

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINTON COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No. 2013-002356

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Fritz Allen Timmons

Appellant.

v.

SCESC and Browns a/s RV and Campers

Respondent

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BRIEF OF APPELLANT

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SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ER BY NOT AWARDING APPEALENT BY DEFAULT ?
2. DID THE COURT ER BY CONDUCTING APPEAL HEARING ?
3. DID THE COURT VIOLATE APPEALANTS RIGHTS TO DUE PROCESS AND COMMIT PERJURY?
4. DID THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION VIOLATE STATE CODE AND COURT RULES?
5. CAN AN EMPLOYEE BE TERMINATED WITHOUT VERBALLY BEING TOLD THAT THEY ARE "FIRED" OR "TERMINATED"?
6. DO THE EMPLOYEES THAT WORKED UNDER THESE CONDITIONS REQUIERED TO BE PAID FOR THE OVERTIME AND NON-PRODUCTIVE WORKING HOURS?
7. DID BROWN'S RVS VIOLATE THE FAIR LABOR STANDARD ACT (FLSA) AND CODE OF FEDERAL REGULATIONS (CFR)?
8. WAS THE APPELANT TERMINATED, DID QUIT, OR IS STILL EMPLOYED BY BROWN'S RVS?
9. DID THE COURT SHOW BIAS BY RENDERING A DECISION WITHOUT EVIDENCE TO SUPPORT IT?

## STATEMENT OF THE CASE

In 2002 Brown's Rvs filed for bankruptcy

Prior to 2006 Brown's Rvs lost floor plans (loans) due to default payments and/or multi-floor plans on same campers.

In 2006 Brown's Rvs business was completely destroyed by fire under unknown circumstances while owners grandson was washing campers at night in parking lot of the business.

Between 2006 and 2009 Brown's Rvs manufacturing and supplier accounts was changed from credit to C.O.D. only accounts along with lawsuits due to default payments.

On Feb 12, 2009 technicians was informed of wage change from hourly pay wage to flat rate pay wage without overtime pay and threatened if did not accept change then browns would inform South Carolina Employment Security Commission (SCESC) that they had quit.

On March 4, 2009, technician pay wage was change, technician hourly pay was terminated, only technicians that had signed new contract of hire would continue to work.

On April , 2009, Testimonial hearing was held at SCESC, 1317 S. Fourth Street. Hartsville, SC, Unemployment benefits denied.

On June 16, Notice of appeal tribunal hearing

On July 1, 2009, Appeal tribunal hearing held, without representative nor letter from brown's Rvs, without Becky D Richardson (commissioner) being present for over half of the hearing and with J. William McLeod (Vise-Chairman) and McKinley Washington, Jr. (Chairman) both of which had uninterested attitudes and based denial of benefits upon South Carolina as being a Right to work state.

On July 24, 2009, Appeal filed with Darlington Cleark of Court.

On Aug 26, 2009, Motion to Dismiss filed

On Sep 2, 2009, Motion to Amend filed

On Nov 4, 2009, Motion to Dismiss hearing held (1<sup>st</sup>), denied due to no representation for SCESC nor Brown's Rvs, presiding Judge Baxley.

On Dec 30, 2009, Notice of 2<sup>nd</sup> Motion to Dismiss hearing.

On Jan 6, 2010, Notice of 2<sup>nd</sup> Motion to Dismiss hearing from SCESC, with Judge Burch presiding.

On April 21, 2011, Motion to Amend notice served

On May 25, 2011, Motion to Amend hearing without Brown's Rvs representation and with unknown judge (Judge Joe) presiding. Due to no decision filed from the Motion to Dismiss hearing (Jan 6, 2010), Judge Doe contacted Judge Burch as to decision of which led to the "motion under advisement" document filed on same day as Motion to Amend hearing.

On Jan 23, 2013, Notice as to status of case served

On Jan 28, 2013, Appellant contacted Darlington Clerk of Court Office as to waiting on Judge Burch's decision. Office personnel were to contact Burch's office.

On Feb 11, 2013, Recontacted Darlington Clerk of Court Office, still not response from Judge Burch's office.

Mid March 2013, Recontacted Darlington Clerk of Court Office, still not response from Judge Burch's office.

On Sep 10, 2013, Appeal case added to roster and served notice of.

On Sep 11, 2013, Motion to Amend order (signed by Judge Burch) filed with Darlington Clerk of Court Office, never served.

Oct 8, 2013, Appeal hearing held and denied without representatives for SCESC nor Brown's Rvs also without full record from SCESC.

