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**May 27 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Daniel Coble, Circuit Court Judge

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Appellate Case No. 2026-000357  
Civil Action No. 2022-CP-40-05552

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South Carolina Automobile and Truck Dealers Association, . . . . . Respondent,

v.

South Carolina Department of Consumer Affairs, . . . . . Appellant.

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**INITIAL BRIEF OF APPELLANT**

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Whether the trial court erred in finding the Appellant exceeded its statutory authority under the Closing Fee Statute, § 37-2-307, or otherwise acted arbitrarily by authorizing and conducting compliance reviews of motor vehicle dealerships, issuing the February 18, 2022, memorandum, and posting on social media.
- II. Whether the trial court erred in finding this matter was not rendered moot by the enactment of the 2023 Closing Fee Statute and in finding there was a justiciable controversy.
- III. Whether the trial court erred in finding the Respondent had standing to pursue its claims regarding the February 18, 2022, memorandum and the Appellant’s social media posts.
- IV. Whether the trial court erred in granting the Respondent’s request for attorney’s fees, granting the Respondent’s motion to amend its Complaint to allege the recovery of attorney’s fees, and in denying the Appellant’s motion to strike certain portions of the Respondent’s request.
- V. Whether the trial court erred in denying DCA’s motion for a new trial.

## **STATEMENT OF THE CASE**

The Respondent, the South Carolina Automobile and Truck Dealers Association (“SCADA”), on September 20, 2022, filed its complaint pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to -140. In its Complaint, SCADA takes issue with certain activities undertaken by Appellant, the South Carolina Department of Consumer Affairs (“DCA”) in 2022, most of which centered on DCA’s administration of S.C. Code Ann. § 37-2-307, commonly known as the “Closing Fee Statute.” Specifically, SCADA sought declaratory and injunctive relief against DCA concerning (1) DCA’s “Closing Fee Registration and Reasonableness Review;” (2) “Recent Departmental Investigations Regarding Closing Fee Compliance;” (3) a Memorandum Issued by DCA on February 18, 2022; and (4) “Recent Department Activities Involving Consumer Webinars and Social Media.” [Complaint] DCA filed its Amended Answer and Counterclaim on November 16, 2022.

In May 2023, the General Assembly repealed and replaced the Closing Fee Statute, under which DCA’s alleged actions took place. *See* Act No. 45, 2023 S.C. Acts 184, eff. May 16, 2023,

codified at S.C. Code Ann. § 37-2-307 (“2023 Statute”). On June 9, 2023, DCA moved to dismiss the case on the grounds that the action was moot and lacked a justiciable controversy as a result of the enactment of the 2023 Statute, and that SCADA lacked standing for certain claims. The trial court denied the motion. [Ord. 9/25/23] DCA moved for dismissal at trial pursuant to Rule 41(b), SCRCPP, for the same reasons. [Trial Tr. 466-92; 603-06]

During the three years this case was pending, DCA produced more than 10,000 pages of documents. SCADA, the Plaintiff in this case, produced a grand total of five pages of documents. [Memo in Support 11/6/23]. The parties also conducted a total of three depositions.

The trial court conducted a bench trial on October 8–10, 2025. The parties called only four witnesses: three Department employees and one SCADA employee who is not a car dealer. Following the conclusion of the trial, the trial court asked for the submission of proposed orders from each side.

On November 6, 2025, the trial court issued its Order Granting Plaintiff’s Request for Declaratory Relief. Following the trial court order, the parties filed various motions and related documents, including: (1) SCADA’s Motion for Award of Attorney’s Fees (filed November 14, 2025); (2) DCA’s Motion to Alter or Amend or, in the alternative, for a New Trial Absolute (filed November 17, 2025); (3) DCA’s Motion to Strike (filed December 2, 2025); and (4) SCADA’s Motion to Amend its Complaint to seek an award of attorney’s fees (filed December 3, 2025).

Pursuant to orders issued on January 16, 2026, and February 12, 2026, the trial court denied all of DCA’s post-trial motions, and granted all of SCADA’s post-trial motions. DCA timely filed its notice of appeal on February 17, 2026.

### **STATEMENT OF FACTS**

DCA has had the statutory responsibility of administering the Closing Fee Statute since 2000 when the General Assembly first enacted it as part of the Consumer Protection Code. DCA’s

authority in the first version of the Closing Fee Statute was very narrow in scope. S.C. Code Ann. § 37-2-307 (2000) (the “2000 Statute”). DCA’s limited authority was recognized in 2015 when our supreme court ruled on an appeal of a class action suit seeking recovery for a closing fee violation under the Dealers Act, S.C. Code Ann. §§ 56-15-10 to -600. *See Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 379, 778 S.E.2d 902, 911 (2015) (“[DCA] is not vested with the authority to determine a reasonable ‘closing fee’”). In that case, the purchaser claimed she was unfairly charged a closing fee that bore no relation to the actual expenses incurred by the dealer.<sup>1</sup>

In the opinion, the court held a closing fee charged “must bear some relation to the actual expenses incurred for the closing.” *Id.* at 381, 778 S.E.2d at 912. The Court explained:

... by specifically delineating a “closing fee” from the purchase price of the vehicle, the dealer must account for the costs that comprise this fee. Without such an accounting, a dealer is charging a consumer an additional amount that is not directly related to the expenses incurred in closing the sale of a motor vehicle but is, nevertheless, identified as a closing fee. We find that such practice effectively circumvents the purpose of the “Closing Fee” Statute and the Dealers Act, which is, in part, to protect consumers from charges that are above the advertised price listed by the dealer.

*Id.* at 382, 778 S.E.2d at 912. The Court upheld the jury’s award of the full amount of closing fees collected during the relevant time, which was \$1,445,786. At the time, this was not the only case in which a purchaser had sued a dealer about closing fees. *Id.*, at 370 n. 6, 778 S.E.2d at 906 n. 6.

After the *Freeman* decision, the General Assembly amended the Closing Fee Statute at SCADA’s urging. S.C. Code Ann. § 37-2-307 (2016) (the “2016 Statute”).<sup>2</sup> [Def. Ex. 14; Trial Tr. 360, 363-64] The 2016 Statute expanded the original 63-word statute to include, inter alia: a definition of “closing fee;” a safe harbor closing fee amount of \$225; the process for a

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<sup>1</sup> At SCADA’s request, DCA filed a motion and proposed joint amicus brief with SCADA in that appeal, but the Court denied the parties’ motion. [Amd. Answer Exh. B]

<sup>2</sup> Because the claims in this case all relate to DCA’s administration of the 2016 Statute, all references and citations herein to § 37-2-307 are to the 2016 Statute, unless stated otherwise.

reasonableness review by DCA if the proposed closing fee exceeds \$225; and DCA's authority to access dealers' books, accounts, and records to determine compliance with the 2016 Statute. *Id.* As a result of the 2016 Statute, DCA's role regarding closing fees expanded significantly and its staff had much to learn. [Trial Tr. 500–501]

Chief Investigator Ken Middlebrooks initially met with a franchise dealer to learn about the costs associated with closing a vehicle transaction that reasonably should be included in a dealership's calculation of its closing fee. [Trial Tr. 501–505] Mr. Middlebrooks quickly discovered that the largest portion of a closing fee would be related to employee compensation. [Trial Tr. 502–503]

Shortly after the amendment of the Closing Fee Statute, the investigators started doing "reasonableness reviews," which concentrated on determining whether the closing fee costs asserted by dealers were reasonable. *See* S.C. Code Ann. § 37-2-307(C)(1) (stating DCA may review the amount of a proposed closing fee for reasonableness). The investigators began visiting dealerships with four investigators at a time to learn the process of determining which costs are reasonable. [Trial Tr. 506–507] As early as 2017, in the initial administration of the 2016 Statute, DCA notified motor vehicle dealerships who were charging closing fees in excess of \$225 that their "books, accounts, and records" were subject to being audited to "determine if the dealer is in compliance with the closing fee statute." [Def. Ex. 5]

After the investigators learned the reasonableness review process, the investigators began doing inspections. [Trial Tr. p. 508–510] The inspections, described as "high level," entailed one or two investigators visiting a dealership, sometimes unannounced, to determine whether the closing fee was displayed in a conspicuous location and to review 8 to 10 random buyer's orders

to make sure the closing fee charged in the transaction did not exceed the amount DCA had permitted the dealership to charge. [Trial Tr. 509]

SCADA's executive vice president, Sims Floyd, testified that the inspections were "expected" pursuant to the 2016 Statute. [Trial Tr. 279–280] He also testified that the review of buyer's orders and advertisements as part of an inspection is in line with the 2016 Statute. [Trial Tr. 361–370]

Prior to 2022, DCA conducted 398 inspections of motor vehicle dealers as part of its administration of the 2016 Statute. [Trial Tr. 131] The investigators rarely received any pushback or objections from dealerships about inspections. [Trial Tr. 131–137; 208; 508–510] That changed in 2022 when DCA started doing compliance reviews.

The COVID-19 pandemic brought unprecedented changes to the automobile industry. Mr. Floyd testified that dealers were "turning inventory in three days" due to a shortage of vehicles. [Trial Tr. 281–282] He also testified dealers were able to sell vehicles for more than the Manufacturer's Suggested Retail Price ("MSRP"), whereas they "frequently sell below MSRP" when there are plenty of vehicles. [Trial Tr. 282–283] DCA also noticed the vehicle shortage had led to changes in the marketplace. [Trial Tr. 44, 141, 205–206, 280–283]

Under the 2016 Statute, if a dealership charges a closing fee, it "must be included in the advertised price of the motor vehicle . . . ." S.C. Code Ann. § 37-2-307(A)(2). As a simple example, if a motor vehicle dealer charges a \$500 closing fee and advertises a motor vehicle at a price of \$30,000, it would mean the vehicle is being sold for \$29,500 with a separate line item for the closing fee of \$500.

