

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge

C.A. No.: 2022-CP-40-05552
Appellate Case No: 2026-000357

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SC Court of Appeals

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

v.

South Carolina Department of Consumer AffairsAppellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly find that the South Carolina Department of Consumer Affairs (“Department”) exceeded its statutory authority with respect to the Department’s conduct in 2022 with respect to “Compliance Reviews” of South Carolina Automobile and Truck Dealers Association (“SCADA”) member dealers, a social media campaign directed at the automobile-dealer industry, and the Department’s February 18, 2022 Memorandum entitled “Misleading and Deceptive Motor Vehicle Dealer Practices”?
2. Did the circuit court correctly determine that SCADA could pursue its claims on behalf of its members and that a 2023 amendment to the Closing Fee Statute did not render this case moot?
3. Did the circuit court have discretion to award attorney’s fees to SCADA?
4. Did the circuit court correctly exercise its discretion in denying the Department’s motion for a new trial based on evidentiary arguments in this case that was tried without a jury?

STATEMENT OF THE CASE¹

On September 20, 2022, the South Carolina Automobile and Truck Dealers Association (“SCADA”) sued the South Carolina Department of Consumer Affairs (the “Department”) under the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to -140 (2005), seeking declarations that three categories of the Department’s 2022 conduct exceeded its statutory authority and were arbitrary and capricious: (1) the “compliance-review” investigations of twenty SCADA member dealerships for compliance with the Closing Fee Statute, S.C. Code Ann. § 37-2-307 (2016) (“2016 Closing Fee Statute”)²; (2) the Department’s February 18, 2022 Memorandum entitled “Misleading and Deceptive Motor Vehicle Dealer Practices” (“Memo”); and (3) the Department’s social-media campaign directed at the automobile-dealer industry. (Complaint, R. at ____). SCADA originally sought temporary injunctive relief to stop the complained of conduct, but this relief became unnecessary by the time of trial.³ (*Id.*). In addition, SCADA sought an award of costs pursuant to S.C. Code Ann. § 15-53-100. (*Id.*; 12/3/25 Motion, R. at ____).

¹ SCADA does not purport to discuss every filing made through the course of this litigation, but it would note that the Department filed fourteen motions with the circuit court over the pendency of this action. (Public Index, R. at ____). SCADA was required to respond to the vast majority of these motions and to prepare for and attend four hearings.

² The Closing Fee Statute was amended in 2023 after the commencement of this lawsuit. Act No. 45, 2023 S.C. Acts 184, 185 (effective May 16, 2023). The version of the statute at issue here is the 2016 version. Act No. 231, 2016 S.C. Acts 1558, 1559 (effective June 2016).

³ The Department ceased conducting the compliance review investigations in late 2022, and the General Assembly amended the 2016 Closing Fee Statute in 2023. For these reasons, injunctive relief became moot. At trial, SCADA “emphatically” clarified that it was no longer “seeking any prospective relief” as to the Closing Fee Statute. (Tr. 480:17-18, R. ____). Rather, SCADA specified that it was only “seeking declaratory relief about past conduct of the Department.” (*Id.* at 18-19, R. ____).

The Department answered on October 21, 2022, asserting as defenses that SCADA failed to state a claim and failed to exhaust administrative remedies. (Answer, R. at ____). The Department also included a counterclaim for civil conspiracy, alleging that SCADA conspired with its members to resist the Department's requests for information in connection with its reviews in 2022. (*Id.*). In its counterclaim, the Department made allegations about a meeting between SCADA representatives and Department officials on May 26, 2022, and a subpoena that the Department presented to SCADA during that meeting, which was attached. (Answer at ¶¶ 77-79, Subpoena, R. at ____). The Department filed an amended answer and counterclaim on November 16, 2022, adding a mootness/ standing defense. (Amended Answer, R. at ____). SCADA replied to the amended counterclaim on December 1, 2022.⁴ (Reply, R. at ____).

SCADA served basic discovery with its complaint on September 21, 2022, and served additional requests on October 13, 2022. (Motion to Compel, R. at ____). Deeming the Department's responses inadequate, SCADA moved to compel on February 10, 2023. (*Id.*). After a hearing, the circuit court granted portions of the motion by formal order dated May 12, 2023. (Order, R. at ____). Rather than complying with the order, the Department filed a motion to reconsider. (5/22/2023 Motion, R. at ____). SCADA filed a memorandum in response detailing that the Department had produced just eight pages in response to the requests about closing fee registrations and consumer complaints and Department audits/ investigations of motor vehicle dealers. (6/1/2023 Response, R. at ____). The circuit court denied the motion to reconsider by order dated June 5, 2023. (Order, R. at ____). Rather than producing any documents, the Department filed a petition for an extraordinary writ with the Supreme Court on June 26, 2023.

⁴ SCADA's motion to dismiss the counterclaim was granted on April 26, 2023. (Motion to Dismiss Counterclaim, Orders (Form 4 and Formal), R. at ____).

(Petition, R. at ____). After the parties completed the briefing on the petition, the Supreme Court denied it on September 13, 2023. (Order, R. at ____).

In the meantime, the Department moved for summary judgment on April 7, 2023, asserting that there was no evidence to support the declarations sought by SCADA. (Motion, R. at ____). SCADA responded, invoking Rule 56(f), SCRCP and outlining the Department's complete unwillingness to participate in discovery or comply with the court's discovery orders. (11/1/2023 Memorandum, R. at ____). As of November 1, 2023, the Department had produced a grand total of sixteen pages of documents. (*Id.*). The Department's summary judgment motion was denied as premature based on the Department's refusal to provide discovery on January 2, 2024.⁵ (Order, R. at ____).

The Department also moved to dismiss on June 9, 2023, based on standing arguments and its contention that the 2023 amendment to the 2016 Closing Fee Statute rendered this case moot. (Motion, R. at ____). The Department further sought a stay of discovery while the motion was pending. (*Id.*). After full briefing and a hearing, the circuit court denied the motion to dismiss by order dated September 25, 2023. (Order, R. at ____). In that order, the court found that the action was not rendered moot because of the amendment and that SCADA had adequately alleged standing. (*Id.*).

After this initial barrage of motions, the case was tried without a jury from October 8–10, 2025. After considering the evidence and the arguments of counsel, the court entered an order in SCADA's favor on November 6, 2025. (Order, R. at ____). The circuit court, having seen the evidence and heard the witnesses, determined that the Department acted arbitrarily and outside its

⁵ The Department filed a second motion for summary judgment on October 25, 2024, which was denied by order dated February 2, 2025. (Motion, Order, R. at ____).

statutory powers in its 2022 conduct targeting SCADA members. (*Id.*). Among other findings, the court ruled that the Department's testimony about the reason for its "invasive investigatory tactics" was not credible and that the Department retaliated against member dealerships that questioned the scope of the Department's investigations. (11/6/2025 Order at 4, 19-20, 21-24, R. at ____).

Both parties filed post-trial motions, SCADA for attorney's fees on November 14, 2025, (Motion, R. at ____), and the Department to alter or amend or for a new trial on November 17, 2025, (Motion, R. at ____). In its motion, the Department argued that the circuit court misconstrued the applicable statutes, erred in its interpretation of the word "arbitrary," erred in failing to find the action was moot or SCADA lacked standing, erred in its characterizations of the testimony and exhibits, and argued that it was entitled to a new trial based on the court's consideration of consumer complaint data and evidence of the May 26, 2022 meeting between SCADA and the Department and the subpoena presented at that meeting. (*Id.*). In connection with its request for attorney's fees, SCADA filed affidavits of counsel as well as a motion to amend its complaint to reflect the procedural history in this case and the case law surrounding attorney's fee awards in declaratory judgment actions. (Affidavits, 12/3/2025 Motion, R. at ____).

On February 12, 2026, the circuit court denied the Department's post-trial motions, granted SCADA's motion to amend, denied the Department's motion to strike SCADA's memorandum in support of its request for attorney's fees and an affidavit from Vincent A. Sheheen submitted in support, and awarded SCADA attorney's fees of \$575,751. (Order, R. ____). The Department appealed.

FACTS

SCADA is a South Carolina nonprofit association, organized in 1937, that represents the interests of manufacturer-franchised new car and truck dealers, with approximately 272 member

dealerships located throughout the state. (Tr. 271:5-8, R. at ____). For years, SCADA and the Department worked in tandem to educate dealerships on various consumer protection issues. (Tr. 310:14-311:2, R. at ____). Prior to 2022, when SCADA member dealers had a question regarding consumer protection practices, SCADA would meet and confer with the Department. (Tr. 310:14-17, R. at ____). The Department would similarly reach out to SCADA to raise issues it observed in the marketplace and discuss them with SCADA and its member dealers. (Tr. 310:17-24, R. at ____). That all changed beginning in 2022.