On Oct 29, 2013, Appellant served Notice of Appeal.

On Nov 6, 2013, Appellant ordered Transcripts.

On Nov 18, 2013, Appellant served payment for Transcripts.

## ARGUMENTS

### I HEARING WAS HELD WITHOUT REPRESENTATION OF EITHER PARTY NOR COMPLETE RECORD TO SUPPORT SUBSTANTIAL EVIDENCE

With only the letter of transmittal(R p 6) without the record of the appellant tribunal' that violates SC code §1-23-320 (G1,2), (I), §1-23-380 (5a, d, e), and Rule 75, SCRCF (providing that the purpose of requiring a party to provide a record on appeal is to give the reviewing court the ability to decide whether the lower court erred in the respects alleged). Because substantial evidence exists in the record to support appellants appeal, the failure did not make the record sufficient to review whether the Commission's decision was supported by substantial evidence (McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 647 (Ct. App. 2006)) and without representatives by Browns a/s RV and Campers (Browns) or South Carolina Employment Security Commission (SCESC)(2009), aka South Carolina Department of Employment and Workforce (eff March 30, 2010), therefore the Appellant should have been awarded by default (§18-7-130, §18-7-140, §18-7-170, Rule 55, SCRCF). Thereby, Judge Baxley has violated Rule 501, 3B(2), SCACR (R p 4,5).

### II HEARING WAS HELD WITHOUT THE DECISION OF THE MOTION TO DISMISS HEARING, WITHOUT FULL RECORD, AND PLACED ON COURT ROSTER PRIOR TO A MOTION TO AMEND ORDER FILED

Without the decision filed from the 2<sup>nd</sup> motion to dismissed (R p 25,26), without Brown's representation, held on Jan. 20, 2010 with Paul M. Burch as presiding judge and added to roster on Sep. 10, 2013 (R p 29) prior to the motion to amend decision being filed on Sep 11, 2013 (R p 3). Without the full record of the SCESC on record (Wilson v. Am. Cas. Ins., 252 S.C. 393, 397, 166 S.E.2d 797, 798 (1969) ,(§1-23-380, McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 647 (Ct. App. 2006)) especially without the SCESC appeal tribunal hearing (also without Brown's representation or letter from) being a court of record and violating §41-35-720 (2009). Also the court did not have the decision on filed from the motion to amend hearing held on May 25, 2011(R p 27), without Brown's representation, with unknown judge (Judge Doe) presiding which was not Burch, Baxley, or Cottingham. Judge Doe could not render a decision due to the lack of decision by Judge Burch from the motion to dismiss hearing (Jan. 20, 2010) and Judge Doe contacted Judge Burch as to the situation of the motion to dismiss, thus obtaining the "motion under advisement" document (R p 2) signed by Judge Burch and filed on same day as the motion to amend hearing. Also with the motion to amend filed 7 calendar days after the motion to dismiss was filed, therefore, Rule 15(a),(d), SCRPC invalidates Rule 12(b), SCRPC, ipso facto, the court upon its own initiative should have, under Rule 12(f), SCRPC, stricken the motion to dismiss. The denial of the motion to dismiss also violates Rule 61, SCRPC in which states "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

III WITH THE APPEAL PROCESS BEGINNING ON , 2009 AND ENDING ON OCT. 8, 2013 DUE TO THE LACK OF DECISION FROM THE MOTION TO DISMISS HEARING ON JAN. 10, 2010 WITH JUDGE BURCH AS PRESIDING AND THE MOTION TO AMEND HEARING HELD ON MAY 25, 2011 AND DECISION (DENIED) SIGNED BY NON-PRESIDING JUDGE BURCH ON SEP 11, 2013

On May 4, 2009 A motion to dismissed hearing (presiding Judge Baxley) was held in which neither respondent had representation and the decision was granted to the appellant by default (R p 1).

A second motion to dismissed hearing was held on Jan. 20, 2010 (R p 26) with Judge Burch presiding and without representation by Browns in which no decision was given thereby an unnecessary and unreasonable delay was caused (State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986)). Judge Burch was contacted by Judge Doe on May 25, 2011 as to the motion to dismiss hearing (Jan.20, 2010) and again contacted in Jan of 2013 (R p 28) by Darlington Clerk of Court off with no response as of March 2013 and as to this day Judge Burch still has not rendered a decision for this motion to dismiss.