Prior to the pandemic, when vehicles were regularly sold for prices below the MSRP or advertised price, closing fee compliance problems would be rare. The parties would agree on a

price for a vehicle and the closing fee would be added to the vehicle's price on the buyer's order. As long as the agreed price plus the closing fee was less than or equal to the advertised price, there was no closing fee compliance problem. [Trial Tr. 163-64; 205-206; 222-223; 280-283; 516]

However, during the pandemic, DCA learned about and observed motor vehicles being sold for more than the advertised price. [Trial Tr. 205-206] DCA also learned about and observed that fees, such as adjusted market value fees or closing fees, were being added to the advertised price. [Trial Tr. 139, 516-524] DCA began receiving numerous calls, complaints, and informal reports or tips from confused consumers concerning the extra fees. [Trial Tr. 88, 139, 516-528]

Based on everything he had heard about fees being added to the advertised price, Mr. Middlebrooks believed dealers likely were adding the closing fee to the advertised price as well. Doing so would constitute a violation of the 2016 Statute. In light of this information, Mr. Middlebrooks considered the investigators' practices for other regulated industries and decided "we need to start doing more in regards to this statute in [sic] the next level would be a compliance review." [Trial Tr. 519-524]

In early February 2022, Mr. Middlebrooks followed up on a tip he had received about a dealership adding fees onto the advertised price of a used vehicle, including a fee that is supposed to be included in the closing fee. To verify the tip, Mr. Middlebrooks conducted his own online shopping experience to buy a specific used truck advertised by the dealership. He communicated with a salesperson about a used truck with an advertised price of \$32,074. When all was said and done, the dealership quoted a price of \$34,459. Numerous fees had been added to the advertised price, including a closing fee. This experience matched up with the tips, calls, and complaints of which DCA was already aware concerning closing fees. [Trial Tr. 525-537; DCA Ex. 74]

Mr. Middlebrooks explained that a surface level inspection of the offending dealership would not have uncovered this violation. An inspection would have only compared the amount of the closing fee charged to the buyer with the amount of the approved closing fee. [Trial Tr. 526–27] An inspection would not inform DCA if a dealer was double-dipping, i.e., charging a closing fee on top of the advertised price. Only a compliance review, which also reviewed advertisements, could determine whether double-dipping had been happening. [Trial Tr. 216–217]

Using the secret shopper transaction as well as information provided in other tips, DCA issued an educational memorandum on February 18, 2022, (the “Memorandum”) advising motor vehicle dealers how to comply with state and federal laws. [Trial Tr. pp. 126, 582–585, 592–596] In the Memorandum, DCA identified several examples of misleading and deceptive practices, including “added extra fees to the advertised price, adjusted market value fees, dealer add-ons, inflating official fees in the contract, and then using MSRP for used cars.” [Trial Tr. 582]; *see* Pl. Ex. 2. Mr. Middlebrooks summarized the overall theme of the Memorandum as, “If you’re not going to sell a car for the advertised price, don’t advertise a price.” [Trial Tr. 583]

In March 2022, DCA started conducting “compliance reviews” of motor vehicle dealers. [Trial Tr. 42; 59–60; 137] As explained at trial, the purpose of a compliance review of any regulated industry is to educate businesses how to comply with the law and to encourage compliance, not to investigate individual complaints. [Trial Tr. 224–225, 511–514, 554-56] In fact, upon conducting compliance reviews of an industry, word would spread through the industry leading to a drop in deficiencies along with a drop in consumer complaints against the industries. [Trial Tr. 555]

Mr. Middlebrooks testified he has conducted compliance reviews of other regulated industries since he started with the agency in 2000. [Trial Tr. 510] Between July 2019 and June 2023 alone, the total number of compliance reviews for various industries were: motor vehicle

dealers (20); continuing care retirement communities (19); discount medical plan organizations (13); mortgage brokers (216); pawnbrokers (168); physical fitness centers (472); and preneed funeral contract providers (675). [Def. Ex. 84] The compliance reviews of the other regulated industries are authorized by statute and are done on a routine basis, without first having any evidence of statutory violations or complaints having been lodged against the business. [Trial Tr. 230; 513; 585].

The language in the statutes for the other industries, *see infra* p. 14, is similar to the 2016 Statute which provided DCA with access to a dealer's records "to determine if the dealer is complying with the provisions of this section." S.C. Code Ann. § 37-2-307(E)(1). DCA's compliance reviews related to closing fees were more in depth than the reasonableness reviews and inspections conducted prior to 2022 and were similar to the process used when performing compliance reviews of other industries. [Trial Tr. 229; 539-40]

DCA conducted compliance reviews of only 20 different dealerships between March 2, 2022, and January 23, 2023. DCA conducted nine compliance reviews in March 2022. Approximately five of these compliance reviews were unannounced. After the first month, DCA discontinued its practice of unannounced visits and would contact a dealership before conducting a compliance review in an effort to accommodate the dealership and so that the dealership would be prepared to provide records. [Trial Tr. 142, 150-51, 568-69]

Early in the compliance review process, the investigators asked for a list of deals so that they could randomly choose deals to review. One of the dealerships offered a "sales report" and informed the investigators that all dealerships would easily be able to provide a sales report. [Trial Tr. 571-72] The sales report obtained from this dealership contained some profit information about closed deals. [Trial Tr. 209-11] Following this, the investigators began asking for a sales report

from which they could randomly select closed deals to review. [Trial Tr. 212-13] As a result, the investigators received some reports from dealerships that included profit information. However, the investigators specifically asked for profit information from only three dealerships.<sup>3</sup> [Trial Tr. 211-12, 571-72]

From the spreadsheets, the investigators would randomly select up to 30 deals to review. [Trial Tr. 212-14] After selecting the deals from the spreadsheets, lists, or sales reports, the investigators were interested in only four items concerning each one: (1) the buyer's order; (2) the pencil sheet; (3) the menu sheet; and (4) the advertisement. [Trial Tr. 142-148; DCA Ex. 77] The investigators then reviewed the documents for each transaction to determine whether the closing fee was added to the advertised price in violation of the 2016 Statute or in some cases whether there was a separate fee charged that should have been included in the closing fee. [Trial Tr. 550-53] The investigators found 19 out of the 20 dealerships reviewed had at least one violation of the 2016 Statute. [Trial Tr. 91, 240, 551-52, 572-73]

## **ARGUMENTS**

### **I. THE TRIAL COURT ERRED IN FINDING DCA EXCEEDED ITS STATUTORY AUTHORITY OR OTHERWISE ACTED ARBITRARILY IN AUTHORIZING AND CONDUCTING COMPLIANCE REVIEWS, ISSUING THE MEMORANDUM, AND POSTING ON SOCIAL MEDIA.**

The issues on appeal concern the interpretation of state statutes by this Court. Questions pertaining to statutory interpretation are questions of law. *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018); *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519,

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<sup>3</sup> For a very short period while conducting the compliance reviews, the investigators believed the profit information would be relevant to the reasonableness of a closing fee. [Trial Tr. 142-148, 597-599] Both investigators testified that profit information related to salaries, which in turn related to calculating closing fees. However, the investigators quickly decided that this would be too difficult to decipher and quantify and, therefore, discontinued asking for profit information. [Trial Tr. 235-37, 268-69]

524, 642 S.E.2d 751, 753 (2007). Questions of law are subject to *de novo* review by the Court, which does not owe “any deference to the court below.” *Id.*

The substantive questions before the Court are whether DCA exceeded its statutory authority and acted arbitrarily in (1) authorizing and performing closing fee compliance reviews, (2) issuing the Memorandum, or (3) posting on social media. “A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1995). If a statute allows for the action, or if it was reasonable to believe the statute allows for the action, such action would not be arbitrary and capricious. Consequently, for an action taken by a state agency to be arbitrary and capricious when the agency has based its action on its interpretation of a statute, the statute must clearly indicate that such actions are not permitted. Ambiguity in a statute would defeat any claim that DCA’s actions were arbitrary and capricious.

**A. The trial court erred in finding DCA’s interpretation of the 2016 Closing Fee Statute was arbitrary.**

DCA was tasked by the General Assembly with administering and enforcing the subject of closing fees. S.C. Code Ann. § 37-2-307(E)(1). DCA attempted to do so based on its interpretation of the 2016 Statute. However, instead of granting DCA any deference, the trial court held that the Closing Fee Statute limited DCA’s access to a dealer’s records only for the purpose of conducting a reasonableness review and stated DCA’s interpretation of the 2016 Closing Fee Statute was “patently absurd and contrary to law.” [11/6/25 Ord. 25] This was error.

The provisions of the South Carolina Consumer Protection Code, S.C. Code Ann. Section 37-1-101 *et seq.* (“SCCPC”) shall be liberally construed and applied to promote the Title’s underlying purposes and policies. S.C. Code Ann. § 37-1-102(1) (2002); *S.C. Dep’t of Consumer*

*Aff. v. Cash Cent. of S.C. LLC*, 435 S.C. 192, 203, 865 S.E.2d 789, 794–95 (quoting *Freeman*, 414 S.C. at 373, 778 S.E.2d at 907). “[T]he purpose of the SCCPC is to clarify the law governing consumer credit and to protect consumer buyers against unfair practices by suppliers of consumer credit.” *Id.* The primary purpose of the CPC is to protect consumers. *Id.*

The SCCPC delineates restrictions on certain fees and charges a person may impose in certain consumer transactions. S.C. Code Ann. § 37-1-100 *et seq.* The 2016 Statute set forth the statutory requirements applicable to a motor vehicle dealer wishing to charge a closing fee. In accordance with the law, a motor vehicle dealer must: (1) file the maximum closing fee it intended to charge in a consumer transaction with DCA, (2) pay a filing fee, (3) post notice of the fee in a conspicuous location in the dealership, (4) include the fee in the advertised price, and (5) disclose the fee on the contract. S.C. Code Ann. § 37-2-307 (2016). The law also charged DCA with the responsibility of administering and enforcing its provisions, including determining the reasonableness of a closing fee exceeding \$225 and determining compliance with the statute’s provisions. S.C. Code Ann. § 37-2-307(2016).

The record shows DCA acted reasonably in its interpretation and conduct related to motor vehicle dealer compliance reviews as it is supported by the plain language of the 2016 Statute, the 2023 amendment thereto, commentary of the Legislature and Administrative Law Court, and case law on agency arbitrariness. As such, the trial court made several errors of law in its placement of limitations on DCA’s administration and interpretation of the 2016 Statute.

#### 1. PLAIN LANGUAGE

A plain reading of the 2016 Statute reveals that DCA held broad powers concerning closing fee compliance. Specifically, the 2016 Statute stated “[t]he department shall have access to a motor vehicle dealer’s books, accounts, and records to determine if the dealer is complying with the

provisions of this section[.]” S.C. Code Ann. § 37-2-307(E)(1). The primary rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E.2d 424 (1980). According to the plain meaning rule, it is not the Court’s place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “[T]he Court should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.” *Duke Energy Corp. v. S.C. Dep’t of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016).

In this matter, the trial court provides two contradictory findings when setting forth its determination of the meaning of subsection (E)(1). First, it found the use of the word “if” in the subsequent subsection, (E)(2), limits DCA’s power only to instances in which “[DCA] determines that a closing fee is not reasonable[.]” S.C. Code Ann. § 37-2-307(E)(2); [Order, pp. 9-10, 27].<sup>4</sup> Such a reading is untenable, given that § 37-2-307(E)(1) begins by declaring DCA “shall administer and enforce the **subject of motor vehicle dealer closing fees** including, but not limited to, this section.” S.C. Code Ann. § 37-2-307(E)(1) (emphasis added).<sup>5</sup> This mandate, immediately preceding the granting of access to books, accounts, and records within the very same subsection, is a clear indication that access to these records was for the purpose of administering and enforcing the 2016 Statute as a whole, and not solely for the purpose of closing fee reasonableness reviews.<sup>6</sup>

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<sup>4</sup> The order adopted by the trial court was almost verbatim the proposed order submitted by SCADA. SCADA never advanced this statutory interpretation until it submitted its proposed trial order three weeks after the trial ended. DCA moved twice for summary judgment, both times asserting its interpretation of the Closing Fee Statute. [Motions for SJ] SCADA did not assert its current interpretation in response to DCA’s dispositive motions.

<sup>5</sup> Indeed, the impetus for the 2016 Statute was to ensure consumers would not be able to sue for a violation of the Dealers Act for violations related to charging a closing fee. [Tr. 360] Logically, one could believe this was also the reason SCADA lobbied for the 2016 Statute.