I. Administration of the 2016 Closing Fee Statute prior to 2022.

Between 2016 and early 2022, if a dealership charged a closing fee in excess of \$225.00, the dealership was required to submit written notice and an application to the Department. (Plf. Ex. 1, R. at ____). Upon receipt of the dealership's notice and application, the Department could but was not required to "review the amount of the closing fee for reasonableness using the criteria" set out by the Department (a "reasonableness review").⁶ (*Id.*; Tr. 125:4-24, R. at ____). Historically, a reasonableness review was limited to an examination of: (1) actual costs and expenses of closing activities; (2) costs of financial work needed to transfer the motor vehicle to the consumer and procure the closing of the motor vehicle transaction; (3) costs necessary to comply with all state, federal, and lender requirements; (4) costs associated with preparation and retrieval of documents; and (5) costs associated with retention and storage of documents. (Plf. Ex. 1; 123-125, R. at ____). Income and profit of the dealership was not part of the reasonableness review.

⁶ When the Department sought a reasonableness review, it was required to provide notice. (Plf. Ex. 1, R. ____). If no notice was given within 30 days of an application, the dealer was authorized to charge the requested closing fee. (*Id.*, R. at ____).

During a reasonableness review, which occurred before a dealership could charge its proposed closing fee, the Department could request: “all administrative costs, staff, supplies, materials, and financial work” required to procure the closing of the motor vehicle transaction, comply with all state, federal, and lender requirements, retrieval of documents, protection of private personal information of the consumer, and document retention and storage costs. (Plf. Ex. 1; Tr.122:3-124:24, R. at ____). Between November 2021 and February 2023, the Department conducted eighty-eight reasonableness reviews. (Plf. Ex. 1; Tr. 130:24-131:2, R. at ____). These reasonableness reviews were not the subject of this action.

The 2016 Closing Fee Statute also stated that the closing fee “must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.” (Def. Ex. 14, R. at ____). From 2016 to 2022, the Department conducted 398 “inspections” or “high level reviews” that were conducted on-site, either announced or unannounced, to check dealership compliance with these requirements. (Plf. Ex. 1; Tr. 131:3-132:10, R. at ____). In these inspections, the Department would check to see if the closing fee certificate was posted in a conspicuous place in the dealership premises, (Tr. 132:11-17, R. at ____), and review a sample of 8–10 buyers’ orders⁷ to confirm the closing fee listed on each buyer’s order matched the approved closing-fee amount, (Tr. 132: 18-23, R. at ____). An average inspection would last between 30-45 minutes. (Tr. 150:14-15, R. at ____). These inspections were expected and occurred with no complaints from dealerships. (Tr. 279:23-280:4, 361-10-11;17-19; 362:1-4, R. at ____).

⁷ A “buyer’s order” is the purchase and sale agreement for a new or used vehicle between the dealer and customer.

II. Administration of the Dealer Advertising Statute prior to 2022.

The General Assembly enacted South Carolina Code section 37-2-308 (2015) (“Dealer Advertising Statute”) to establish motor vehicle dealer advertising requirements and prohibitions related to motor vehicle sales and leases. (Tr. 81:25-82:7, R. ____). Prior to 2022, the Department enforced the Dealer Advertising Statute by receiving consumer complaints and sending letters to dealerships regarding advertising violations. (Tr. 82:17-83:4, R. ____). This practice of sending letters included enforcement of violations where the closing fee was allegedly excluded from the advertised price of the vehicle. (Tr. 83:5-13, R. ____). Since 2017, the Department had sent 1,424 dealer advertising letters and 412 requests for clarification, many of them focused on whether closing fees were properly included in dealer advertising. (Plf. Ex. 1 at 17; Tr. 275:10-24, R. at ____). Dealers that received these letters would then implement corrective actions. (Tr. 276:11-19, R. at ____).

III. The Department issues a memorandum regarding “Misleading and Deceptive Motor Vehicle Dealer Practices” and launches a social media campaign targeting motor vehicle dealerships in early 2022.

The Department’s conduct giving rise to this action began with the issuance of a February 18, 2022, memorandum regarding “Misleading and Deceptive Motor Vehicle Dealer Practices” (“Memo”), which presented the Department’s views on dealerships’ advertising and sales practices and its interpretation of the 2016 Closing Fee Statute. (Plf. Ex. 2, R. at ____). The Memo addressed adding fees to the advertised price, “inflating official fees,” and using MSRP for used cars—and declared, among other things, that title-processing fees are “prohibited” and must be absorbed by the dealer as a cost of doing business or included in the closing fee. (*Id.*; 11/6/25 Order 13–14, R. at ____).

Six days later, the Department launched a social media campaign “sounding the alarm” about alleged misleading and deceptive motor vehicle dealer practices, inviting complaints,

referring to “junk” fees, and using the hashtag #DontGetDuped. (Plf. Ex. 7; Tr. 101-105, R. at ____). There were twenty-seven motor vehicle related posts between February 24 and December 12, 2022, a 300% increase from the prior year. (Tr. 96:4-12, R. at ____). Shortly after appearing at a hearing before the South Carolina General Assembly’s House Legislative Oversight Committee on February 23, 2023, the Department deleted these posts. (Tr. 99:12-22, R. at ____).

IV. Basic reviews checking for reasonableness and documentation under the 2016 Closing Fee Statute become invasive Compliance Reviews seeking detailed, confidential financial information from member dealerships.

On March 2, 2022, the Department upended its prior review practices for closing fees and advertising matters due to a purported “uptick in complaints regarding motor vehicle dealers including closing fee and advertising related complaints,” which Deputy Administrator Roger Hall testified required the Department to begin conducting “Compliance Reviews.” (Tr. 75:14-18, R. at ____). All of the Department’s Compliance Reviews, twenty in total, were aimed at SCADA members.

As found by the circuit court, there was no uptick in closing fee complaints. In fact, the Department received nineteen total complaints against the twenty SCADA member dealers subjected to a Compliance Review between 2020 and 2021. (Plf. Ex. 3B; Tr. 301:12-18, 11/6/2025 Order, R. at ____). None of the nineteen complaints mention the word closing fee or complained of any fees. Instead, they primarily concerned complaints regarding vehicle repairs and all were resolved as “satisfied” or “adequate business response” prior to the commencement of the Compliance Reviews. (Plf. Ex. 3B; Tr. 304:23-305:7, R. at ____).

In its after-the-fact effort to justify the Compliance Reviews, the Department claimed that it could not investigate whether a dealership was “double dipping” by including a closing fee in the advertised price of a vehicle and then adding the closing fee as a separate line item on a buyer’s order without a Compliance Review, (Tr. 568:15-20, R. at ____), even though, prior to March

2022, the Department investigated closing fee complaints such as alleged “double dipping” by sending a letter to the Dealership in response to a consumer complaint, (Tr. 183:25-184:12, R. at ____).

The Compliance Review process involved, initially, an unannounced visit to the dealership by two Department employees, asking for a list of sales transactions for the last 90 days, thirty of which would be randomly selected for further scrutiny. (Tr. 142-148, R. at ____). For the thirty selected transactions, the Department would ask for the “pencil sheet,” the buyers’ order, the advertising, and the “menu sheet.”⁸ (Tr. 144:23-24; 148:2-6, R. at ____). An average Compliance Review lasted two to three hours and often involved interviewing dealership personnel in a manner that was disruptive to business. (Tr. 149:22-150:4; 587:4-9; 333:6-12, R. at ____).

In addition to requesting deal jackets, the Department requested information that it admitted it did not need to determine if a closing fee violation existed, such as “front-gross” and “back-gross” profit information. (Tr. 588-91, R. at ____). In total, the Department collected 182 pages of profit information from nine dealerships. (Plf. Ex. 20, R. at ____). When five dealerships declined to produce information they reasonably believed the statute did not require, the Department threatened penalties and revoked or threatened to revoke their closing-fee certificates—a sanction found nowhere in the statute—and forced one dealership to refund 603 customers a \$50 title-processing fee, totaling \$30,150. (11/6/25 Order 19–20, 34; Tr. 191-196, R. at ____). Several other dealerships were similarly coerced to make consumer refunds.

⁸ The “pencil sheet” is an industry term for a pricing worksheet used by car salespeople and managers during price negotiations. (Tr. 145:24-146:9, R. at ____). The “menu sheet” is a list of optional add-ons such as warranties and service contracts sold as part of the sales transaction. (Tr. 146:10-21, R. at ____).

In May 2022, Sims Floyd, SCADA’s executive vice president, met with the Department to discuss the new Compliance Reviews and the concerns raised by SCADA’s member dealers. (Tr. 310:9-311:20, R. at ____). SCADA attended the meeting in good faith to understand and offer to work with SCADA member dealers to correct any problems that the Department might have seen in the marketplace. (Tr. p. 312:16-313:10, R. at ____). The Department’s representatives, on the other hand, would not look Floyd in the eye, refused to provide any substantive information as to why the Compliance Reviews were initiated, and ultimately, served a subpoena on Floyd requesting, among other things, all communications with SCADA member dealers related to the Memo and the Compliance Reviews. (Plf. Ex. 11; Tr. 311:3-320:5, R. at ____).

V. The 2023 amendment to the Closing Fee Statute.

In May 2023, after the commencement of this action, the General Assembly amended the Closing Fee Statute. Act No. 45, 2023 S.C. Acts 185. The amendment narrowed the Department’s records access to “only . . . the extent necessary to determine the dealer’s compliance with the disclosure provisions” and the accuracy of cost information, and provided that the Department “may review or investigate a dealer upon receipt of a complaint or other credible evidence.” (Def. Ex. 15, App. A, R. at ____). These changes were made in direct response to the Department’s overreach beginning in 2022. (Def. Ex. 17 at 7, R. at ____).

