to Reconsider, Alter, or Amend its previous Order. However, the result of the previous Order remains and the Court GRANTS the Plaintiff's Motion and finds the Defendant failed to show cause why its Answer should not be struck as a sanction for repeated discovery abuse. Accordingly, the Court strikes the Defendant's Answer as permitted by Rule 37(b)(2)(C), SCRCP, and declares Defendant D.R. Horton in default.

The Court DENIES the Defendant's Motion for Sanctions.

SO ORDERED.



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2025-06-02 18:58:18 page 11 of 11

ELECTRONICALLY FILED - 2025 Jun 03 10:42 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069
ELECTRONICALLY FILED - 2025 Jun 05 3:24 PM - JASPER - COMMON PLEAS - CASE#2021CP2700069



Beaufort County Fourteenth Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Mark William McGilton

Case Number:	20192401049904	Court Agency:	Beaufort Magistrate	Filed Date:	07/24/2019
Case Type:	Traffic	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Scott, LaShonda Green	Disposition Judge:	Sproatt, Rod H.
Disposition:	TIA Guilty Bench Trial Fine Only				
Disposition Date:	08/05/2019	Date Received:		Arrest Date:	07/22/2019
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
McGilton, Mark William		White	M	1966	Defendant		09/18/2019
Walls, Talon C					Officer		07/24/2019

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
McGilton, Mark William	2100-Traffic / Speeding, 10 mph or less over the speed limit	2100-Traffic / Speeding, 10 mph or less over the speed limit	08/05/2019

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	Fine		Amount				

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
McGilton, Mark William	Criminal/Traffic Court	Event		08/05/2019-10:00	08/05/2019-16:00	

Financials

Summary

Fine/Costs:	\$75.00	Total Paid for fine/costs:	\$75.00	Balance Due:	\$0.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Fine to General Fund	AFNEGF	\$24.10		\$24.10
Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$25.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$2.89		\$2.89

State Assessment	STAASM	\$23.01		\$23.01
Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
09/18/2019	9892823	c07jmcfarl	FP	\$75.00

From: "Courtmail27_DoNotReply@sccourts.org"
<Courtmail27_DoNotReply@sccourts.org>
Subject: Motion "MSANCT-Motion/Sanctions" for Case "2021CP2700069-Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al" was added to a Motions Roster for 8/17/2022 at 10:00 AM
Date: July 11, 2022 at 1:14:13 PM MDT
To: Jason Imhoff <jimhoff@conlaw.com>

This case appears on the Jasper County Common Pleas Motions Roster with the Honorable Bentley Price, presiding. This hearing will be held on WEDNESDAY, August 17, 2022 at 10:00 am IN-PERSON. THE DATE AND TIME IS SUBJECT TO CHANGE. IF THE DATE AND TIME CHANGE YOU WILL RECEIVE ANOTHER NOTICE. Hearings will be held at the Jasper County Courthouse located on 265 Russell Street Ridgeland, SC 29936 Please DO NOT call the Clerk's office with updates. ALL updates should be made in writing to qtruesdale@jaspercountysc.gov and bpricelc@sccourts.org **PRO SE LITIGANTS SHOULD CALL THE COURT CONFIRMING IF THEIR HEARING IS MOVING FOWARD.**

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**From:** "Courtmail27\_DoNotReply@sccourts.org"  
<Courtmail27\_DoNotReply@sccourts.org>  
**Subject:** Motion "MCOMPL-Motion/Compel" for Case "2021CP2700069-Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al" was added to a Motions Roster for 12/7/2023 at 9:30 AM  
**Date:** November 7, 2023 at 9:09:39 AM MST  
**To:** Jason Imhoff <jimhoff@conlaw.com>

This case appears on the Jasper County Common Pleas Motions Roster with the Honorable Judge R. Lawton McIntosh, presiding. Court hearings will begin at 9:30 am on Thursday, December 7, 2023 IN-PERSON. Hearings will be held at the Jasper County Courthouse located on 265 Russell Street Ridgeland, South Carolina 29936. Please DO NOT call the Clerk's office with updates. ALL updates should be made in writing to qtruesdale@jaspercountysc.gov and lmcintoshlc@sccourts.org.

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Certificate of Counsel

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

May 4, 2026

RECEIVED
May 04 2026
SC Court of Appeals

s/Carl F. Muller

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Attorneys for Appellant D. R. Horton, Inc.

[NOTE: Except as otherwise shown, to avoid duplication, or where not designated to be included, all exhibits to all motions and memoranda will be included.]