<sup>6</sup> The trial court, in concluding the 2016 Statute only provided access to a dealership’s records for reasonableness reviews, stated it would be illogical and unreasonable to conclude the statute gives DCA unfettered access to a dealership’s records at any time, for any reason, or for no reason at all. [11/6/25 Ord. 27]. DCA has never contended the 2016 Statute gives it *carte blanche* access to a dealership’s records. [Trial Tr. 29-30]

In an attempt to bolster its argument, SCADA, in the proposed order adopted by the trial court, relies on a memorandum issued December 12, 2017, in which DCA posits that it has access to “dealer’s books, account, and records to verify the information provided with the filing[.]” [11/6/25 Ord. 10, 28]. However, the trial court ignores that the very same sentence continues with, “**and** determine if the dealer is in compliance with the closing fee statute.” (emphasis added). DCA clearly delineates between reasonableness reviews for verification of the filed information **and** compliance reviews to determine whether the dealer is complying with the 2016 Statute, which contains provisions outside of reasonableness with which a motor vehicle must comply. Through the memorandum, SCADA was placed on notice by DCA of its stance that it may audit a dealer’s records in order to “determine if the dealer is in compliance with the Closing Fee Statute.” [Trial Tr. 265-266] SCADA did not object to or disagree with this notice despite being aware of it when it was issued. [Trial Tr. 401-403] It was only after this was put into practice through requests for the documentation necessary to actually uncover hidden violations that SCADA protested DCA’s actions. [Trial Tr. 403]

Compliance reviews are not unique to car dealerships. [DCA Ex. 84] Several other regulatory frameworks administered and enforced by DCA also contain similar language granting DCA access to books, accounts and records to determine compliance with filing, registration, and/or licensing requirements<sup>7</sup>:

- S.C. Code Ann. § 40-58-65(C) (“The administrator may examine the books and records of a mortgage broker and other documents and records to determine whether there has been substantial compliance with this chapter.”);
- S.C. Code Ann. § 40-39-90 (stating records kept by pawnbrokers must at all reasonable times be open to inspection by DCA);

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<sup>7</sup> The authorization given to DCA in the 2016 Statute is also comparable to the audit authorization given to the SCDMV, which provides that a dealer’s records “must be open at all reasonable times for inspection and copying by the [DMV],” and does not require probable cause. S.C. Code Ann. § 56-15-340(A).

- S.C. Code Ann. § 32-7-70(B) (stating DCA may at any reasonable time and shall at least once every two years investigate the books, records, and accounts of preneed funeral contract providers);
- S.C. Code Ann. § 37-7-114(A) (stating each credit counseling organization shall maintain “complete and accurate books, accounts, and records as [DCA] may reasonably require to determine if the credit counseling agency is complying with the provisions of this chapter”);
- S.C. Code Ann. § 37-11-80 (stating DCA may make examinations of continuing care retirement communities to ensure the operator can meet its obligations and that the operator shall submit books and records needed to determine the community’s financial soundness);
- S.C. Regs. Ann. 28-100(C)(1) (stating physical fitness centers must at all reasonable times make their books and records available for inspection for the purpose of assuring the business is complying with applicable law and regulations).

The trial court ignored this evidence of compliance reviews performed by DCA under similar statutory schemes—evidence that clearly supports the reasonableness of DCA’s interpretation of the 2016 Statute—and instead incorrectly found that DCA’s actions in performing compliance reviews functioned as investigations, which would require DCA to have probable cause prior to launching. S.C. Code Ann. § 37-6-106(1); [11/6/25 Ord. 16, 29-31]

The probable cause standard of section 37-6-106(1) presupposes that DCA has existing evidence of a violation or other act subject to action by DCA. On the other hand, the requirements of subsections 37-2-307(A)(2) and (E)(1) were a statutory directive to DCA to ensure that dealerships were complying with the 2016 Statute and also gave authority to DCA to review dealerships’ records in the only way that such compliance could be assured—by viewing the closing fees as advertised, disclosed, and assessed in actual transactions. There is nothing in the plain language of the 2016 Statute that would require DCA to first have probable cause before conducting a compliance review. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.”).

Even if the trial court was correct in its assertion that a compliance review is indistinguishable from a formal investigation, given that the 2016 Statute and the statute authorizing Departmental investigations both pertain to “investigating” books and other documents, the more specific 2016 Statute would prevail over the general investigation statute. *See Duke Power Co. v. S.C. Pub. Serv. Comm’n*, 284 S.C. 81, 326 S.E.2d 395 (1985) (stating laws giving specific treatment to a given situation take precedence over general laws on the subject). The 2016 Statute contains no requirement that probable cause exist prior to performing “investigations,” indicating no such requirement is necessary. Further, the trial court recognized the difference between an investigation and a review of books, accounts, and records, contradicting its finding that the 2016 Statute only permitted reasonableness reviews.

It is undisputed that in addition to reasonableness reviews and compliance reviews, DCA conducted what it dubs as “inspections” of motor vehicle dealers. [Trial Tr. 538-39] The inspections, mostly unannounced and conducted without any cause or complaint, consisted of a review of multiple buyer’s orders. SCADA had no objection to DCA’s inspections of motor vehicle dealers and Mr. Floyd admitted the inspections were “expected by the law.” [Trial Tr. 279-80] The trial court agreed, holding that for a dealership to be considered in compliance with the 2016 Statute it must provide notice to DCA of its maximum closing fee, pay a registration fee, include the closing fee in the advertised price, and display the closing fee certificate in a conspicuous place. [Order p. 29]. The court goes on to say, “[t]o ensure compliance, [DCA] only needed to enter the dealership to view the closing certificate and obtain the advertised price and the sales contract for several deals.” *Id.*

SCADA has no objection to the type of review at each end of the spectrum (an inspection being the least intensive and intrusive and an investigation being the most intensive and intrusive).

SCADA did not have any objection to DCA asking for and receiving buyer's orders or advertisements. [Trial Tr. 368-69] Likewise, SCADA did not have any objection to DCA obtaining any other documents from a dealership if those documents were related to closing fees. [Trial Tr. 367-375] Thus, it is so surprising that the trial court found that there is no rational interpretation of the 2016 Statute allowing some other review, i.e., a compliance review. If there is truly no statutory basis for DCA's compliance reviews, there would be no statutory basis for DCA's inspections. For the above-mentioned reasons, the trial court erred as a matter of law in ignoring the plain meaning of the 2016 Statute, which clearly gave DCA "access to a motor vehicle dealer's books, accounts, and records to determine if the dealer is complying with the provisions of this section[.]"

## 2. 2023 CLOSING FEE STATUTE AMENDMENT

The language of the 2023 Statute provides evidence of DCA's former authority to access dealers' records to determine compliance, absent probable cause. The 2023 Statute states DCA "may review or investigate a dealer upon receipt of a complaint or other credible evidence that the dealer has violated a provision . . . related to closing fees." S.C. Code Ann. § 37-2-307(E)(3). By requiring DCA to have received a complaint or other credible evidence of a violation related to closing fees in order to "review or investigate" a dealership, the 2023 Statute admits that neither complaints nor credible evidence were required to initiate such reviews under the 2016 Statute. The General Assembly could have included this language in the 2016 Statute, but it did not, and now it has. *See Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 135 S.E.2d 841 (1964) (stating it will be presumed in adopting an amendment to a statute that the Legislature intended to make some change in the existing law); *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 46, 659 S.E.2d 125, 130 (2008) ("When the Legislature adopts an amendment to a statute, [our appellate courts]

recognize[] a presumption that the Legislature intended to change the existing law.”); *Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) (“It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning.”).

Mr. Floyd opined that the purpose of the 2023 Statute was to simply emphasize what DCA should have already known. [Trial Tr. 418] It cannot be presumed that the legislature was simply clarifying what it earlier intended. If the General Assembly intended to clarify that probable cause was required before a compliance review could be conducted, it could have said so. *See Hock RH, LLC v. S.C. Dep’t of Revenue*, 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018) (stating clarification of a statute cannot be presumed unless that intent is expressly stated). In the Act under consideration in *Hock RH*, the legislature had specifically stated its intent “to clarify” its earlier enactment. *Id.* at 215, 813 S.E.2d at 544. Here, the title of the amendment to the 2016 Statute states it is an act “to amend” section 37-2-307 “to require the closing fee to be prominently displayed with the advertised price, to require the fee be reasonable, and to specify the manner in which the Department of Consumer Affairs is to provide enforcement measures.” Act No. 45, 2023 S.C. Acts 184.

Furthermore, in 2024, during its comprehensive review of DCA, the South Carolina House Legislative Oversight Committee (“Committee”) specifically found the following:

Prior to the passage of [the 2023 Statute], ***DCA had statutory authority to access a vehicle dealer’s books, accounts, and records to determine if the dealer was in compliance with applicable state law.*** This ***broad authority*** and agency requests for records, deemed onerous and unnecessary by affected automobile dealers, created an acrimonious regulatory environment and relationship between DCA and automobile dealers.

[Def. Ex. 17] (emphasis added). Not only does the Committee agree with DCA’s statutory interpretation, but it also indicates that it believed this had been a problematic aspect of the statute,

as it led to an acrimonious environment. This is clear evidence the legislature was seeking to “fix” this issue by curtailing DCA’s powers with the 2023 Statute, rather than simply seeking to clarify the prior status quo. Moreover, Mr. Floyd would not have stated to the Committee that the 2023 Statute took care of 98 percent of SCADA’s concerns, if the statute’s amendment had not truly changed DCA’s previous statutory authority to conduct compliance reviews. [Trial Tr. 410] This statement begs the question: then what is the true purpose of SCADA’s lawsuit?<sup>8</sup>

The trial court failed to consider the Committee’s finding. Additionally, the court ignored a finding of the South Carolina Administrative Law Court (“ALC”) directly pertaining to dealer compliance reviews. When determining a matter brought by a dealer refusing to provide records, the ALC specifically found that DCA possessed “authority under the plain language of the closing fee statute [to] access[] books, accounts, and records for the purposes of determining compliance with that section.” [Def. Ex. 44] Such a finding reinforces the fact that DCA’s interpretations of its statutory authority to perform compliance reviews were rational and reasonable. By completely ignoring the legislative history of the 2023 Statute, the Committee’s findings, and the ALC order, the trial court erred in determining that DCA’s actions in enforcing the 2016 Statute through the compliance reviews was arbitrary and capricious.

### 3. DCA’S INTERPRETATION DOES NOT GIVE RISE TO ARBITRARINESS

Even if this Court finds that the trial court correctly interpreted the 2016 Statute, such a finding would not automatically equate to a finding of arbitrariness by DCA. South Carolina courts define an arbitrary decision as one “based alone on one’s will” and lacking any course of reasoning. *City of Charleston Hous. Auth. v. Brown*, 437 S.C. 514, 525, 878 S.E.2d 913, 919 (Ct. App. 2022). A disagreement over the interpretation of an ambiguous statute, by contrast, generally presents a

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<sup>8</sup> Mr. Floyd admitted that his concern was that DCA’s leadership had not changed. [Trial Tr. 394-395; 410-411]

question of law, not arbitrariness. Only where an agency’s interpretation is contrary to the plain language of a statute will it be found to be arbitrary. *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). The evidence in this case shows that DCA decided to perform compliance reviews based on its reasoned interpretation of the 2016 Statute. An agency’s decision is not arbitrary so long as it reflects some course of reasoning. *Brown*, 437 S.C. at 525, 878 S.E.2d at 919; *see also S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t Control*, 443 S.C. 80, 92, 901 S.E.2d 706, 713 (Ct. App. 2024).