ARGUMENTS

To appreciate the Department’s position over the course of this litigation and the evidence presented at trial, the Court need look no further than the Department’s opening statement: “[The Closing Fee Statute] gives [the Department] all the authority [it needs] to conduct Compliance Reviews, and [the Department] didn’t have to have any reason, cause, or complaint whatsoever to do so.” (Tr. 12:18–22, R. at ____). As found by the circuit court, however, the 2016 Closing Fee Statute does not authorize the Department’s warrantless investigations that gave rise to this action.

I. The circuit court correctly found that the Department exceeded the scope of its statutory authority and acted arbitrarily and capriciously in conducting the Compliance Reviews, issuing the Memo, and launching the social media campaign.

A. Standard of Review

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Felts v. Richland Cnty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). “Questions of statutory interpretation are ‘questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below.’” *S.C. Dep’t of Soc. Servs. v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018) (quoting *State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012)). To the extent this case is one of statutory interpretation, “dependent only on how the undisputed facts apply to the statute,” this standard of review will govern. *Comm’rs of Pub. Works of the City of Laurens v. City of Fountain Inn*, 428 S.C. 209, 219 n.4, 833 S.E.2d 834, 839 n.4 (2019).

Should the Court determine that there are disputed questions of fact, that review will follow the underlying relief sought in this case, which was declaratory and injunctive relief regarding the Department’s past conduct. As such, an equitable standard of review would apply. *Doe v. S. C. Med. Malpractice Liab. Joint Underwriting Ass’n*, 347 S.C. 642, 645-46, 557 S.E.2d 670, 672 (2001) (holding that since “main purpose” of action was for injunctive relief, the appellate court could take its own view of the facts). In “an action in equity,” this Court may find facts in accordance with its view of the preponderance of evidence. *Townes Assocs. Ltd. v. Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

This scope of review does not permit this Court to disregard the findings of the circuit court that saw and heard the witnesses and was in a better position to judge their credibility. *See, e.g., Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). “The credibility of testimony is a matter for the finder of fact to judge.” *S.C. Dep’t of Soc. Servs. v. Forrester*, 282

S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984). “In a bench trial, the judge, as the finder of fact, may believe all, some, or none of the testimony, even when it is not contradicted.” *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). As will be argued further below, the circuit court considered the applicable statutes, but also found the Department’s testimony as to the reasons for its actions was not credible. Those credibility determinations are entitled to deference on appeal.

Lastly, an agency decision is arbitrary “if it is without a rational basis, is based . . . 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. 1985) (citing *Hatcher v. S.C. Dist. Council of Assemblies of God, Inc.*, 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976), and *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943)). Conduct that is retaliatory or without statutory basis will be deemed arbitrary by South Carolina courts. *See Daufuskie Island Util. Co., Inc. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019) (reversing Public Service Commission order applying a heightened retaliatory standard of review). In other words, an agency’s actions are not entitled to deference and may be deemed arbitrary and capricious if they are found to be pretextual.

B. The Department’s regulatory authority and investigatory powers are fixed by statute.

1. The Department’s powers with respect to automobile dealers.

The Department is responsible for administering and enforcing the provisions of the South Carolina Consumer Protection Code (the “Code”), S.C. Code Ann. §§ 37-1-101 to -175 (2015 & Supp. 2025). The Code gives the Department regulatory authority over licensed motor vehicle dealers in two areas relevant here: (1) closing fees in motor vehicle sale or lease transactions

pursuant to the Closing Fee Statute; and (2) motor vehicle dealer advertising practices, S.C. Code Ann. §§ 37-2-304, -308 (2015).

In addition to these dealer specific statutes, the Department is authorized to conduct “investigations” as to acts that are “subject to action by the administrator” if there is probable cause, as follows:

If the administrator has ***probable cause*** to believe that a person has engaged in an act which is subject to action by the administrator, [s]he may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon [her] own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and ***require the production of any matter which is relevant to the investigation, including . . . documents, or other tangible things*** and the identity and location of persons having knowledge of relevant facts, or any other matter ***reasonably calculated to lead to the discovery of admissible evidence.***

S.C. Code Ann. § 37-6-106(1) (2015) (emphasis added). The language relating to the permissible scope of the investigation under this section mirrors that found in Rule 26(a), SCRCP. The provision is not a general right to investigate any matter at whim or to request information that is beyond the scope of the Department’s regulatory authority.

In addition, S.C. Code Ann. § 37-6-118(1) (2015), entitled “Investigation of unfair trade practices in consumer transactions,” states:

(1) ***Whenever the administrator receives a complaint*** against a person pertaining to any consumer transaction arising out of the production, promotion or sale of consumer goods and services, and:

(a) ***the person against whom the complaint is made fails to respond to a written inquiry*** made by the administrator concerning the complaint within the time limitation set forth in the inquiry; or

(b) the administrator has ***probable cause*** to believe that the person complained of has or is engaged in market practices or a course of conduct which is fraudulent, illegal, deceptive or unfair, the administrator may, subject to Section 37-6-105, conduct an

investigation of the complaint pursuant to Section 37-6-106 to determine if that person has engaged in such market practices or course of conduct.

(emphasis added). Again, this is not a general right to investigate. It is limited to matters where a complaint has been filed or where there is probable cause to suspect a violation, subject to the procedures in § 37-6-106.

2. The 2016 Closing Fee Statute.

The purchase of a motor vehicle is a highly regulated transaction, requiring significant work on the part of the dealer. These transactions may involve trade-in vehicles and liens on those vehicles, registration, financing, and titling of multiple vehicles, sometimes in multiple states, as well as retail installment financing to assist the consumer with purchasing the vehicle. Given this complexity, the 2016 Closing Fee Statute allows motor vehicle dealers to charge consumers a closing fee to recover the dealer's "closing activity" costs and expenses *i.e.*, the dealer's **costs** associated with the "administrative and financial work needed to transfer and deliver the motor vehicle to the consumer . . . including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs." S.C. Code Ann. § 37-2-307(B), (C)(3) (2016).

The statutory requirements for a dealer to charge a closing fee are (1) paying a registration fee (not to exceed \$25) and registering the fee with the Department each year on or before January 31, (2) including the closing fee in the advertised price of the motor vehicle, (3) disclosing the closing fee on the retail sales contract, and (4) displaying notice of the closing fee in a conspicuous location in the dealership. S.C. Code Ann. § 37-2-307(A) (2016). If a dealer seeks to charge a closing fee in excess of \$225, the dealer must submit an "Addendum" with the registration providing the following information regarding the dealer's closing activity costs: (1) an

explanation of the method used to calculate the proposed closing fee; (2) all supporting documents used in calculating the proposed closing fee; and (3) an analysis specifying the component amount of the proposed closing fee associated with each of the factors set forth in § 37-2-307(C)(3) (2016).

For registrations exceeding \$225, the Department “*may* review the amount of the [proposed] closing fee for reasonableness.” S.C. Code Ann. § 37-2-307(C)(1) (2016). The scope of the reasonableness review was limited to the following:

(3) In determining the reasonableness of a closing fee, the department ***shall allow*** the following items to be included in a reasonable closing fee:

- (a) ***all administrative expenses, costs, staff, supplies, materials, and financial work*** needed to transfer the motor vehicle to the consumer and to procure the closing of the motor vehicle transaction; . . .
- (b) to comply with all state, federal, and lender requirements; . . .
- (c) the preparation and retrieval of documents; . . .
- (d) the protection of the private personal information of the consumer; and . . .
- (e) records retention and storage costs of such records.

S.C. Code Ann. § 37-2-307(C)(3) (2016) (emphasis added).

To review a registration for reasonableness, the Department was required to notify the dealer in writing of its intent to conduct a formal review of the dealer’s proposed closing fee within thirty days of receipt of the application; otherwise, the dealer was allowed to charge the closing fee set forth in its registration. S.C. Code Ann. § 37-2-307 (2016). If the Department chose to conduct a reasonableness review and provided the requisite notice, “[t]he [D]epartment shall have access to a motor vehicle dealer’s books, accounts, and records ***to determine if the dealer is complying with the provisions*** of [the Closing Fee Statute], and this ***financial*** information must be kept confidential and privileged from disclosure, except as provided by law.” S.C. Code Ann. § 37-2-307(E) (2016) (emphasis added).

3. The Dealer Advertising Statute.

The Code also governs advertisements and statements “made in the course of soliciting for the sale or lease of a motor vehicle in a newspaper, magazine, or on radio, television, or the Internet.” S.C. Code Ann. § 37-2-308(A)(1). This code section prohibits advertising “in a manner that is false, deceptive, or misleading, or that misrepresents a vehicle offered for sale.” S.C. Code Ann. § 37-2-308(C). And it requires that “[d]iscounts or savings on the sale or lease of a new motor vehicle indicated in an advertisement must be those that are deducted from the Manufacturer’s Suggested Retail Price as stated on the Monroney Sticker.” S.C. Code Ann. § 37-2-308(D) (emphasis added). The Dealer Advertising Statute does not contain any provision that provides the Department with access to a dealer’s business information. Rather, it provides that “[p]enalties and hearing rights for violations of this section are governed by the provisions of Section 37-6-108.” S.C. Code Ann. § 37-2-308 (K). “Additionally, *the Department must send notices . . . to motor vehicle dealers* who have violated the provisions of Section 37-2-308 *by mail.*” S.C. Code Ann. § 37-6-108(F) (2015) (emphasis added). No such notices were sent regarding the events giving rise to SCADA’s complaint in this case.