Although the commission itself had violated code §1-23-380 and Rule 75 , SCRPC without providing the full record to the court. On Sep 11, 2013 Judge Burch files a decision order (R p 3)(and without being served violating Rule 77,SCRPC ) denying a motion to amend although Judge Burch was not the presiding judge of the motion to amend hearing and did not hear the case, ipso facto, committing barratry (§16-17-10 (2b),

§16-17-735(A2),(B)). The case being based upon clerical error and Rule 61, SCRPC , also violating Rule 15 ; SCRPC , ipso facto, violating §8-1-60, §16-9-10(A2). With §41-35-740 (2009) stating “**The Commission shall be deemed to be a party to any judicial action** “ and the commission claiming they are not named as a party along with the “letter of transmittal of commission decision” (R p 6) being filed with the appeal cover sheet and the commission served, therefore was the commission a party to the case and if not then the commission did not have legal authority for a motion to dismiss nor be a party in the motion to amend. The letter of transmittal states “The petition must be filed in the court of common Pleas” thereby complying to the grounds in which the appeal is sought and with the statement “The commission ....must be named as defendants” thereby the commission has been named although not on the coversheet itself and along with being served by the clerk of court. Along with the above said and with Judge Baxley as supervisor over Judge Burch therefore Judge Baxley has committed Barratry (§16-17-10(2a)) and Conspiracy (§16-17-410) for the purpose of a shame legal process (§16-17-735(E3) to cover up the violations of Article I, Section 14 of the S.C. Constitution (S.C. Const. art. I, § 14), and the Sixth Amendment to the U.S. Constitution (U.S. Const. amend. VI) by Judge Burch.

#### IV SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION TOTALLY IGNORED COURT RULES, FEDERAL AND STATE CODES

With Brown’s Rvs statute clearly stating “There is no overtime pay”. “you will only be paid on time tickets” and “No pay for cleaning the shop--ever” (Strickland v. Strickland, 375 S.C. 76. 88-89, 650 SE 2d 465, 472 (2007)) clearly violating FLSA and

CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, §778.318 (R p. 17,18) (Lawson v. South Carolina Dep't of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000)), and with the appellant tribunal bound by the code of judicial conduct, therefore the members of the tribunal has violated , Rule 501, 3B(2),(5), SCACR (McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006)) And has committed Neglect of duty (§8-1-60), and Conspiracy (§16-17-410) (R p 7, 8, 21), and without providing the court a full record (Wilson v. Am. Cas. Ins., 252 S.C. 393, 397, 166 S.E.2d 797, 798 (1969)) violating §41-35-750 (2009) that states “With its answer the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision.”, “An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules” and “the findings of the commission as to the facts, if supported by evidence and in the absence of fraud,”.

V AN EMPLOYEE CAN BE TERMINATED WITHOUT VERBALLY BEING TOLD THAT THEY ARE “FIRED” OR “TERMINATED” BY BREACH OF CONTRACT OF HIRE

Due to the fact that both parties must agree for an agreement/contract to be amended, therefore only one party cannot amend but can only terminate the agreement/contract. When an employer violates code §41-27-230 (2009) by altering or termination without the employee's agreement does this constitute as quitting without cause as the SCESC process normally justifies it to be(R p 13, 21). Example; if an employer reduces an employee's normal working hours (30 to 40 per week) down to 4 to

8 hours per week thereby causing the employee to quit due to financial loss thereby not being eligible to receive unemployment benefits which is a common practice in South Carolina. In this case the Employer terminated the contract of hire in favor of a new one thereby violating code §41-27-230 (2009). Therefore when an employer terminates a contract of hire, the employer terminates the employee with or without written or verbally informing the employee of their termination, ispo facto, the employee becomes unemployed (§41-27-370(1) (2009)) without the employer verbally telling the employee that they are “**FIRE**D” or “**TERMINATED**” .

VI EMPLOYEES THAT HAS OR DOES WORK UNDER THESE CONDITIONS ARE REQUIERED TO BE PAID FOR THE OVERTIME AND NON-PRODUCTIVE WORKING HOURS PER FEDERAL AND STATE CODES

Due to the violations of the FLSA and CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, §778.318 (R p 19, 20) under which the employees of Browns Rvs are forced to work under (R p 17,18) constitutes a complete audit (§41-10-70) of the company for the maximum time aloud by law if not back to March 5, 2009 due to the violation of due process caused by the state (State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986)) and payment to the employees and ex-employees for all the wages not paid to them at three times the amount (§41-10-80C) along with interest due to the lack of a disclaimer, creates an implied contract of employment and wrongful termination (Lawson v. South Carolina Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000)).