A statutory interpretation crosses into arbitrariness when it effectively destroys the statute’s benefit and leaves the statute with no practical operation. *Torrence v. S.C. Dep’t of Corr.*, 433 S.C. 633, 650, 861 S.E.2d 36, 46 (Ct. App. 2021). DCA’s performance of compliance reviews did not destroy the statutory benefits to motor vehicle dealers of being able to charge closing fees—without being subject to suit under the Dealers Act—or leave the 2016 Statute with no practical operation. The only instances in which compliance reviews led to any suspension of a dealership’s ability to charge a closing fee was when a dealership wantonly refused to abide by DCA’s reasonable request for records. [Def. Ex. 16, 44, 60] This is certainly insufficient to claim that the statutory benefits of being able to charge closing fees had been destroyed. The trial court thwarted the consumer protection purpose and benefit of the statute, however, when narrowly construing its language to limit DCA’s regulatory oversight of dealers choosing to impose a closing fee. This Court recently noted the importance of a filing requirement when stating, “The purpose of filing a maximum rate schedule serves not only to inform consumers, **it triggers DCA’s oversight** of the lender, which is critical to assuring the SCCPC’s objectives of protecting consumers . . . .” *Cash Central*, 435 S.C. at 206, 865 S.E.2d at 796 (emphasis added). In that case, this Court upheld

DCA's interpretation of a statute governing the interest rates a lender could impose in the absence of filing its maximum annual percentage rate with DCA. *See* S.C. Code Ann. § 37-3-305 (1982).

The 2016 Statute clearly provided DCA with the authority to perform compliance reviews. However, even if the statute was found to be ambiguous, it was certainly not clear that such compliance reviews were not permitted, and such clarity would be required for DCA's interpretation of the statute to be arbitrary and capricious on its face. Moreover, as stated previously, the Legislative Oversight Committee supported DCA's interpretation of the statute granting broad authority for accessing dealer books, accounts, and records. [Def. Ex. 17] This finding is a persuasive indication that it was not clear that the 2016 Statute prohibited or did not permit DCA to pursue compliance reviews. Moreover, Mr. Floyd did not contest the Committee's finding regarding DCA's broad authority. [Trial Tr. 419]

South Carolina courts reserve declaring conduct to be arbitrary for extreme circumstances such as (1) ignoring clear physical evidence to blindly enforce a default policy, *Chisolm v. S.C. Dep't of Motor Vehicles*, 402 S.C. 593, 607, 741 S.E.2d 42, 50 (Ct. App. 2013); (2) failing to exercise legally required discretion, *Brown*, 437 S.C. at 525, 878 S.E.2d at 919; (3) entirely denying expenses without determining a reasonable amount, *In re Blue Granite Water Co.*, 434 S.C. 180, 862 S.E.2d 887 (2021); (4) changing rules to target a specific party, *Daufuskie Island Util. Co. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019); or (5) allowing bias to override evidence and continuously citing a party for non-existent violations, *Tennis v. S.C. Dep't of Soc. Servs.*, 355 S.C. 551, 585 S.E.2d 312 (Ct. App. 2003). None of these examples of outrageous conduct can be found in DCA's decision to initiate compliance reviews or in DCA's performance of the reviews.

For these reasons, the trial court erred in finding that DCA's interpretation of the 2016 Statute is irreconcilable with the statute giving DCA its general investigatory powers, and in finding that DCA's interpretation does not comport with a plain reading of the statutory language. [11/26/25 Ord. 25-26]. DCA's actions were not based on a whim. Instead, they were based upon a rational construction of the plain language of the 2016 Statute. This Court should reverse the trial court's conclusion that DCA interpreted the 2016 Statute in an arbitrary manner.

**B. The trial court erred in finding DCA's requests for documents exceeded what was permitted under the 2016 Statute.**

If this Court finds that DCA had no authority under any circumstances to conduct compliance reviews, there will be no need to analyze the mechanics of the compliance reviews. On the other hand, if compliance reviews were authorized by the statute, we now turn to the reviews themselves and the documents requested. The trial court found that the documents requested in the performance of the compliance reviews exceeded what was permitted by the 2016 Statute. This was error.

DCA was created by the Legislature and receives its power and authority through its enabling statute and any subsequent statutes for which the agency has been charged with administering and/or enforcing. *City of Rock Hill v. S.C. Dep't of Health and Envtl. Control*, 302 S.C.161, 165, 394 S.E.2d 327, 328 (1990). The powers delineated are either expressly granted by the statutes or inferred from the expressed authority. *Id.*, at 165, 394 S.E.2d at 328. The Legislature, recognizing a need for enhanced regulation of motor vehicle closing fees, enacted the 2016 Statute, subjecting dealers who chose to impose such fees to regulation by DCA. S.C. Code Ann. § 37-2-307 (2016).

DCA was given access to dealers' records to determine whether dealers are in compliance with "the subject of motor vehicle dealer closing fees[.]" S.C. Code Ann. § 37-2-307(E)(1).

Consequently, it would have been within DCA's reasonable authority and discretion to request any records relevant to determining compliance with the 2016 Statute. What this comes down to is the trial court's error in not recognizing the relevance of the requested documents.

DCA's approach and methodology for compliance reviews was rational and reasonable. Initially in the compliance review process, the investigators asked for buyer's orders from recently closed deals. [Trial Tr. 142] Then, the investigators would ask to see the advertisement for the vehicle in question to ensure that the advertised price correlated with the buyer's order. [Trial Tr. 142-143] As the process evolved, the investigators began to ask for a list of transactions from the past ninety days. *Id.* Thirty deals would be chosen from this list for further review. [Trial Tr. 144, 213-14] From these deals, the investigators typically requested four documents: the buyer's order, the advertisement, the pencil sheet, and the menu sheet. [Trial Tr. 144-145] DCA did not request entire deal jackets, which is the entire file concerning a closed deal. [Trial Tr. 144, 214-15] No evidence or testimony was offered at trial to contradict this testimony.

SCADA did not have any objection to DCA asking for and receiving buyer's orders or advertisements. SCADA challenges only DCA's request for pencil sheets and menu sheets. [Trial Tr. 367-69] In other words, this case boils down to whether the requests for pencil sheets and menu sheets were arbitrary and capricious. A menu sheet contains the pricing for items that a consumer can purchase along with the motor vehicle. The menu sheet was important for deciphering buyers' orders to ensure that none of the fees should have been included as part of the closing fee, and to confirm the numbers on the buyer's order were what they were stated to be, especially when abbreviations or limited descriptions were provided on the buyer's order. The pencil sheet was important for determining whether the negotiation started at the advertised price and whether the closing fee was included in the beginning number or was added in later after negotiations. [Trial

Tr. 145-148, 214-16, 247-48, 252; DCA Ex. 54] The investigators had rational, reasonable reasons for the document requests.

DCA conducted only 20 compliance reviews of motor vehicle dealers. DCA generally followed its same formula used for compliance reviews of other regulated industries. [Trial Tr. 229; 539–540] In most cases, DCA contacted the dealerships ahead of time to arrange an appointment and to request a list of deals. From that list, DCA would randomly pick deals to review. From those randomly chosen deals, DCA requested only the limited paperwork described above.

Profit information was requested from only three dealerships.<sup>9</sup> [Trial Tr. 597] The investigators initially believed that this information could help determine whether the salary percentage of certain employees applied to the closing fee was reasonable given the amount of time spent selling products on the back end. [Trial Tr. 597-599] The profit information was tied to the salaries of the personnel who were involved to some degree with closing a motor vehicle transaction but also performed other unrelated activities, including selling additional products. Both investigators explained how the number of products sold by a certain dealership employee could reflect a percentage of that employee's time spent doing job functions unrelated to closing a motor vehicle. [Trial Tr. 235-37, 268-69] Because the justification for a closing fee calculation in large part includes percentages of salaries of various dealer employees, it is logical that the investigators attempted to identify and quantify how such calculation could be considered. Mr. Middlebrooks testified that he decided to abandon that analysis when he determined it would be too difficult to quantify. Rather than any arbitrary action, this clearly shows DCA considered its options and made reasonable choices. The notion that DCA exceeded its statutory mandate simply

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<sup>9</sup> The trial court's order asserts DCA requested such information from nine dealerships, despite the undisputed testimony at trial that only three requests were made. [Motion for New Trial, p. 14].

because it requested information which later turned out to be unhelpful for a determination of closing fee compliance is patently absurd, particularly given that the documents related to closing fee compliance. Therefore, the trial court erred in finding that the documents requested by DCA exceeded what was permitted by the 2016 Statute. [11/26/25 Ord. 29].

The investigators were not seeking documents at their whim. When a few dealerships pushed back on DCA's requests, DCA's attorneys got involved and supported the investigators' requests. [Trial Tr. 199-204; DCA Ex. 54, 68] The attorneys' involvement and analysis shows that DCA's actions were far from arbitrary.

A finding that the 2016 Statute did not require DCA to have probable cause prior to conducting compliance reviews does not mean DCA had *carte blanche* to obtain any and all records, and DCA has never contended such. DCA has always recognized the 2016 Statute limited DCA's access to those records necessary to determine compliance with the statute. For example, there is no evidence DCA ever asked for a consumer's credit application. DCA clearly and rationally explained why it requested certain records such as pencil sheets and menu sheets in addition to buyer's orders and advertisements. The only purpose in accessing these records was to determine compliance with the 2016 Statute. The documents gathered in compliance reviews, just a step up from inspections, accomplished the purpose of such access and confirmed the existence of widespread closing fee violations. [Trial Tr. 91, 238-240, 551-52, 572-73] A court should defer to an agency's findings or interpretation unless there is a compelling reason to reject them. *Lexington Law Firm v. S.C. Dep't of Consumer Affairs*, 382 S.C. 580, 677 S.E.2d 591 (2009), citing *Faile v. S.C. Emp. Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) ("The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons."). SCADA has not presented a

sufficient reason to reject DCA's determination of what materials were necessary for its compliance reviews.

For the reasons stated herein, the trial court's conclusion that DCA acted arbitrarily and capriciously in its performance of closing fee compliance reviews is in error. [11/6/25 Ord. 26]. Thus, this Court should reverse the ruling.