C. The circuit court correctly construed the applicable provisions of the Code in ruling that the Department’s warrantless investigations without a complaint or probable cause exceeded the Department’s authority and were arbitrary and capricious.

An administrative agency’s “powers to investigate and elicit information are . . . derived from and limited by the authorizing statutes.” *Ex parte Allstate Ins.*, 248 S.C. 550, 563, 151 S.E.2d 849, 853 (1966). Courts have recognized the importance of maintaining the discretionary powers of governmental agencies while ensuring accountability through statutory and constitutional safeguards and generally do not interfere with an agency’s discretion to initiate investigations unless there is evidence of fraud, abuse of power, or unreasonable or capricious conduct. *Orr v.*

Clyburn, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982). This principle underscores the importance of adhering to statutory and procedural requirements in government investigations.

As a starting point when considering the statutes at issue here, “[t]he cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000). “Statute[s] must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction.” *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). In interpreting a statute, its language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Koenig v. South Carolina Dep’t of Pub. Safety*, 325 S.C. 400, 404, 480 S.E.2d 98, 99 (Ct.App.1996).

Against this backdrop, the 2016 Closing Fee Statute authorized access to a “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) (2016). The Department argued at trial that this language gives it permission to investigate any dealer, at any time, for any reason or for no reason at all. (Tr. 12:18–22, R. at ____). Contrary to the Department’s arguments, this section does not confer “broad powers,” but rather limits review to compliance with the Closing Fee Statute.

The Department avoids calling the closing fee “Compliance Reviews” what they really were—intrusive investigations amounting to a warrantless search. The United States and South Carolina Constitutions both protect the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” requiring warrants supported by probable cause (a reasonable belief that a crime or other violation of law has occurred, or such evidence exists) and describing the objects of the search with particularity. U.S. Const. amend.

IV; *see also*, S.C. Const. art. I, § 10 (protecting explicitly against “unreasonable invasions of privacy”).

The Department contends that its “Compliance Reviews” of motor vehicle dealers are similar to reviews conducted with respect to other industries that are subject to the Code. A review of the applicable Code provisions shows key differences between the statutes and regulations governing those industries and the 2016 Closing Fee Statute illustrating that there is less investigatory power under the Closing Fee Statute than under the provisions cited by the Department.

The 2016 Closing Fee Statute provided, “[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, and this financial information must be kept confidential and privileged from disclosure, except as provided by law.” S.C. Code Ann. § 37-2-307(E)(1) (2016). That is the entirety of the grant. The 2016 Closing Fee Statute did not mandate investigations at regular intervals. The provisions cited by the Department are contrasted below:

- **S.C. Code Ann. § 40-58-65 (Supp. 2025) (Mortgage Brokers).** The Department conveniently and selectively quotes from the statute and represents that “[t]he 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.” § 40-58-65(C). The Department’s brief fails to include the immediately following sentence, which states: ***“[u]nless there is reason to believe a violation of this chapter has occurred, examinations must be limited to one each year.”*** *Id.* (emphasis added). Read in full, the mortgage broker statute does the opposite of what the Department claims. It only allows the Department access to books, accounts, and records once a year ***unless*** there is reason to believe a violation of the Code has occurred.
- **S.C. Code Ann. § 40-39-90 (Supp. 2025) (Pawnbrokers).** The Pawnbroker statute mandates that a pawnbroker’s records ***“must at all reasonable times*** be open to the inspection” by the Department. § 40-39-90(A) (emphasis added). The Closing Fee Statute contains no similar language that a dealer’s books,

accounts, and records must be available to the Department *at all reasonable times*.

- **S.C. Code Ann. § 32-7-70(B) (Supp. 2025) (Preneed Funeral Contracts).** This statute directs that the Department “*may at any reasonable time and shall at least once every two years investigate the books, records, and accounts of each provider . . . and for that purpose may require the attendance of and examine under oath all persons whose testimony the department may require.*” § 32-7-70(B) (emphasis added). Like the Mortgage Broker Statute and the Pawnbroker Statute, two features distinguish it from the Closing Fee Statute. First, it commands a recurring investigation “at any reasonable time” or “at least once every two years.” Second, it confers the power to compel attendance and examine witnesses under oath. The Closing Fee Statute allows neither.
- **S.C. Code Ann. Regs. 28-600(L) (Supp. 2025) (Continuing Care Retirement Communities).** Here, the Department cites only to S.C. Code Ann. § 37-11-80 (2015) but, again, omits the operative regulation which states that the Department “*may at any time examine the records and affairs and inspect the physical property of any operator . . . whether in connection with a formal examination or not,*” and its agents may “have access to, and inspect and copy any records, *with or without advance notice.*” Regs. 28-600(L) (emphasis added).
- **S.C. Code Ann. Regs. 28-100(C)(1) (Supp. 2025) (Physical Fitness Centers).** Again, this provision compels open-ended, standing access to the physical fitness centers’ records. It requires that “*[a]ll books . . . and all other sources of information with regard to the business . . . at all reasonable times be available for inspection by the Department.*” Regs. 28-100(C)(1) (emphasis added). The sweep of that language stands in contrast to the Closing Fee Statute’s confined grant of “access” to a dealer’s “books, accounts, and records” for the single purpose of a reasonableness review.
- **S.C. Code Ann. §§ 37-17-40, 37-17-80 (2015) (Discount Medical Plans).** The Discount Medical Plans statute authorizes only targeted inquiry and adjudicatory enforcement. On registration with the Department, a Discount Medical Plan organization must supply an annual list of its marketers and representatives, and “the department may make inquiry on specific marketers or representatives on a case by case basis.” § 37-17-40(C). When the Department suspects a violation, its remedy is to “file a request for a contested case hearing with the Administrative Law Court” for a cease-and-desist or revocation order with penalties set by the administrative law judge. § 37-17-80(A-B). The Discount Medical Plans statute thus confers no roving investigatory power; if anything, it confirms that the General Assembly intentionally confers varying level of investigatory power depending on the industry at issue.

Unlike these statutes, the 2016 Closing Fee Statute lists factors that the Department *may* review when determining the reasonableness of a closing fee, which refer only to “administrative expenses” or other “costs” and “financial work” related to processing a vehicle sale. S.C. Code Ann. § 37-2-307(C)(3) (2016); *see also* S.C. Code Ann. § 37-2-307(C)(1) (2016) (“The department *may* review the amount of the closing fee for reasonableness using the criteria in item (3)” (emphasis added)).

The Department’s ability to access books, accounts, and records provided in § 37-2-307(E)(1) only applies during the Department’s review of a dealership’s proposed closing fee for reasonableness. The statute then permits the Department access to a dealership’s “books, accounts, and records” as part of that assessment. S.C. Code Ann. § 37-2-307(E)(1) (2016). That is the limit of the review as reflected in subsection E(1-2), which provide as follows:

(E)(1) The Department of Consumer Affairs shall administer and enforce the subject of motor vehicle dealer closing fees including, but not limited to, this section. . . . The 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**, and this financial information must be kept confidential and privileged from disclosure, except as provided by law.

(2) **If the department determines that a closing fee is not reasonable**, the department shall issue a written order detailing the department’s findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(emphasis added). Reading those provisions together, along with the entire statutory framework, clarifies that the Department’s access to books and records is discretionary and only for the Department to determine “if” the closing fee is reasonable during its reasonableness review. This construction is consistent with the Administrator’s December 12, 2017, memorandum to South

Carolina Motor Vehicle Dealers regarding the “Annual Filing of Motor Vehicle Closing Fees.” (Def. Ex. 5 at 3, R. at ____ (stating, “The Department relies on the accuracy and good faith of the information provided for closing fees in excess of \$225.00. ***We may, however, audit the dealer’s books, accounts, and records to verify the information provided with the filing and determine if the dealer is in compliance with the closing fee statute.***” (emphasis added))). Given this language, there was no justifiable reason for the Department’s Compliance Reviews.

When the Department undertook the Compliance Reviews, the Department had already reviewed and approved the twenty dealerships’ closing fees. Accordingly, the only information the Department needed to review to ensure compliance with the 2016 Closing Fee Statute was whether the closing fee certificate was in plain view, whether the closing fee was included in the advertised price, and whether the closing fee was included on the sales contract. To do this, the Department only needed to enter the dealership to view the closing certificate and obtain the advertised price and the sales contract for several deals. In fact, this was the closing fee “inspection” process the Department routinely followed prior to March 2022.

Nor were the Compliance Reviews authorized under the Department’s general investigative authority. The Department, through the Administrator, may investigate whether a “person has engaged in an act which is subject to action by the administrator,” provided there is ***probable cause*** to believe a violation of the Consumer Protection Code has occurred. S.C. Code Ann. § 37-6-106(1). To justify these warrantless investigations, the Department claimed an “uptick in reports and complaints related to vehicle-related advertising.” (Plf. Ex. 1 at 3, R. at ____). A review of the Department’s own data, however, established that the Department’s justification was purely pretextual as discussed in the Facts section above. Thus, the Department did not have probable cause to initiate any investigation of these twenty SCADA member dealerships.