**VII BROWN'S RV'S CONTRACT OF HIRE CLEARLY VIOLATES THE FAIR LABOR STANDARD ACT (FLSA) AND CODE OF FEDERAL REGULATIONS (CFR)**

As of March 5, 2009, Brown's terminated the contract/agreement under which the service technicians were employed under. In which if a technician was not to sign a new contract of hire (R p 17, 18), then the technician would no longer be employed by Browns Rvs. Due to the termination of hourly pay for the technicians, the technicians did not have an option to continue to work under hourly pay. The technicians was also threatened that if they did not sign the new contract of hire that Browns Rvs would tell the unemployment office that they had quit and if they had any customer information (phone number, address not private or confidential information) that the technicians would be hearing from Browns lawyers. The hourly pay termination without option thereby violates SC code §41-27-230 (1)(a) (2009), along with the new contract (R p 17, 18) that violates CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, §778.318. With the duties of a RV technician including but not limited to carpentry, plumbing. Electrical (12v DC, 120v and 220v AC), hydraulics, small appliance repair/installation, HVAC, small engine repair, ect.(R p 22, 23), thereby Browns is not immune to FLSA and CFR as to overtime wage, minimum wage, or non-productive hourly wage.

**VIII THE APPELANT WAS WRONGFULLY TERMINATED, QUIT WITH CAUSE, OR IS STILL EMPLOYED BY BROWN'S RVS**

As to being still employed, As to the standards of the unemployment agency's

practice that an employee is not fired/terminated unless the employer informs the employee orally or written that the employee is “fired” or “terminated”, then it also stands that an employee has not quit if the employee does not stated to the employer orally or written that the employee does in fact “quit”, ipso facto, the appellant was not terminated nor quit, therefore the appellant is still employed (§41-27-230(1) (2009)) by Brown’s Rvs. With an average work week of 53 hours, therefore due to the change of work policy, of which neither has a disclaimer (§41-1-110), that does not state “employee must be on premises” nor “must use time clock“ and does state “do not work on anything at any time without a time ticket and a work order” (R p 17, 18), therefore in accordance with CFR 778.223, 778.315, 778.316, 778.318, along with the pay scale increase to \$18 hour with no differential between productive and non-productive hours established, therefore back pay of wages from March 5, 2009 to present with interest (7.25%), approximately \$1,043,982.78 is owed. In accordance to §41-10-80 (C) (an amount equal to three times the full amount of the unpaid wages), therefore a total of \$3,131,948.34 in wages that Brown’s Rvs owes to the appellant.

As to being terminated, Brown’s terminated the contract of hire (§41-27-230 (2009)) in favor of a new contract of hire (R p 17, 18) and with no option to continue under the original hire of contract (§41-10-30 in which states “normal hours and wages **agreed upon**”, thereby causing the appellant to become unemployed (§41-27-370 (2009)) through wrongful termination and no fault by the appellant (Lawson v. South Carolina Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000) .

As to appellant quitting, with the new contract of hire (R p 17, 18)(§41-10-100) that directly violates CFR codes §778.223, §778.308, §778.311, §778.315, §778.316, and

§778.318 (R. p. 15, L 18-20, p. 14, L 8-9), in which Brown's is not immune due to the technicians duties include (R p 22, 23, 24) carpentry, electrician, plumbing, ect., therefore, violation of state and/or federal codes and/or regulations cause a "Quitting with good cause" to be implemented.

IX WITHOUT EVIDENCE OR ARGUMENT TO SUPPORT THE COURTS DECISION, THE COURT HAS SHOWN BIAS AGAINST THE APPELLANT

With the appellants statement "...if you did not agree to the new way they pay it, then you not longer work for them." (R p 9, L 7-9), "So under Title 41 -- states that employment is a contract, written or oral, and by terminating the contract -- which I was under for hourly -- to work by commission; therefore I was terminated and did not quit." (R p 9, L 10-13)(§41-27-230 (2009)) and "you'd have to sign the contract when they changed over to the commission part, which clearly stated that they do not pay overtime, which is a clear violation of federal law.."(R p 10, L2-5)(CFR §778.315). Therefore, With only a letter of transmittal and not the full record to base a decision on (R p 4, 5), violating §18-7-130, nor was there any representatives for Brown's Rvs or SCESC, what was the basis of Judge Baxley's decision and his statement "I do find that you did voluntarily quit because you refused to accept the new employment terms." (R p 11, L 24,25, p. 12, L1) and "I don't find a violation of federal law, which you have talked about, for overtime -- failure to pay overtime; nor do I find any other violation of state law." (R p 12, L4-6).