**C. The trial court erred in finding that DCA's issuance of the February 2022 Memorandum was arbitrary and was not grounded upon any applicable statutory authority.**

DCA's Memorandum addressed the topics of adding extra fees to an advertised price, inflating official fees in a contract, and using MSRP for used cars. The only relief requested by SCADA in its Complaint was a declaration that DCA was not entitled to prohibit any dealer fee in a motor vehicle sales transaction unless the fee is specifically prohibited by law, or unless the fee has been unfairly or deceptively charged to the consumer. [Complaint] SCADA did not challenge DCA's statutory authority to issue the Memorandum at trial and this issue was not tried by consent, because it was not tried at all. By finding that DCA should not have issued the Memorandum in the first place, the trial court went far beyond SCADA's declaratory request that the Memorandum established arbitrary rules for dealerships to follow. Either way, there was nothing improper about issuing the Memorandum, and the opinions stated therein are not arbitrary.

DCA has a statutory duty to "counsel persons and groups on their rights and duties," S.C. Code Ann. § 37-6-104(1)(b), and "the administrator shall: . . . (f) undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services[.]" S.C. Code Ann. § 37-6-117(f); *see also* S.C. Code Ann. Regs. 28-3(G), (M). Read in conjunction with the duty to inform businesses of their rights and responsibilities under the law and ability to issue

opinions and statements, the General Assembly clearly empowered DCA to issue the Memorandum. *See Joiner v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (“[i]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.”). The Memorandum is a statutorily permitted vehicle that simply fulfills these duties by informing the auto dealer industry of DCA’s position on certain issues. It did not create new law or rules, or stand as a formal administrative interpretation, and there is no evidence the Memorandum was enforced against any dealer.<sup>10</sup>

SCADA did not present any substantive evidence at trial about the Memorandum or why any of the opinions were allegedly incorrect. SCADA entered the Memorandum into evidence, and Mr. Floyd testified, without explanation, that he did not agree with the contents of the Memorandum.<sup>11</sup> That is the sum total of the evidence entered at trial concerning the Memorandum. That is not evidence of arbitrariness. There was no evidence the Memorandum was ever enforced against any dealership. There was no evidence the Memorandum was used in any way other than as general, educational guidance by DCA. The Order unnecessarily throws into question DCA’s statutory duty to “counsel persons and groups on their rights and duties under [the Consumer Protection Code].” S.C. Code Ann. § 37-6-104(1)(b); *see also* S.C. Code Ann. Regs. 28-3(G), (M). It also questions DCA’s authority to issue opinions or statements, even though the law provides a safe harbor for businesses that rely upon such opinions or statements. *See* S.C. Code Ann. § 37-6-506(3). Despite this, the trial court simply adopted SCADA’s proposed order with facts that were

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<sup>10</sup> One of the underlying purposes of the SCCPC is “to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act;” S.C. Code Ann. § 37-1-102(f). It is notable that in March 2026, the Federal Trade Commission, issued warning letters nationwide to auto dealers citing several misleading and deceptive advertising practices, including issues DCA raised in the Memorandum. *Compare* DCA’s Memorandum with [https://www.ftc.gov/system/files/ftc\\_gov/pdf/AutoWarningLetter.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/AutoWarningLetter.pdf) (last visited 5/27/2026).

<sup>11</sup> Mr. Floyd testified only that dealers were concerned about the Memorandum, and it “seemed to create new law to us.” [Trial Tr. 282-84] This is as close as Mr. Floyd got to saying he disagreed with the Memorandum.

not elicited at trial and legal analysis that DCA had no opportunity to address. From a fundamental standpoint, DCA was deprived of a fair trial on this issue.

For example, the trial court declared it was improper for DCA to require a dealership to issue refunds of “title processing fees.” [11/6/25 Ord. 34] However, there was no evidence presented at trial about why these refunds were allegedly improper and no opportunity for DCA to address this issue. To reiterate, at trial, SCADA did nothing more than enter the Memorandum into evidence.<sup>12</sup> There was not one bit of evidence or testimony explaining or demonstrating why the contents of the Memorandum were unreasonable or arbitrary.

The Memorandum issued by DCA is no different from a functional standpoint from any other memo issued in the past by DCA. DCA issued memos to automobile dealers on May 24, 2016, June 6, 2016, December 12, 2017, and December 20, 2019. [Mot. To Amend, Ex. B] In the past, Mr. Floyd has also had no problem with contacting DCA to receive informal opinions that do not have any binding legal effect. As he testified at trial, “we utilize state agencies to tell us and advise the industry.” [Trial Tr. 448] Mr. Floyd even sent questions to DCA’s Administrator concerning advertising issues during the pendency of this suit. [See Def. Post-Trial Motion Exh. B]

The issuance of the Memorandum was not clearly prohibited by statute but instead was permitted or even mandated by DCA’s statutory duties. However, as mentioned previously, even if the statutory justification for issuing the Memorandum was ambiguous, this would prevent DCA’s issuance of the Memorandum from being arbitrary and capricious. An agency’s decision is not arbitrary so long as it reflects some course of reasoning. *Brown*, 437 S.C. at 525, 878 S.E.2d

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<sup>12</sup> SCADA treated this issue like it was at the summary judgment stage. [Trial Tr. 486-7] SCADA chose not to make any dispositive motions before trial. Thus, it was SCADA’s burden at trial to prove, with evidence, why the Memorandum was arbitrary. SCADA failed to do so. Non-suit should have been granted to DCA.

at 919; *see also* *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 443 S.C. 80, 92, 901 S.E.2d 706, 713 (Ct. App. 2024) (finding the agency and the ALC properly interpreted a statute to allow the issuance of coastal permits). Moreover, it was reasonable for DCA to believe that the contents of the Memorandum pertained to its statutory duties of education and counseling. The three primary issues covered in the Memorandum could all reasonably be considered as an impediment to honesty, fair business practices, and public responsibility, the precise values which the Administrator is mandated to encourage in businesses. S.C. Code Ann. § 37-6-104(1)(b).

If DCA had been given the opportunity to respond to the merits of any of the issues now adjudged by the trial court concerning the Memorandum, DCA would have pointed out that it was not attempting to “prohibit dealers from charging any fee other than a closing fee.” [11/6/25 Ord. 34]. Nor was the Memorandum demanding that businesses absorb certain costs of doing business.<sup>13</sup> The Memorandum clearly referred to a real-life situation involving a dealership’s effort to charge a consumer separately for a fee that arguably should have been part of the closing fee. DCA’s conclusion in the Memorandum was clearly not based on will alone without any reasoning or judgment. DCA’s conclusion in the Memorandum that “[a]ny costs for administrative work to transfer [title to] the vehicle, therefore, must be included in the dealer’s closing fee” is clearly and rationally based on the statutory definition of a closing fee. The trial court’s conclusion that a dealer can charge any fee separately in addition to a closing fee is in contradiction to the definition of a closing fee and also arguably contradicts the supreme court’s ruling in *Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 778 S.E.2d 902 (2015).

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<sup>13</sup> The Memorandum explicitly states that any processing fees “must be absorbed by the dealer or included in the dealer’s closing fee, which must be included in the advertised price.” [Pl. Ex. 2]

There is no evidence the Memorandum violates the *Deese, supra*, arbitrariness standard. The trial court's order puts DCA in the unenviable position of attempting to follow its statutory directives, including to "counsel persons and groups on their rights and duties, S.C. Code Ann. § 37-6-104(1)(b), in a way that does not cross over into rulemaking. The trial court's order goes too far. It is not supported by evidence or statute. Thus, this Court should reverse the ruling.

**D. The trial court erred in finding that the DCA's social media posts were an abuse of its statutory authority, and that these posts were otherwise arbitrary and capricious in character.**

In making the social media posts at issue in this case, DCA was relying upon its clear statutory mandate to educate and inform consumers. The SCCPC plainly states that "the administrator shall: initiate and encourage programs to inform consumers of market practices and schemes which are fraudulent, deceptive or illegal; how to detect and avoid abusive consumer transactions; and of remedies and relief available to consumers[.]" S.C. Code Ann. § 37-6-117(e) (2015). This is not some optional initiative, but rather a clear duty assigned to DCA.

During the COVID-19 pandemic, supply chain issues gripped the nation, leading to a rapid increase in motor vehicle costs. [Trial Tr. 44; 141; 205-206; 280-283] This was a natural result, but it provided an opportunity for unscrupulous dealers to add impermissible fees onto advertised prices. As an indication of how endemic violations truly were in the industry, nineteen of the twenty dealerships that received compliance reviews were found to have violated the 2016 Statute. These violations certainly qualify as being deceptive, illegal, and abusive, which are precisely the types of market practices that DCA has a mandate to educate consumers about. Therefore, DCA did not act arbitrarily in its social media postings. The posts are not prohibited by any clear terms of any statute. When the optics of the posts were questioned by the industry and by members of the

General Assembly, DCA removed the posts as a gesture of goodwill on or about February 27, 2023.  
[Trial Tr. 105]

Furthermore, it can hardly be argued that the social media posts were an exercise of DCA's will divorced from any logical consideration, when DCA was willing to remove the posts after it received complaints about them being too incendiary. It is manifestly unfair to argue that DCA accepting criticism and removing the posts which offended some members of the industry serves as evidence of arbitrary and capricious conduct. Thus, the trial court erred in finding that the Department's social media posts amounted to arbitrary and capricious conduct or otherwise exceeded its statutory authority. [11/6/25 Ord. 35]. This Court should reverse the trial court's ruling.

II. THE TRIAL COURT ERRED IN FINDING THIS MATTER WAS NOT RENDERED MOOT BY THE ENACTMENT OF THE 2023 STATUTE AND IN FINDING THERE WAS A JUSTICIABLE CONTROVERSY.

“Declaratory judgment actions must involve an actual, justiciable controversy that is ripe for determination.” *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 918 n.7 (1996). “The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing.” *Sloan v. Greenville Cnty.*, 356 S.C. 531, 547, 590 S.E.2d 338, 346 (Ct. App. 2003).

“Despite the [Declaratory Judgment] Act’s broad language, it has its limits.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). If the adjudication of a question “would settle no legal rights of the parties[,] [i]t would be only advisory and, therefore, beyond the intended purpose of a declaratory judgment.” *Power v. McNair*, 255 S.C. 150, 154-55, 177 S.E.2d 551, 553 (1970). “Questions of statutory interpretation, by themselves, do not rise to

the level of actual controversy.” *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013).

The questions raised in this action all deal with statutory interpretation in relation to DCA’s actions under a statute that was repealed in May 2023. The intervening legislative changes to the 2016 Statute rendered this case moot. “Under South Carolina law, an amended statute should be construed ‘as if the original statute had been repealed, and a new and independent Act in the amended form adopted.’” *State ex rel. Carter v. State*, 325 S.C. 204, 208, 481 S.E.2d 429, 431 (1997) (internal quotations omitted); *see also Peterson Outdoor Advert. Corp. v. Beaufort Cnty.*, 291 S.C. 533, 535, 354 S.E.2d 563, 564-65 (1987) (stating the general rule is that the repeal or amendment of a zoning ordinance during an appeal renders an appeal moot).

Courts should not pass on moot and academic questions or make an adjudication where there remains no actual controversy. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true *when some event occurs* making it impossible for [the] reviewing Court to grant effectual relief.” *Id.* (emphasis added).