This pretext is bolstered by the timing of the investigations, beginning shortly after the Department issued the Memo concerning deceptive and misleading sales tactics. The Memo makes it clear that the Department was not looking at Closing Fee Statute violations, but overall sales and advertising issues at dealerships. As set forth above, the Department may investigate a dealership for an alleged unfair or deceptive sales practice, *if it had a consumer complaint or other probable cause*. S.C. Code Ann. § 37-6-118. “[T]he Department must send notices . . . to *motor vehicle dealers* who have violated the provisions of Section 37-2-308 [the Dealer Advertising Statute] *by mail*.” S.C. Code Ann. § 37-6-108(F) (emphasis added). But lacking a complaint or probable cause, the Department decided to claim authority under the Closing Fee Statute instead and to conduct warrantless and unannounced investigations of advertising violations without sending letters. The circuit court, having reviewed the evidence and heard the witnesses, did not credit the Department’s explanations and determined they were purely pretextual. (11/6/2025 Order, R. at ____).

Moreover, when dealerships pushed back on the *scope* of information requested by the Department, the Department retaliated against the dealerships with various threats and sanctions for failing to provide the information. In doing so, the Department acted arbitrarily and capriciously and misused its authority under § 37-6-108(A). The Department’s threats to revoke, or actual revocation of, the dealerships’ closing fee permits lacks any basis in the Code. Each of the five dealerships submitted their notice to charge a closing fee to the Department, and the Department reviewed each dealership’s closing fee for reasonableness and *approved* the dealership’s closing fee permit based on their review. The Department does not have the authority to later revoke those permits to force the dealerships to produce information that does not pertain to compliance with the Closing Fee Statute.

The 2023 amendment to the Closing Fee Statute refutes the Department’s theory of its own authority. When the General Assembly amends a statute, the Court presumes that the Legislature intended to change the law, not merely to restate it. *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 157-58, 135 S.E.2d 841, 844 (1964). The Legislature’s very “act of amending the statute” thus “shows that a departure from the original law was intended.” *Cannon v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 371 S.C. 581, 584, 641 S.E.2d 429, 430 (2007).

That canon controls here. In 2023 the General Assembly amended subsection (E) of the Closing Fee Statute to state:

(E)(1)The department shall administer and enforce the subject of motor vehicle dealer closing fees as limited by this section. The department may make and promulgate such rules and regulations relating to motor vehicle dealer closing fees to administer and enforce this section. ***The department shall have access to a dealer’s records, but only to the extent necessary to determine the dealer’s compliance with the disclosure provisions of subsection (B)(2) and the accuracy of the dealer’s cost and expense information in subsection (C)(5),*** and this information must be kept confidential and privileged from disclosure, except as otherwise provided by law.

(2) In administering and enforcing this section, or for any other review or investigation of dealers, the department shall:

(a) promote education for consumers and best practices for dealers; and

(b) mediate complaints between a consumer and a dealer, whenever possible.

(3) The department may review or investigate a dealer upon receipt of a complaint or other credible evidence that the dealer has violated a provision of this section or a provision of this title related to closing fees.

S.C. Code Ann. § 37-2-307(E)(1-3) (Supp. 2025) (emphasis added).

In effect, had the Legislature originally intended the Department wield the investigatory powers it claims here, the Legislature would not have amended the Closing Fee Statute to curb the Department's conduct.

The Department contends that the South Carolina House Legislative Oversight Committee's 2024 Study Report "agrees" with the Department's statutory interpretation of the 2016 Closing Fee Statute as granting "broad authority for accessing dealer books, accounts, and records" and thereby confirming that its compliance-review investigations were permissible under the 2016 statute. The Report does no such thing.

First, the Report addresses a point that was never in dispute. The single sentence the Department relies on states only that, prior to the 2023 amendment, "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." (Def. Ex. 17 at 7, R. at ____). That is a paraphrase of the statutory text itself. SCADA does not dispute that the 2016 statute gave the Department access to a dealership's records to review closing fees for reasonableness. The contested question is different—whether that limited grant of authority extended to intrusive, warrantless "Compliance Review" investigations conducted without a consumer complaint or probable cause. The Report says nothing about probable cause, complaints, or the manner or scope of the Department's investigations. A finding that the Department had *some* access authority is not an endorsement of the *specific investigatory practices* the circuit court found unlawful.

Second, read in full, Finding 2 of the Report undercuts the Department's argument rather than supporting it. In that finding, the committee characterized the Department's exercise of that authority as "requests for records, deemed onerous and unnecessary by affected automobile dealers," which "created an acrimonious regulatory environment and relationship between DCA

and automobile dealers.” (Def. Ex. 17 at 7, R. at ____). The Report identifies “[c]omplaints of government overreach, onerous DCA inspection practices, and hostility towards the motor vehicle industry” as the conditions that “prompted legislative action.” (*Id.*) Far from ratifying the Department’s conduct, the Committee documents the precise dissatisfaction that led the General Assembly to curtail the Department’s practices and confirms that the resulting legislation “resolved 98% of [the industry’s] concerns.” (Tr. 410:19-25, R. at ____). That description aligns with, rather than contradicts, the circuit court’s finding that DCA acted arbitrarily and beyond its authority. (11/6/2025 Order, R. at ____).

In addition, a 2024 committee report is not competent evidence of what the 2016 General Assembly intended. The Study Report post-dates the 2016 statute, the 2022 conduct at issue, and the 2023 amendment. Under settled South Carolina law, the legislature’s subsequent acts cast no light on the intent of the legislature which enacted the statute being construed, and a statute will not be regarded as a legislative construction of an earlier statute unless it is clear and unequivocal that such was the intent of the legislature. *Home Health Servs., Inc. v. S.C. Dep’t of Health & Env’t Control*, 298 S.C. 258, 262 n.1, 379 S.E.2d 734, 736 n.1 (Ct. App. 1989). The Supreme Court has reaffirmed that principle and held that the statutory language itself “is the best guide to legislative intent.” *Whitner v. State*, 328 S.C. 1, 9, 492 S.E.2d 777, 781 (1997). Courts likewise “disregard the subsequently expressed opinions” concerning legislative intent and will not consider “post-passage statements” even where a provision is ambiguous. *Creswick v. Univ. of S.C.*, 434 S.C. 77, 83-84, 862 S.E.2d 706, 708 (2021).

In short, the Committee Report neither corroborates nor affirms the Department’s statutory interpretation. It merely restates an undisputed, but limited, grant of records access, describes the industry’s objections to the Department’s overreaching practices, and documents the legislative

correction of those practices. It provides no basis to disturb the circuit court's declaratory judgment.

D. The circuit court correctly found that the Memo was arbitrary and not grounded in any applicable statutory authority.

The Department contends the Memo was authorized by its duties to “counsel” and “encourage” businesses, S.C. Code Ann. §§ 37-6-104(1)(b), -117(f) (2015), and that its issuance was “not tried.” Both contentions fail. The issue was tried: the Memo was admitted, litigated, and addressed by the Department's own witnesses, and the circuit court expressly deemed the pleadings amended to conform to the evidence under Rule 15(b), SCRCp. (11/6/25 Order 36 n.11, R. at ____).

The Memo was neither a rule promulgated under the Code's rulemaking procedures, nor an administrative interpretation issued on request; the Department issued it *sua sponte*. (11/6/25 Order 31–32, R. at ____). A “[r]ule” is defined as “authorized by this title that applies generally and implements, interprets or prescribes law or policy.” S.C. Code Ann. § 37-6-402(5) (2015). To adopt a rule, the Department provides notice to the public and “afford[s] all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing.” S.C. Code Ann. § 37-6-404(1)(a-b) (2015). For substantive rules, the Code requires a “hearing must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members,” such as SCADA. S.C. Code Ann. § 37-6-404(1)(b). The Memo did not meet any of these requirements.

Nor is the Memo an administrative interpretation provided by the Department pursuant to S.C. Code Ann. Regs. 28-26 (2011), which allows “any person” to request that the Administrator “issue an administrative interpretation of any provision of the Code or any Rule or Regulation issued pursuant thereto.” The Memo was not issued at anyone's request, but rather at the whim of

the Department. As a result, the directives to motor vehicle dealers in the Memo had no binding legal effect.

The Memo did not purport to be for education only. Instead, its central aim was to bar dealers from charging a title-processing fee, an edict without statutory basis. Although the Closing Fee Statute permits a dealer to recover closing costs through a closing fee, nothing in the Code prohibits a separately disclosed fee. *See S.C. Dep't of Consumer Affs. v. Rent-A-Ctr., Inc.*, 345 S.C. 251, 254-56, 547 S.E.2d 881, 883-84 (Ct. App. 2001) (rejecting the argument that fees not specifically authorized are prohibited by negative implication). Declaring a lawful, disclosed fee “prohibited,” and ordering refunds, was arbitrary. *Deese*, 286 S.C. at 184-85, 332 S.E.2d at 541.