## CONCLUSION

The appellant was wrongfully dismissed from Brown's Rvs when Brown's change contract of hire of which new contract of hire (flat rate) violates State and Federal codes along with no option to continue to work under old contract of hire (average of 53 hours clock hours per week). The SCESC violated Stated codes and court rules by denying of benefits of appellant and not following state code or court rules in the appeal process. The SCESC decision and appeal decision was made with total disregard for state and federal codes. The state violated the appellants rights to due process while violating state code and court rules. Therefore the Brown's Rvs, SCESC along with the State has cause financial burden upon the appellant that forced the appellant to take a substandard part time job limited to 30 hours per week that prevented an appropriate job to be found along with a loss of substantial income.

Thereby the Appellant requests the following.

- 1) \$3,131,948.34 the equivalent to loss wages if continued to work for Brown's Rvs and accordance to State and Federal codes for non paid wages weather as to being considered as to being "Fired", "Quitting with Cause" or "Wrongfully Terminated".
- 2) The full investigation by South Carolina Department of Labor, Licensing

and Regulation and/or SLED and payment of owed wages to the employees and ex-employees in accordance to State and Federal codes

- 3) The Appellant also request the equivalent of lawyer fees for both appeals to the circuit and appeal courts to the total of \$2,408,155.08
  
- 4) Appellant also request charges and complaints to be filed with the appropriate authorities for each of the following persons along with the immediate suspension from their jobs and duties there of and without pay pending a full investigation.

**(A) Judge Paul Burch**

(A) §16-17-10 (2b), (B) §16-17-735(A2), (C) §16-17-735(B), (D) §16-17-735(E3), (E) S.C. Const. art. I, § 14, (F) U.S. Const. amend. VI, (G) Rule 15 , SCRCPP, (H) Rule 501, 3B(8), SCACR

**(B) Judge J. Michael Baxley**

(A) Rule 501, 3B(2), SCACR, (B) Rule 501, 3C(3), SCACR, (C) Rule 501, 3D(1), SCACR, (D) Rule 501, 3E(1a), SCACR , (E) Rule 61,SCRCPP, (F) §16-17-10(2a), (G) §16-17-410, (H) §16-17-735(E3)

**(C) The SCESC Tribunal (Becky D Richardson (commissioner), McKinley Washington, Jr. (Chairman), and J. William McLeod (Vice-Chairman))**

**(A) §1-23-320 (G1), (B) §1-23-320 (G2), (C) §1-23-320 (I), (D) §1-23-380, (E) §1-23-380 (5a), (F) §1-23-380 (5d), (G) §1-23-380 (5e), (H) §8-1-60, (I) §16-17-410, (J) §41-35-720 (2009), (K) §41-35-750 (2009), (L) Rule 75 , SCRPC, (M) Rule 501, 3B(2), SCACR, (N) Rule 501, 3B(5), SCACR**

**(D) Browns Rvs**

**(A) §778.223, (B) §778.308, (C) §778.311, (D) §778.315, (E) §778.316, (F) §778.318, (G) §41-27-230 (2009), (H) §41-27-230 (2009), (I) §41-27-230 (1)(a) (2009)**

July 1, 2014

Respectfully submitted,



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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

July 1, 2014



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINTON COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No.2013-002356

Fritz Allen Timmons

Appellant.

v.

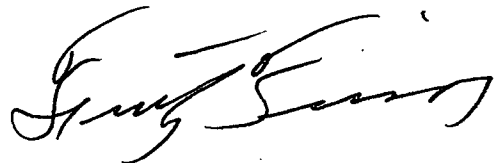
SCESC and Browns a/s RV and Campers

Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellants Final Briefs complies with Rule 211(b).

July 1, 2014



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DARLINTON COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No.2013-002356

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Fritz Allen Timmons

Appellant.

v.

SCESC and Browns a/s RV and Campers

Respondent

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PROOF OF SERVICE

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I certify that I have served the Appellants Final Brief on The South Carolina Employment Security Commission (aka South Carolina Department of Employment and Workforce) by depositing a copy of it in the United States Mail, postage prepaid, on July 2, 2014, addressed to the attorneys of record, Derrick McFarland. P. O. Box 8597, Columbia, SC 29202, and Browns A/S RV and Campers, Inc.(Pro Se), 30049 Hwy 151 McBee, SC 29101 in accordance to Rule 211a. SCACR.



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