DCA’s practices that are being challenged in this matter are based on a statute that no longer exists. Any ruling by this Court on past practices that are no longer possible would settle no legal rights of the parties. The trial court’s declaration about DCA’s past practices does not affect how DCA currently operates under the 2023 Statute, which changed DCA’s practices. [Des. Of Matter 11-13, 17]

If the legislative changes themselves weren’t enough, Mr. Floyd testified that the amendments “take[] care of 98% of our concerns” and that the 2023 Statute “largely addresses” issues dealing with reviews and investigations. [Def. Supp. Memo 8/11/23; 11/6/23 Memo Supp

SJ] This Court should find that this action is moot and there is no justiciable controversy concerning SCADA's request for declaratory relief under the 2016 Statute.<sup>14</sup>

III. THE TRIAL COURT ERRED IN FINDING SCADA HAD STANDING TO PURSUE ITS CLAIMS REGARDING THE MEMORANDUM AND DCA'S SOCIAL MEDIA ACTIVITY.

“A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing.” *Joseph v. S.C. Dep't of Labor, Licensing, and Regul.*, 417 S.C. 436, 449, 790 S.E.2d 763, 769 (2016). Standing is defined as “a personal stake in the subject matter of a lawsuit.” *Id.*

To possess standing, an organization, like SCADA, must alone have suffered a concrete, particularized injury, or at least one of its members must have suffered such an injury, and the other elements of associational standing must be satisfied. *Carnival Corp. v. Hist. Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014). A plaintiff must allege that “its members will suffer an individualized injury; a mere interest in a problem is not enough.” *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001).

SCADA did not show, by a preponderance of the evidence, that the social media activity actually caused a concrete and particularized injury to any member. SCADA presented no evidence that any dealer had been affected by the social media posts in any personal or individual way. Simply lumping all dealerships together, and alleging some general, overall harm to reputation does not satisfy the law's standard that requires a showing of a particular, individualized injury.

Likewise, SCADA lacks standing to bring any claim for declaratory relief concerning the Memorandum. SCADA did not show, by a preponderance of the evidence, that any dealership suffered a particular injury as a result of the issuance of the Memorandum. SCADA provided no testimony about the content in the Memorandum it disagreed with. More importantly, SCADA

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<sup>14</sup> As discussed earlier, *supra*, the general investigatory statute, § 37-6-106, did not apply to DCA's actions under the 2016 Statute and does not entitle SCADA to a declaratory judgment.

presented no evidence that any dealership was ever cited to be in violation of the Memorandum or that any penalties or fines were issued to any dealerships because of the Memorandum. SCADA's "mere interest" in the contents of the Memorandum does not show that SCADA or any of its members suffered an individualized injury.

#### IV. THE TRIAL COURT ERRED IN GRANTING SCADA'S REQUEST FOR ATTORNEY'S FEES.

In its Complaint, SCADA asked only for an "award of SCADA's costs pursuant to S.C. Code § 15-53-100, and for such other and further relief as the Court may deem just and proper." It was only after DCA opposed the attorney's fees request that SCADA took any action to assert its alleged right to attorney's fees. SCADA never raised the prospect of attorney's fees during the pendency of this case. Furthermore, the statutory justification relied on by the trial court does not support an award of attorney's fees. The trial court, therefore, made several errors of law in granting SCADA's request for attorney's fees, and this Court should reverse the ruling.

##### **A. The trial court erred in finding the South Carolina Declaratory Judgment Act (the "DJA") provides for the award of attorney's fees.**

"Determining the proper interpretation of a statute is a question of law, and [the appellate court] reviews questions of law de novo." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

The DJA provides, in a section entitled "Costs," that "the court may make such award of costs as may seem equitable and just." S.C. Code Ann. § 15-53-100. The trial court found the DJA has been interpreted to include attorney's fees as part of the costs that may be awarded in declaratory judgment actions. There has been no such interpretation, which may explain why SCADA did not plead its entitlement to attorney's fees in its Complaint at the onset of litigation.

The trial court misconstrues *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017). In *Lollis*, the parties entered into contracts for the purchase of land. The plaintiffs, the purported sellers, filed an action to declare them to be the owners of certain tracts of land. *Id.* at 476, 807 S.E.2d at 727. The defendants, the buyers, counterclaimed for (1) specific performance of the contracts; (2) damages for various tort causes of action; and (3) attorney’s fees and costs. *Id.*

Following a bench trial, the circuit court found the buyers had rights under the contracts of sale, effectively finding against the sellers on their declaratory judgment cause of action. *Id.* at 476, 807 S.E.2d at 728. The circuit court denied the buyers’ request for attorney’s fees. *Id.* The buyers appealed the denial of attorney’s fees. In their post-trial motion, the buyers presented three separate grounds for the award of attorney’s fees: (1) the Frivolous Civil Proceedings Sanctions Act, (2) Rule 37(c), SCRCPP, and (3) section 15-53-100 of the DJA. *Id.* at 486, 807 S.E.2d at 733.

On appeal, this Court remanded the matter “to the circuit court for consideration of the above three grounds for attorney’s fees and costs and for the required analysis of the underlying specific facts.” *Id.* at 489, 807 S.E.2d at 734. The Court made no interpretation of the DJA. The Court certainly did not go so far as to interpret the DJA to include attorney’s fees as part of the costs that may be awarded in a declaratory judgment action. The Court simply remanded the issue of attorney’s fees to the circuit court because the circuit court had not made the required analysis of **any** of the grounds for attorney’s fees and costs cited. *Id.* at 487, 807 S.E.2d at 733. There is no reasonable reading of *Lollis* that would lead one to believe the Court decided that the DJA allowed for the award of attorney’s fees, or that attorney’s fees are included within the spectrum of “costs” the DJA contemplates. The Court remanded the case back for a determination whether attorney’s fees and costs were appropriate under some, all, or none of the three cited potential grounds.

The other cases cited by the trial court also do not support its decision. *See Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978) (“No right to recover is here asserted under any statute. Appellant then must recover, if at all, upon some contractual right.”); *Cornelius v. Oconee Cnty.*, 369 S.C. 531, 633 S.E.2d 492 (2006) (awarding attorney’s fees in a declaratory judgment action pursuant to the State Action Statute, not pursuant to the DJA).

Because the DJA does not define attorney’s fees as “costs” and case law has not interpreted costs under the DJA to include attorney’s fees, the trial court erred in finding that SCADA was entitled to attorney’s fees under the DJA.

**B. The trial court abused its discretion in finding SCADA was entitled to attorney’s fees and costs pursuant to the State Action Statute.**

“The decision to award or deny attorneys’ fees under a state statute will not be disturbed on appeal absent an abuse of discretion.” *See TCC of Charleston, Inc. v. Concord & Cumberland, LLC*, 446 S.C. 202, 221, 918 S.E.2d 699, 709 (Ct. App. 2025) (quoting *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d. 439, 445 (2009)). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” *Id.*

The trial court abused its discretion when deciding to allow SCADA to recover attorney’s fees in this case. The “State Action Statute,” S.C. Code Ann. § 15-77-300, allows for an award of attorney’s fees to a party who prevails in a civil action contesting state action if: (1) the court finds that the agency acted without substantial justification *in pressing its claim against the party*; and (2) the court finds that there are no special circumstances that would make the award of attorney’s fees unjust. S.C. Code Ann. § 15-77-300(A) (emphasis added).

The term “substantial justification” in the context of attorney’s fees “does not mean ‘justified to a high degree,’ but rather ‘justified in substance or in the main’—that is, justified to a

degree that could satisfy a reasonable person.” *Heath v. Cnty. of Aiken*, 302 S.C. 178, 183, 394 S.E.2d 709, 712 (1990) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). The agency action to be examined for substantial justification is the agency’s action in “pressing its claim” in the litigation. See *McDowell v. S.C. Dep’t of Soc. Servs.*, 304 S.C. 539, 542, 405 S.E.2d 830, 833 (1991) (“We therefore look to the agency’s position in litigating this case to determine whether it is one which has a reasonable basis in law and fact.”).

Here, the trial court erred in applying the substantial justification standard to DCA’s complained-of actions that took place in 2022. [Or. at 12 (Feb. 12, 2026)] The trial court instead should have applied the standard to whether DCA was substantially justified in pressing its position in this litigation. *McDowell* is illustrative of this distinction. Initially, the agency denied a mother’s eligibility for food stamps due to a joint ownership interest in her son’s car. On appeal, this Court reversed the denial under the doctrine of a resulting trust. When the mother petitioned for attorney’s fees, the circuit court found she was not entitled to attorney’s fees for proceedings in the circuit court because the agency’s denial of food stamps was substantially justified. The supreme court reversed, ruling that because the agency relied on an erroneous legal conclusion based on “established South Carolina precedent,” its defense of the administrative decision lacked a reasonable basis in law and fact. *Id.* at 543, 405 S.E.2d at 833.

This case is distinguishable from *McDowell*. First, the trial court erroneously applied the substantial justification standard to DCA’s actions under the 2016 Statute prior to the Complaint being filed in this case. The trial court should have applied the substantial justification standard to DCA’s pressing of its claim in this litigation. In addition, there is no “established South Carolina precedent” concerning the 2016 Closing Fee Statute and its interpretation.

The trial court also erred in ignoring a significant provision of the State Action Statute, which provides, “The agency is *presumed to be substantially justified* in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.” S.C. Code Ann. § 15-77-300(A) (Supp. 2025) (emphasis added). The clear and unambiguous language in the 2016 Statute provided, “DCA *shall have access* to a motor vehicle dealer’s books, accounts, and records *to determine if the dealer is complying with the provisions of this section.*” S.C. Code Ann. § 37-2-307(E)(1) (emphasis added). DCA acted under this statutorily mandated authority to access a dealership’s records for the purpose of determining compliance with the statute, and the trial court should have applied the presumption of substantial justification. No court of competent jurisdiction has ever invalidated the 2016 Statute. Indeed, Judge Lenski acknowledged this clear and unambiguous authority in an order dated November 22, 2022, finding there was nothing “preventing DCA from exercising its authority under the plain language of the closing fee statute and accessing Fred Anderson’s books, accounts, and records for purposes of determining compliance with that section.” [Def Ex. 44] DCA, therefore, had a ruling from a court of competent jurisdiction that supported DCA’s position *only two months after* SCADA filed this litigation. That court decision evidenced that DCA’s reliance on the statutory language was “justified to a degree that could satisfy a reasonable person.”

DCA’s substantial justification was also endorsed by the House Legislative Oversight Committee when the Committee reported that DCA had “broad authority to access a vehicle dealer’s books, accounts, and records to determine if the dealer was in compliance with state law.” [Def. Ex. 17] Furthermore, DCA presented ample evidence of similar reviews it conducts of licensees in other industries. [Trial Tr. 228-31, 499, 512-13, 538-40, 575-78; Def. Ex. 84]. The evidence at trial also showed that DCA informed SCADA as early as 2017 that it reserved the right

to review books, accounts, and records to determine compliance with the 2016 Statute. [Def. Exh. 5]

Similarly, whether or not the trial court believed DCA's actions in publishing its Memorandum or its social media posts were substantially justified is immaterial. The trial court's analysis should have focused on whether DCA had substantial justification in pressing its position about the Memorandum and social media posts in this litigation.