The Memo further purports to address using the MSRP in relation to advertising for used vehicles stating:

The Department is aware of dealers representing discounts on used vehicles as savings off of the MSRP. South Carolina law requires “[d]iscounts or savings on the sale or lease of a **new** motor vehicle indicated in an advertisement must be those that are deducted from the [MSRP] as stated on the Monroney Sticker.” Section 37-2-308(D) (emphasis added). MSRP, however, is not applicable to used cars and using MSRP to represent or advertise the value of a used vehicle is deceptive and misleading, a violation of Section 37-2-308(C). Further, advertising or representing to a consumer that the sales price reflects a discount or savings off of the MSRP is deceptive and misleading, a violation of Section 37-2-308(C).

(Plf. Ex. 2 at 4, R.____.)

SCADA’s executive vice president, Sims Floyd, testified at trial that in 2022, due to pandemic related shortages of vehicles and parts, many used vehicles were selling at MSRP. In addition, all used vehicles had an MSRP when new, and the MSRP of the vehicle could be important information to used car consumers. Furthermore, simply because the Dealer Advertising Statute requires discounts or savings on **new** vehicles to be indicated in a vehicle advertisement as a deduction from MSRP, does not mean that a similar method may not be utilized in advertisements

for used vehicles. This is especially true when subsection 37-2-308(F) of the same statute requires that “[w]hen the price of a motor vehicle is quoted, the advertisement must clearly identify the motor vehicle as new or used and include the make, model, and year” of the vehicle. S.C. Code Ann. § 37-2-308(F). As a result, the Department’s prohibition in the Memo against using the MSRP in relation to advertisements regarding used vehicles was not supported by the plain language of the statute.

In essence, the Department did not like what it was seeing with respect to new and used vehicle pricing after the pandemic, so it issued the Memo in hopes of avoiding the formal rulemaking process, which would have allowed for input by SCADA and its members and consumers. This was a clear overreach.

E. The circuit court correctly found that the social media campaign was an arbitrary abuse of statutory authority.

The General Assembly charged the Department with protecting the interests of consumers of this state and with “having due regard for the interests of legitimate and scrupulous creditors.” S.C. Code Ann. § 37-1-102(2)(d); S.C. Code Ann. Regs. 28-3(B) (2011). The Department’s consumer-education authority is not unbounded. The circuit court found that the Department abandoned that balance when after nine neutral posts in 2021, the Department published 27 derogatory posts in 2022—a 300% increase—branded the industry with the “#DontGetDuped” social media hashtag, solicited consumer complaints, and then deleted every post immediately after legislative scrutiny. (11/6/25 Order at 15, 35, R. at ____). The Department’s argument that deleting the posts shows reasoned judgment cuts the other way: the timing corroborates the circuit court’s finding of hostility and pretext.

The reputational injury caused to SCADA member dealers is palpably demonstrated from derogatory language used in the Department’s social media crusade. (Plf. Ex. 7, R. ____). For

example, “[the Department] thinks car buying junk fees belong in the trash;” “BUYING A CAR? BEWARE OF THESE MISLEADING AND DECEPTIVE PRACTICES: Inflating Official Fees in the Contract, Extra Fees Added onto the Advertised Price, Using MSRP for Used Cars;” “DON’T GET DUPED BY THE DEALER WHEN BUYING A CAR;” “[The Department] is sounding the alarm on several misleading and deceptive motor vehicle dealer practices.” (*Id.*) The Department’s campaign gives little regard to “scrupulous” dealerships and paints the entire automotive industry, including SCADA member dealers, as out to “dupe” or trick its customers.

II. This case presented an active, justiciable case or controversy, and SCADA had standing to bring this action to address the Department’s overreach with respect to the Memo and the individualized harm from the social media campaign and the warrantless investigations of its members.

“South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached.” *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 417-18, 498 S.E.2d 906, 908 (Ct. App. 1998). “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Peoples Fed. Sav. & Loan Ass’n of S.C. v. Res. Plan. Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) (internal citations omitted); *see also*, *Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) (holding the function of a court is “to decide actual controversies injuriously affecting the rights of some party to the litigation”). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.” *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (quoting *Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

Here, there was an active controversy about the Department’s past conduct and its power to investigate motor vehicle dealers. SCADA’s concerns about the Department’s administration of the statute were not negated by the 2023 amendments. Moreover, there was no change to the

Department’s authority to investigate motor vehicle dealers pursuant to its “investigatory powers” set forth in § 37-6-106(1), which was not amended. Thus, there was an active case or controversy to be adjudicated. SCADA seeks to protect its members from overreach by the Department in its administration of the Closing Fee Statute and the Dealer Advertising Statute.

The 2023 amendment did not moot SCADA’s challenge to the Department’s 2022 conduct. A defendant cannot moot a case “by repealing a challenged statute and replacing it with one that differs in some insignificant respect;” the controversy remains live where the change does not undo the plaintiff’s injury. *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 629–31, 767 S.E.2d 157, 162–63 (2014). More fundamentally, “interpretation of the law—and evaluation of the government’s acts pursuant to that law—are critical and necessary judicial functions,” not academic questions. *Abbeville*, 410 S.C. at 633, 767 S.E.2d at 164. SCADA sought declarations about the Department’s completed conduct and its continuing consequences—revoked certificates, coerced refunds, reputation smearing, and an industry-wide chilling effect—which a repeal cannot erase.

A declaratory plaintiff facing agency enforcement need not submit to sanctions before obtaining relief. *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 563, 463 S.E.2d 90, 91 (1995). Independently, the recurring nature of the Department’s investigative practices satisfies the exceptions for matters capable of repetition yet evading review and of important public interest. *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001).

The Department relies heavily on *Peterson Outdoor Advert. Corp. v. Beaufort Cnty.*, 291 S.C. 533, 354 S.E.2d 563 (1987). In *Peterson*, the relief requested by the plaintiff was prospective and sought a determination as to whether the ordinance violated the First Amendment. 291 S.C. at 534-35, 354 S.C. at 564. Here, SCADA did not seek, and the circuit court did not grant, any

prospective relief as to future conduct by the Department. (Tr. 480:16-20; R. ____). SCADA only sought declarations relating to the propriety of the Department's actions in 2022, based on the then applicable statutes. The 2023 amended Closing Fee Statute is not relevant to that analysis.

In addition, SCADA had standing to seek relief with respect to the Memo and the social media campaign. An association has standing when at least one member could sue individually, the interests are germane to its purpose, and neither the claim nor the relief requires individual member participation. *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 211, 845 S.E.2d 481, 486 (2020). Germaneness is "undemanding," and the third element is satisfied where the association seeks declaratory relief rather than member-specific damages. *Pres. Soc'y.*, 430 S.C. at 216-18, 845 S.E.2d at 488-91. Thus, the remaining issue is whether at least one member could sue individually. The Department boldly states that "SCADA 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."

To the contrary, the Memo arbitrarily declares that "[p]rocessing fees, if any, for tax, title, or the like must be absorbed by the dealer or included in the dealer's closing fee, which must be included in the advertised price." (Plf. Ex. 2, R. ____). At trial, SCADA entered the Department's Investigator Notes for the twenty SCADA member dealers subject to a Compliance Review into evidence. (Plf. Ex. 22, R. ____). These Notes reveal the individualized harm that each of the twenty dealers subjected to compliance reviews were forced to spend significant time and effort and suffer business interruptions to comply with the Department's improper investigative demands. Many were also forced to make questionable refunds to consumers.

In addition, the Memo arbitrarily declared that "MSRP is not applicable to used cars and using MSRP to represent or advertise the value of a used vehicle is deceptive and misleading . . .

[f]urther, advertising or representing to a consumer that the sales price reflects a discount or savings off the MSRP is deceptive and misleading.” (Plf. Ex. 2, R. ____). In its Investigator notes for Vaden Chevrolet Buick, the investigator found that “[t]he used car ‘pencils’ disclosed the savings for the used car from the MSRP which is a violation.” (Plf. Ex. 22, R.____; Def. Ex. 8, R.____). This shows that the Department was actively pursuing and investigating SCADA member dealers for the conduct it purported was barred by the Memo.

The General Assembly charged the Department with protecting the interests of consumers of this state and with “having due regard for the interests of legitimate and scrupulous creditors.” Regs. 28-3(B). Instead of maintaining due regard for the interests of legitimate and scrupulous automotive dealers, the Department initiated a social media crusade against SCADA member dealers. (Plf. Ex. 7, R. ____). The Department’s social media campaign gives little regard to “scrupulous” dealerships and paints the entire automotive industry, including SCADA member dealers, as out to “dupe” or trick its customers and equates all dealerships to scam artists and fraudsters, supporting a finding of a particularized harm as to the SCADA member dealers who were both subject of the social media posts and the Compliance Reviews and a generalized harm to dealerships statewide.

Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n, 407 S.C. 67, 753 S.E.2d 846 (2014), is distinguishable for the reason our Supreme Court gave in *Preservation Society*: the Carnival plaintiffs alleged only generalized public grievances and offered no evidence of individualized member harm. 430 S.C. at 214-15, 845 S.E.2d at 488-89. Here there is abundant evidence of individualized harm to SCADA member dealers, especially the twenty dealers subjected to Compliance Reviews.