Concerning the Memorandum, DCA has shown that it issued memoranda and opinions in the past, similar to the memorandum in question. [Def. Ex. 5]. DCA is authorized to "counsel persons and groups on their rights and duties under the [Consumer Protection Code]" and is required to "undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services" S.C. Code Ann. §§ 37-6-104(1)(b) and -117(f). These statutory provisions offer substantial justification for DCA's position in this litigation.

Regarding DCA's social media posts, DCA is well within its rights as a party to the litigation to press SCADA on its claims. Demanding that SCADA back its claims with evidence, rather than vague speculation and innuendo, is the essence of due process. In fact, the record supports DCA's litigation position on this matter because SCADA was unable to provide at trial any evidence of what, if any, harm befell its members related to DCA's social media posts. SCADA did not produce any witness dealers to testify about any harm they incurred due to the posts.

Though the trial court may have disagreed with DCA's legal position on the issues in this case, this does not mean DCA's position did not have a reasonable basis in law and fact. DCA,

therefore, requests this Court find it was substantially justified in pressing its claims in this litigation.<sup>15</sup>

If a trial court finds that an agency acted without substantial justification, the trial court then should evaluate whether there are special circumstances that would make an award of attorney's fees unjust. S.C. Code Ann. § 15-77-300(A)(2). The trial court's analysis on this element consists mainly of berating DCA's actions in conducting "warrantless searches" and concludes that a failure to award attorney's fees would be unjust. [2/12/26 Ord. 13] This is not the proper standard.

There is no benefit to the citizens of this state to support awarding the fees. The evidence at trial showed that DCA's actions were not taken at its employees' whim. DCA's actions were taken with the knowledge and input of DCA's staff attorneys. This would be a much different case if it was shown that employees were engaging in behavior without any supervision or without seeking legal advice. DCA's compliance reviews resulted in finding closing fee violations by 19 out of the 20 dealerships reviewed which resulted in money being refunded to consumers in South Carolina who had overpaid. DCA should not be punished for looking out for consumers in South Carolina and for engaging in its statutory mandate.

Special circumstances also exist in this case due to SCADA's significant delay in notifying DCA it would seek attorneys fees. SCADA never provided any indication, formal or informal, that it would pursue attorneys fees in this case. SCADA did not request attorney's fees in its filings, did not mention the possibility during any settlement discussions, and did not reference attorney's fees during the three days of trial. DCA, therefore, was deprived of any opportunity to consider attorney's fees as a factor in efforts to resolve the litigation before trial. [Supp. Memo. Dec. 22, 2025]

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<sup>15</sup> DCA did not "press" any claims. DCA was on the defense. Adopting SCADA's logic would mean DCA had no choice but to concede the issue entirely to avoid a finding that it lacked substantial justification.

This Court should reverse the trial court’s finding that attorney’s fees are allowed when considering all of the factors contained in subsection (A) of the State Action Statute. S.C. Code Ann. § 15-77-300(A).

**C. The trial court abused its discretion in finding SCADA’s attorney’s fees were reasonable.**

“[T]he specific amount of attorney[’s] fees awarded pursuant to a statute authorizing reasonable attorney[’s] fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *TCC of Charleston, Inc.*, 446 S.C. at 221, 918 S.E.2d at 709. “However, where the issues of the amount of attorney[’s] fees awarded depends on the [c]ourt’s interpretation of ‘reasonable’ attorney[’s] fees as contained in the [statute], the interpretation of the statute is a question of law that the [c]ourt reviews de novo.” *Id.* (quoting *S.C. Dep’t of Transp. v. Revels*, 411 S.C. 1, 8, 766 S.E.2d 700, 704 (2014)).

An award of attorney’s fees pursuant to the State Action Statute “must be limited to reasonable time expended at a reasonable rate.” S.C. Code Ann. § 15-77-300(B). “A ‘reasonable fee’ may well be less than the ‘going rate’ on the facts of a particular case.” *Prevatte v. Asbury Arms*, 302 S.C. 413, 418, 396 S.E.2d 642, 645 (Ct. App. 1990). “[T]he overriding benchmark for awards of attorneys’ fees under . . . the state action statute . . . is that attorneys’ fees must be ‘reasonable.’” *Layman v. State*, 376 S.C. 434, 455, 658 S.E.2d, 320, 331 (2008).

The State Action Statute includes a constellation of factors that must be shown and examined prior to awarding any fees. *See* S.C. Code Ann. § 15-77-300(B).<sup>16</sup> Moreover, the trial court “must make specific written findings regarding each factor listed” when making an award of attorney’s fees. *Revels*, 411 S.C. at 14, 766 S.E.2d at 706; *see also Horton v. Jasper Cnty. Sch.*

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<sup>16</sup> The factors in the State Action Statute, which were added in 2010, are similar to the six factors used in conducting a *Jackson* evaluation. *See Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

*Dist.*, 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018) (stating the trial court must “adequately explain [the award] with specific findings”). The trial court, however, did not make sufficient, specific findings regarding each factor.

SCADA’s attorneys’ hourly rates and time spent on the litigation are not reasonable and SCADA did not present sufficient evidence of these matters for the trial court to have properly considered the required factors. Therefore, no analysis can be made of whether the hourly rates and time spent “are reasonable given the professional standing of counsel and the nature of the case.” *See Layman*, 376 S.C. at 459, 658 S.E.2d at 333. One group of attorneys submitted their billed hours and their total billed fees, so that a determination can be made of hourly rates. Mr. Sheheen simply submitted the total amount of his fees with no itemization of time spent because he “does not bill clients on an hourly rate basis, but rather on a monthly retainer fee as full compensation for his experience, expertise, advice, and knowledge, and work on the matter.” [Pl. Reply Memo 12/8/2025 p. 8]

It appears that the attorneys with Haynesworth Sinkler Boyd, P.A. spent 917 hours on this litigation. By using the same hourly rate calculated for Mr. Becker (\$384/hour), it can be extrapolated that Mr. Sheheen billed approximately 598 hours. Mr. Becker claims he spent almost the exact amount of time on this matter (593.2 hours). However, for all we know, maybe Mr. Sheheen billed at a much higher rate. But this poses its own problems. To make a proper determination of a reasonable fee, the court must be able to compare Mr. Sheheen’s hourly rate with “the customary legal fees for similar services.” S.C. Code Ann. § 15-77-300(B)(5). The trial court’s order includes no analysis of this factor. In all, the attorneys for SCADA apparently expended 1,515 hours on this case and are claiming \$575,507 in attorney’s fees alone for this one litigation matter. This amount is far from reasonable. Hours that are not reasonably expended

should be excluded from a fee calculation. *Brawley v. Richland Cnty.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025). This would include “hours that are excessive, redundant, or otherwise unnecessary.” *Id.* at 95, 911 S.E.2d at 164, citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

According to Mr. Becker’s affidavit, 11 separate attorneys from his firm worked on this case. Together with Mr. Sheheen, 12 attorneys worked on this case. Only two attorneys showed up for any depositions or motions in this matter, but even that was redundant. Mr. Sheheen did not participate in any meaningful way in any substance of this case, until the trial. In fact, if DCA had not called Mr. Middlebrooks to the stand, Mr. Sheheen would have taken no part in the trial. SCADA took a total of two depositions in this case, which Mr. Sheheen did not attend. DCA took one deposition in this case, of SCADA’s executive vice president, which was attended by both Mr. Becker and Mr. Sheheen. Mr. Sheheen did not argue any motions. Mr. Sheheen did not sign any pleadings, motions, or related responses as the author of any of the papers. At the trial, Mr. Sheheen introduced himself as “outside corporate counsel.” He stated “Mr. Becker will be handling the trial today.” [Trial Tr. 4]

In justifying the award, the trial court concluded “DCA has no first-hand knowledge of the full measure of Mr. Sheheen’s contribution to the prosecution of this case.” [2/12/26 Ord. 14] This statement is breathtaking. On this point, neither did the trial court have any knowledge of Mr. Sheheen’s contributions. Mr. Sheheen untimely filed an affidavit in support of SCADA’s Motion for Award of Attorney’s Fees on November 26, 2025, with no explanation as to why the affidavit could not have been filed at the same time as the preceding motion that was filed on November 14, 2025, and no explanation of the required factors.

A trial court lacks jurisdiction to consider a post-trial motion for attorney’s fees after expiration of the 10-day period to file post-trial motions after entry of judgment. *In re Beard*, 359

S.C. 351, 597 S.E.2d 835 (Ct. App. 2004). By allowing SCADA to file Mr. Sheheen's affidavit to say all the things SCADA should have said in its motion, the trial court essentially allowed SCADA to file successive motions. A party filing a post-trial motion under Rules 52 or 59, SCRPC, must completely state all grounds and reasons for the motion. There is no provision made for a party to make a post-trial motion in a conclusory fashion and then to submit all of the parties' arguments at a later time. *See I'on, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (stating parties should raise all necessary issues and arguments to trial court and attempt to obtain a ruling).<sup>17</sup>

To make matters worse, Mr. Sheheen has not provided the amount of his monthly retainer and has not provided any measure of how much the monthly retainer was consumed with work on this case. Mr. Sheheen did not provide any itemization or estimate of his time spent on this case.<sup>18</sup>

Mr. Sheheen attested he "provided advice and counsel to [SCADA]." [Sheheen Aff. p. 1] This is not a proper itemization for the trial court to have determined if the fees were "limited to a reasonable time expended at a reasonable rate." S.C. Code Ann. § 15-77-300(B). Mr. Sheheen's request for attorney's fees should have been denied outright as Mr. Sheheen did not provide any meaningful basis for the trial court to apply the factors of "the time devoted" or "the customary legal fees for similar services." S.C. Code Ann. § 15-77-300(B).

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<sup>17</sup> For these reasons, DCA objected to the trial court's consideration of Mr. Sheheen's affidavit filed on November 26, 2025, and DCA moved to strike the affidavit and the tardy materials. This affidavit was filed 20 days after the trial court's order of judgment. There is no provision in the rules allowing a party to submit additional facts after the running of the 10-day post-trial deadline. For these reasons, the trial court erred in denying DCA's motion to strike and accepting these late-filed materials. [Mot. to Strike]

<sup>18</sup> Inexplicably, in a memo filed on December 8, 2025, SCADA stated in a footnote that Mr. Sheheen estimated he spent "more than 200 hours on this case" but "his exact billable hours are not tracked and can only be estimated." If this unsworn number is correct, Mr. Sheheen's hourly rate is \$1,150 per hour. Other than this amount being shocking on its face, it is not supported by any facts showing that this would be a customary fee for similar services. *See Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (stating the court must consider six factors when assessing attorney's fees, including the customary fees for similar services). The "nature, extent, and difficulty" of this case do not demand such a premium. *Id.*

It is hard to fathom how SCADA's attorneys expended over 1,500 hours on this matter. But without itemized time sheets, it is impossible to make the analysis required by the State Action Statute or by *Jackson*. "[A]ttorneys' fees assessed to a state agency may only be paid 'upon presentation of an itemized accounting of the attorney's fees.'" *Layman*, 376 S.C. 457, 658 S.E.2d at 332, quoting S.C. Code Ann. § 15-77-330. SCADA's attorneys did not properly provide an itemized accounting for the trial court's examination of the required factors to determine if the requested fee is reasonable. For example, there must be duplication in the amounts billed by the two principal attorneys, but it is impossible to tell without detailed time records. Nevertheless, the trial court accepted SCADA's scant time keeping records without reservation. Without itemized statements of the time billed by all professionals, there is no evidentiary basis for the trial court's determination that the fees are reasonable.

The nature, extent, and difficulty of the case do not support the exorbitant amount of fees awarded. This case involved one cause of action, and a very limited set of witnesses. In fact, in discovery, SCADA named only three witnesses, only one of whom was called at trial.

This matter was not complicated or difficult. It involved the interpretation of a statute for which SCADA had a large part in drafting. The Closing Fee Statute is not novel to Mr. Floyd or his counsel. In fact, Mr. Becker represented the dealership in the *Freeman* case and on appeal. There was not a learning curve. SCADA claims this was a "novel case" with "few legal precedents." Statutory construction is not a novel issue. If this case is truly novel with few legal precedents, this should counsel in favor of a finding that DCA did not act arbitrarily. DCA did not cross any bright line concerning any previous interpretation of the Closing Fee Statute.

By comparison, DCA's case was handled almost exclusively by one attorney. DCA's trial and appellate counsel billed 461 hours of professional time through October 31, 2025. The trial

court's order speculates that this figure is low, and the trial court takes DCA to task for "refusing" to provide information about the time spent by in-house lawyers. In addition to the rank speculation engaged in by the trial court, it was not DCA's burden on this issue.

SCADA has not made the proper showing of its entitlement to reasonable attorneys' fees. Nevertheless, the trial court, with minimal analysis of the necessary factors, awarded attorneys' fees to SCADA without any sound evidentiary basis.

The trial court's order concluded that SCADA's election not to pursue a trial on other issues should not have any effect on its status as a prevailing party. This is incorrect. SCADA did not prevail on claims that it did not pursue. The fees alleged by SCADA were incurred in pursuing all claims it alleged—until it chose to abandon several claims shortly before trial—and DCA had to defend against all the claims presented. For example, DCA's various dispositive motions included arguments for the dismissal of the claims that SCADA eventually abandoned. DCA had to conduct discovery and respond to discovery requests concerning the abandoned claims. Undoubtedly, part of the fees sought by SCADA involved pressing the abandoned claims and defending them against DCA's dispositive motions. The abandonment of certain claims should not be considered as prevailing on such claims. *See Brawley v. Richland Cnty.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025) (stating a reasonable fee award must include only reasonably expended hours and must be proportional to the degree of success obtained). There was no degree of success obtained by SCADA on its abandoned claims. Therefore, it was an error for the trial court not to consider SCADA's abandoned claims and their proportionality to the attorney's fees SCADA sought.

**D. The trial court abused its discretion in allowing SCADA to amend its Complaint after trial to plead the award of attorney's fees.**

"A motion to amend is addressed to the sound discretion of the [circuit court]," and its "finding will not be overturned on appeal without an abuse of discretion." *First South Bank v.*

*Rosenberg*, 418 S.C. 170, 185, 790 S.E.2d 919, 928 (Ct. App. 2016). As stated previously, SCADA did not mention attorneys fees until after the trial court issued the initial Order Granting Declaratory Judgment. And only after DCA opposed SCADA’s motion for attorney’s fees did SCADA take any action to assert its alleged right to attorney’s fees. Leave to amend “shall be freely given when justice so requires and [it] does not prejudice any other party.” Rule 15(a), SCRCP. Justice did not require an amendment and the proposed amendment is prejudicial to DCA.

SCADA claims that this “matter involved considerable work prior to filing the complaint.” [Pl. Reply Memo 12/8/25 p. 8] After all of this “considerable work,” SCADA concluded in the prayer of its Complaint that it would only request the repayment of its costs at the conclusion of the litigation. It can reasonably be assumed that someone, out of the twelve lawyers who worked on this file, would have noticed before the conclusion of trial that the Complaint did not seek attorney’s fees. It can also reasonably be assumed that someone, in drafting the Complaint, read the terms of the DJA and decided to ask only for an award of costs. This is not just an oversight; the Complaint was a lengthy, detailed dissertation of all things related to DCA’s actions, with a detailed recitation of all the injunctive and declaratory relief being sought by SCADA. All of this, but SCADA could not be troubled to give DCA notice that it would be seeking attorney’s fees.

In support of the court’s decision to allow SCADA to amend its Complaint to seek an award of attorney’s fees, the court concluded that DCA had sufficient notice of SCADA’s intent to seek attorney’s fees through the filing of a memorandum in support of SCADA’s April 12, 2023, motion to dismiss DCA’s counterclaim.<sup>19</sup> SCADA requested dismissal of the counterclaim and an “award [of] attorney’s fees and costs expended by SCADA in defending against” it. [2/12/26 Ord. 7] However, this is quite an assumption and affords wide deference to SCADA. SCADA’s request in

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<sup>19</sup> SCADA did not request attorney’s fees in its motion to dismiss the counterclaim. See Rule 7(b), SCRCP (motions shall state with particularity the grounds therefor and the relief sought).

its motion can more plausibly be understood as a request for attorney's fees related to its defense specifically against DCA's civil conspiracy counterclaim. If we are to believe it was SCADA's intent from that point in the case to seek attorney's fees for the entirety of the matter, it just as easily could have moved to amend its Complaint at that time.

The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried and a lack of opportunity to refute it. *Pool v. Pool*, 329 S.C. 324, 494 S.E.2d 820 (1998). DCA lacked notice and opportunity. If DCA had any notice that attorney's fees might be sought, its litigation position might have differed. DCA would have had the opportunity long ago to discuss or consider attorney's fees. The parties engaged in several months of settlement discussions and exchanged proposed consent orders, but SCADA never once mentioned any entitlement to attorney's fees. It was a nonissue for three years of litigation until surfacing in a post-judgment, post-trial motion.

While *Pool* states the general rule regarding the amendment of pleadings, it is not applicable to the present case. In *Pool*, the husband moved to amend his pleadings either before or during the trial, and evidence regarding the issues was admitted at the trial. *Pool*, 329 S.C. at 327, 494 S.E.2d at 822. *Pool* also recognized that amendments can be made to conform to proof, but SCADA did not allege any claims for attorney's fees. *Id.* at 328, 494 S.E.2d at 822.

Because SCADA never asserted any intent to seek an award of attorney's fees for the entirety of the case, and because it waited until after an order was issued, it was improper for the trial court to allow SCADA to amend its initial complaint to seek an award of attorney's fees. This Court should reverse the trial court's award of attorney's fees.

#### V. THE TRIAL COURT SHOULD HAVE GRANTED A NEW TRIAL.

Under Rule 59(a), SCRCF, a trial court may grant a new trial on the basis of judicial error, such as the improper admission of evidence. “On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.” Rule 59(a), SCRCF. On November 17, 2025, DCA moved for a new trial absolute on the basis of (1) the legal and factual errors made in the trial court’s judgment order, and (2) the following specific grounds, all of which materially prejudiced DCA and its right to a fair trial.

**A. The trial court erred in allowing the admission of complaint data and any evidence about DCA’s justification for compliance reviews.**

DCA stipulated at the outset of trial that it did not have a prior complaint against all the dealers that underwent a compliance review. DCA does not contend it had *carte blanche* to access a dealer’s records, but the 2016 Statute was all the justification needed by DCA to conduct compliance reviews. Nevertheless, SCADA engaged in great effort to call into question the “justification” for the compliance reviews.<sup>20</sup>

The complaint data was highly prejudicial to DCA and had no probative value. SCADA effectively used the complaint data to call into question whether DCA’s compliance reviews were justified. However, at the same time, SCADA argued that the compliance reviews could be done only if DCA had probable cause of a violation of the 2016 Statute. Which is it? If DCA needed and had probable cause, why would it also need a “steep” rise in complaints? On the other hand, if DCA had presented evidence of a steep rise in complaints, would this have done away with the necessity of probable cause?

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<sup>20</sup> SCADA moved to admit at least eleven exhibits at trial concerning DCA’s complaint data. DCA objected to the admission of these exhibits.

SCADA could have made its case without the complaint data. There was evidence of the manner of conducting the compliance reviews. Mr. Middlebrooks testified about why DCA began conducting compliance reviews. The complaint data did nothing to make the facts about how the compliance reviews were conducted any more or less probable. The mechanism of the compliance reviews was not highly contested. The complaint data did not make the facts concerning any aspect of the compliance reviews any more or less probable. *See* Rule 401, SCRE. The complaint data did nothing but confuse the issues in this case.

By admitting the complaint data, DCA was forced to try to explain its justification for the compliance reviews.<sup>21</sup> The trial court's conclusion that the 2016 Statute did not allow compliance reviews could have been reached without hearing any evidence of justification or complaint data. But once the trial court allowed the complaint data to come into play the trial became infected with issues that had no relation to the matters alleged in the Complaint. SCADA's admittedly effective parsing of the complaint data served no purpose in determining at trial whether DCA had authority under the 2016 Statute or whether the compliance reviews were arbitrarily conducted. For example, what relevance does complaint data have regarding whether DCA could have access to pencil sheets and menu sheets?

**B. The trial court erred in allowing the admission of evidence concerning the issuance of a subpoena by DCA.**

DCA should have been granted a new trial because the introduction of a subpoena was highly prejudicial and clearly influenced the trial court's decision as it devoted nearly two full pages of its Order to the issuance of the subpoena.

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<sup>21</sup> DCA clearly and repeatedly explained its justification. Multiple witnesses outlined the unusual sales challenges brought on by the pandemic and demonstrated that compliance reviews—rather than inspections or reasonableness reviews—were required to address them.

DCA filed a motion *in limine* to exclude any “testimony or evidence that [SCADA] was served with a subpoena for documents on or about May 26, 2022[.]” [Def. Mot. in Lim.] SCADA’s Complaint made no mention of the service of this subpoena and sought no declaration concerning the subpoena. Accordingly, **any** evidence regarding the subpoena was completely immaterial to DCA’s conduct regarding compliance reviews. The subpoena had nothing to do with statutory interpretation or the workings of the compliance reviews. Despite agreeing that the “issue in this case was the improper enforcement—arbitrary capricious [*sic*] enforcement of the statute,” the trial court denied DCA’s motion *in limine* to exclude evidence concerning the subpoena. [Trial Tr. 34] Immediately afterward, the court analogized the issuance of the subpoena with “prosecutorial vindictiveness.” *Id.* DCA renewed its objection during Mr. Floyd’s testimony about the subpoena.

The trial court placed undue emphasis on the irrelevant and highly prejudicial testimony regarding subpoena. Notably, this matter occupied the first two pages of the final order and constituted the only section personally drafted by the trial. Because this highly prejudicial information was uniquely featured, DCA is entitled to a new trial.

### CONCLUSION

Based on the foregoing discussion and analysis, DCA respectfully requests that this Court reverse the trial court’s orders finding in favor of SCADA on its claims for declaratory relief and the award of attorney’s fees.

Respectfully submitted,

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