Finally, should the Court have any doubt as to injury caused by the warrantless investigations, the Memo, and the social media campaign, the public-importance exception independently confers standing, because whether a state agency may conduct warrantless record sweeps and publicly disparage a regulated industry is a question of the legality of government action requiring “resolution for future guidance.” *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199–200, 669 S.E.2d 337, 341-42 (2008).

III. The circuit court acted within its discretion in making an award of attorney’s fees in this case, and the amount of the award directly reflects the lengths to which the Department resisted participating in discovery in this matter.

A. Standard of Review

The determination of the amount of attorney’s fees awarded pursuant to a statute is addressed to the sound discretion of the circuit court and will not be reversed absent an abuse of that discretion. *See, e.g., EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 621, 635 S.E.2d 922, 926 (Ct. App. 2006); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). “[A]n appellate court will not reverse an award [of attorney’s fees] unless it is based on an error of law or is without *any evidentiary support*.” *Williamson v. Middleton*, 374 S.C. 419, 427, 649 S.E.2d 57, 61 (Ct. App. 2007), *reversed on other grounds by Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d. 867 (2009). Moreover, “[b]ecause a [trial court] has close and intimate knowledge of the efforts expended and the value of the services rendered, the fee award must not be overturned unless it is clearly wrong.” *Harwood v. Am. Airlines, Inc.*, 37 F.4th 954, 960 (4th Cir. 2022) (quoting *Plyler v. Evatt*, 902 F.2d 273, 278 (4th Cir. 1990)).

B. The circuit court did not err in granting SCADA's motion to amend its complaint on the issue of attorney's fees given the notice to the Department and the Department's ability to respond.

As a threshold issue, SCADA moved to amend its complaint after trial to clarify the basis for its request for attorney's fees. (12/3/2025 Motion, R. at ____). The proposed amendment read as follows (additional language underlined):

WHEREFORE, Plaintiff prays that the Court find in its favor and render judgment declaring and ordering as requested above, for the award of SCADA's attorney's fees and costs pursuant to S.C. Code § 15-53-100, or any other applicable statute or rule providing for an award of attorney's fees, costs, or sanctions, and for such other and further relief as the Court may deem just and proper.

Under Rule 15, SCRPC, leave to amend "shall be given freely" in the absence of prejudice to another party. "Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge Ordinarily, amendments to conform to proof should be liberally allowed." *Ball v. Canadian Am. Express Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994).

The central inquiry when considering a motion to amend is whether the amendment will prejudice the opposing party. *Pool v. Pool*, 329 S.C. 324, 328, 494 S.E.2d 820, 822 (1998). This is true even if the request to amend is made at or after trial. *See Soil & Material Eng'rs, Inc. v. Folly Assocs.*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) ("Simply because an amendment to conform to proof was made late in the trial affords no basis for holding that the amendment comes too late. Rather, as the rule makes clear, the question is one of prejudice to the opposing party.").

In affirming the circuit court's decision to allow an amendment seeking attorney's fees, the *Pool* court stated:

[Defendant] has not shown any prejudice resulting from the judge's allowing the evidence or amendment. *See Ball*, 314 S.C. at 275, 442 S.E.2d at 622 ("Prejudice occurs when the amendment states a new

claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action”). . . . 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. *Folly Assocs.*, 293 S.C. at 501, 361 S.E.2d at 781 (Ct. App. 1987) (“In considering potential prejudice to the opposing party, the court should consider whether the opposing party has had the opportunity to prepare for the issue now being raised formally.”).

329 S.C. at 328-29, 494 S.E.2d at 822-23.

Here, the Department had adequate notice of SCADA’s intent to seek attorney’s fees and had a full opportunity to respond. As a general matter, costs, including attorney’s fees, are assessed following a judgment. Rule 54, SCRCP. Here, SCADA’s complaint included a demand for costs pursuant to the Declaratory Judgments Act and SCADA moved for costs and submitted an affidavit within the time allowed under Rule 54. (11/14/2025 Motion, R. at ____). The Department vigorously opposed the request. (Memorandum in Opposition, Motion to Strike, R. at ____). Thus, there was no prejudice and there was no abuse of discretion on the circuit court’s part in granting leave to amend.

In addition, the issue of fees was fairly included in SCADA’s original complaint. (Complaint, R. at ____). Section 15-53-100 of the Declaratory Judgments Act provides that “[i]n any proceeding under this chapter the court may make such award of costs as may seem equitable and just.” Prior case law suggests that this provision can serve as a basis for an award of attorney’s fees. *See, e.g., Lollis*, 421 S.C. at 486, 807 S.E.2d at 733 (identifying § 15-53-100 as one of three potential grounds for attorney’s fees and costs requiring analysis on remand, alongside the South Carolina Frivolous Civil Proceedings Sanctions Act and Rule 37(c), SCRCP); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978) (allowing recovery of attorney’s fees for the defense of an insurance coverage declaratory judgment action). This construction is bolstered by S.C. Code Ann. § 15-77-300(A) (Supp. 2025) (“State Action Statute”), which provides that a party

“contesting state action” who is “the prevailing party” may recover reasonable attorney’s fees, to be taxed as court costs, in the court’s discretion. The Department had further notice of SCADA’s intent to seek attorney’s fees through SCADA’s memorandum in support of its April 12, 2023 motion to dismiss the Department’s civil conspiracy counterclaim, in which SCADA specifically requested dismissal of the counterclaim and “award [of] attorney’s fees and costs expended by SCADA in defending against” it. (4/12/2023 Memorandum at 13, R. at ____).

Under these circumstances, the circuit court did not err in finding that there was not a “serious disadvantage” or “lack of opportunity to refute” the request for attorney’s fees. *Pool*, 329 S.C. at 328-29, 494 S.E.2d at 822-23; *see also Hardaway Concrete Co. v. Hall Contracting Corp.*, 374 S.C. 216, 227-28, 647 S.E.2d 488, 494 (Ct. App. 2007) (affirming order allowing amendment to seek attorney’s fees where the opposing party had notice, argued the issue, and presented relevant authority). As such, the circuit court was within its discretion in granting the motion to amend.

C. The circuit court’s attorney’s fee award represents an appropriate exercise of discretion and is supported by the law and the record.

The circuit court’s attorney’s fee award rests on two separate statutory provisions, S.C. Code Ann. § 15-53-100 and the State Action Statute, S.C. Code Ann. § 15-77-300. (2/12/2026 Order, R. at ____). After considering the applicable factors, the circuit court determined that an award was appropriate. In reaching this result, the circuit court stated:

The Court’s Order concludes in numerous places and in numerous ways that the Department’s reliance on the language of the Closing Fee Statute alone as the basis to conduct warrantless searches of motor vehicle dealers’ books, accounts, and records was not warranted under existing law and blatantly ignored other provisions of the Consumer Protection Code limiting the Department’s investigatory power and federal and state constitutional protections against unreasonable searches. The Court’s Order also found that the Department “arbitrarily and capriciously” conducted these “warrantless searches of dealer sales and advertising records

conducted as fishing expeditions seeking information that the Department could portray as misleading and deceptive practices” against motor vehicle dealers without any consumer complaint or probable cause The Department still refuses to admit wrongdoing for wantonly and systematically violating motor vehicle dealer’s constitutional and statutory rights to be free from unwarranted governmental searches. A *failure* to award attorney’s fees in response to this conduct would be unjust.

(*Id.*, R. at ____). In other words, the circuit court found that the Department’s steadfast insistence through trial that it could seek anything it wanted from SCADA’s member dealers at any time and “didn’t have to have any reason, cause, or complaint whatsoever to do so,” (Tr. 12:18–22, R. at ____), warranted a fee award under the facts and circumstances of this case. As such, the decision to award attorney’s fee should be affirmed. See *Cornelius v. Oconee Cnty.*, 369 S.C. 531, 539, 633 S.E.2d 492, 496 (2006) (rejecting the County’s argument that “attorney’s fees [were] improper” as the case was “merely a declaratory judgment action to define rights, duties, and obligations,” and an award of attorney’s fees was proper under § 15-77-300 where the County acted without substantial justification, and no special circumstances render the attorneys’ fee award unjust.)

1. The South Carolina Declaratory Judgment Act.

As discussed above, “in any proceeding under [the Declaratory Judgments Act] the court may make such award of costs as may seem equitable and just.” S.C. Code Ann. § 15-53-100. “Costs” has been applied to support a fee award in prior cases. *Lollis*, 421 S.C. at 489, 807 S.E.2d at 734 (“[W]e remand to the circuit court for consideration of the above three grounds for attorney’s fees and costs and for the required analyses of the underlying specific facts.”); see also *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 549-51, 243 S.E.2d 443, 444-45 (1978) (finding the circuit court erred in declining to award attorney’s fees to defendant insured in a declaratory judgment action brought by plaintiff insurer to avoid coverage under defendant’s policy, and remanding to

trial court for entry of award of fees to defendant insured); *State Auto Prop. & Cas. Ins. Co. v. Raynolds*, 357 S.C. 219, 226, 592 S.E.2d 633, 637 (2004) (stating “[i]t is well-settled in South Carolina that when a defendant insured prevails in a declaratory judgment action, the insured is entitled to recover attorney’s fees” and citing *Hegler*); *Marshall v. ISMIE Mut. Ins. Co.*, No. 2:24-CV-00223-DCN, 2024 WL 4495355, at *8 (D.S.C. Oct. 15, 2024), *motion to certify appeal denied*, No. 2:24-CV-00223-DCN, 2025 WL 92400 (D.S.C. Jan. 14, 2025).

2. The State Action Statute.

This statute provides:

In any civil action brought by . . . *any party who is contesting state action*, unless the prevailing party is the State or any political subdivision of the State, the court *may allow the prevailing party to recover reasonable attorney’s fees to be taxed as court costs against the appropriate agency 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).

SCADA is unquestionably the prevailing party as it prevailed in obtaining the requested declaratory relief on all three issues it pursued at trial. It further succeeded in getting the Department’s counterclaim dismissed early in this litigation.

For reasons that remain unknown to SCADA, the Department began a crusade against its member dealers in the spring of 2022. Despite statutory and constitutional protections that would apply to SCADA’s member dealers and the procedures in place for creating rules and regulations, the Department took the position that it could by Memo force dealers to absorb title registration fees rather than passing those along to customers, smear the industry as a whole through a social media campaign, and go on fishing expeditions through dealer books and records and retaliate

against dealers who asked questions. SCADA brought this action to stop this conduct and require the Department to operate within the confines of the Code.

Contrary to the argument in the Department's brief, the circuit court's order addressed the litigation positions of the Department in determining that there was a lack of substantial justification. (2/12/2026 Order at 11-13, R. at ____). When this action was brought, the Department filed a counterclaim alleging that SCADA and its dealers' opposition to its investigative actions was somehow a civil conspiracy. This counterclaim was dismissed because the Department is clearly not statutorily authorized to bring such a claim. (5/12/23 Order at 1-5, R. at ____). The Department fought every point and refused to concede an inch, filing motion after motion to avoid discovery and a determination on the merits. As the Department admitted in its Pretrial Brief, any "admissions of wrongdoing by the Department is a non-starter." (Pre-Trial Brief, R. at ____). All the Department was willing to do was "to stipulate that it ha[d] changed its practices, and that the activities undertaken in 2022 would not be authorized under the New Closing Fee Statute." (Dep't. Pre-trial Brief at 12, R. at ____). The Department continued to argue at trial: "[The Closing Fee Statute] gives [the Department] all the authority [it needs] to conduct Compliance Reviews, and [the Department] didn't have to have any reason, cause, or complaint whatsoever to do so." (Tr. 12:18-22, R. at ____). Given this conduct and the positions taken by the Department, the circuit court was within its discretion in finding that the Department acted without substantial justification.

In addition, the circuit court was within its discretion in finding that no special circumstances would make an award of attorney's fees unjust. As set forth in the circuit court's order, the Department targeted SCADA's member dealers and punished both SCADA and its members when they dared to ask questions. When SCADA sought judicial relief against these

overreaches, the Department fought it at every turn. The State Action Statute is designed to provide relief for parties, like SCADA, who seek to ensure that state actors operate within the limits of the law. Thus, the record supports the circuit court's finding.

3. The amount of the attorney's fee award is supported by the record.

The Department concedes that the amount of a statutory attorney's fee award is left to the discretion of the trial judge. Under the State Action Statute, courts consider the following factors:

(B) Attorney's fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

- (1) the nature, extent, and difficulty of the case;
- (2) the time devoted;
- (3) the professional standing of counsel;
- (4) the beneficial results obtained; and
- (5) the customary legal fees for similar services.

S.C. Code Ann. § 15-77-300(B). Here, SCADA submitted affidavits from its two law firms. With respect to Haynsworth Sinkler Boyd, P.A., SCADA presented an itemized list of hours and rates by timekeeper. (Affidavit, R. at ____). With respect to Vincent Sheheen, SCADA submitted an affidavit showing fees paid together with a description of the types of work performed, including regularly reviewing pleadings, motions, and memoranda during the case, consulting with co-counsel and the client regarding discovery and motion practice, settlement discussion, and assisting with depositions and trial preparation and strategy. (Affidavit, R. at ____). According to his affidavit, Sheheen 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.

The circuit court considered each of the applicable factors. (2/12/2026 Order at 13-18, R. at ____). Those findings are supported by the affidavits presented in support of SCADA's motion as well as the procedural history of this case. (Affidavits, R. at ____). Without question, SCADA achieved a beneficial result for its members. On the issue of reasonableness and customary legal fees, the circuit court's discussion of *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008) addresses those factors in light of the facts in the leading case on this issue, finding that SCADA's attorneys performed more work, in fewer hours, and at lower rates (without adjusting for inflation) than those upheld in *Layman* in 2008.

SCADA agrees that this case was expensive and that its attorneys were required to spend many hours preparing and bringing it to trial. That time and effort was, in large part, due to the tactics of the Department. As discussed in the Statement of the Case above, SCADA's attorneys spent months responding to the many motions and an interlocutory appeal filed by the Department in its efforts to avoid producing documents in this matter. The public index further illustrates the lengths to which the Department went to avoid a trial on the merits. Yes, a straightforward declaratory judgment action could have been resolved at minimal time and expense to the parties, but that is not how the Department chose to proceed. SCADA should not be penalized for its expenses incurred in responding to the Department's scorched earth strategy.

IV. The circuit court acted within its discretion in denying a new trial.

The Department contends it was entitled to a new trial based on the circuit court's consideration of complaint data and evidence relating to a subpoena presented by the Department to SCADA at a meeting in May 2022. "The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 88-89, 610 S.E.2d 852, 856 (Ct. App. 2005)

(quotation omitted); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 49, 691 S.E.2d 135, 149 (2010) (“Whether to grant a new trial is a matter within the discretion of the trial judge, and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law.”).

Evidentiary rulings are subject to an abuse of discretion standard and will only be reversed upon a showing of error and prejudice. *Crowley v. Spivey*, 285 S.C. 397, 410, 329 S.E.2d 774, 782 (Ct. App. 1985). In a bench trial, “[i]t is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence.” *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011).

Here, there has been no showing of error or prejudice. As reflected above, the Department’s reasons for taking the actions it did with respect to SCADA’s member dealers were relevant in determining whether those actions were authorized under the Code or whether those actions were arbitrary and capricious. The Department attempted to paint its own version of events and the justification for them, and SCADA was entitled to refute that story. The complaint data therefore went to motive and credibility and was relevant under Rule 401, SCRE.

The Department did not want the complaint data considered precisely because it showed that the Department’s explanation for why it undertook its crusade against SCADA’s members was pretextual. As such, it was highly probative as to SCADA’s claim. Evidence is not unfairly prejudicial merely because it is damaging. *State v. Dennis*, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013) (holding that “damage to a defendant’s case that results from the legitimate probative force of the evidence” does not result in unfair prejudice). Instead, the party asserting the claim must show that the evidence’s “probative value is *substantially outweighed* by the danger of unfair prejudice,” meaning “an undue tendency to suggest decision on an improper basis.” *State*

v. *Heath*, 433 S.C. 506, 514, 860 S.E.2d 673, 677 (Ct. App. 2021). Here, the Department’s concern is the probative value of the evidence. There is no suggestion that the evidence resulted in a “decision based on something other than legitimate probative force of evidence.” *State v. Phillips*, 430 S.C. 319, 328, 844 S.E.2d 651, 656 (2020). As such, there was no unfair prejudice of the type contemplated under Rule 403, SCRE.

With respect to the subpoena, the Department’s counterclaim included allegations about the May 2022 meeting and attached the subpoena. Thus, it was the Department that raised the subpoena first. By the time of trial, however, the Department had changed its tune. Again, the Department’s motivations with respect to the Compliance Reviews, the Memo, and the social media campaign were highly relevant on the issue of whether the conduct was arbitrary and capricious. As a result, evidence showing the Department’s vindictiveness, including the subpoena and testimony about the meeting, was relevant. Again, evidence is not unfairly prejudicial for purposes of Rule 403 simply because it is persuasive.

For these reasons, there is no basis for reversal as to either of these issues. The circuit court was well within its discretion in admitting the contested evidence in this bench trial and in denying the Department’s motion for a new trial.

CONCLUSION

After hearing the witnesses and reviewing the evidence, the circuit court agreed with SCADA that the Department’s conduct was an extreme overreach conducted outside the bounds of the Code to punish SCADA and its member dealers. The circuit court also found that the Department’s stated reasons for its investigations and departures from past practice, which it presented to the legislature in oversight hearings, were false and pretextual. The degree of the circuit court’s displeasure with the Department is on full display in the Order’s introduction, which states:

[G]overnment agencies work for the public benefit, and the pattern of actions by the agency through this time period were not based on a reasonable mission and were dependent on will alone. Just as any business who takes advantage of consumers here in South Carolina can expect the heavy hand of the law to swiftly correct any detrimental behavior, those same businesses can and should expect the heavy hand of the law to apply the law evenly, reasonably, and fairly to all.

(11/6/2025 Order at 2, R. at ____). For the reasons presented above, this matter should be affirmed in its entirety, and the Department should be placed on notice that this type of conduct will not be tolerated by the courts.

Respectfully submitted,

s/ James Y. Becker

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September 24, 2026