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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SEP 14 2015

SC Court of Appeals

The Honorable DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2001-CP-40-04203  
Appellate Case No. 2014-001826

EDWIN M. SMITH, JR. .... APPELLANT,

vs.

DAVID FEDOR, ..... RESPONDENT.

**APPELLANT'S MOTION TO AMEND RECORD ON APPEAL  
AND FOR EXTENSION OF TIME TO FILE FINAL BRIEFS**

Pursuant to South Carolina Appellate Court Rules 212(b) and 263(b), Appellant Edwin M. Smith, Jr., at the request of counsel for Respondent David A. Fedor, moves to amend the Record on Appeal to remove three (3) pages from the previously filed Record on Appeal which Appellant filed and served on August 24, 2015. The three pages in the original Record on Appeal are pages 45, 68, and 89. Appellant with Respondent's consent<sup>1</sup> also moves herein for an extension of time to file the amended Record on Appeal and final briefs to allow the final briefs to reflect this Court's orders on the Record on Appeal.

<sup>1</sup> The consent of Respondent applies to the substance of the requested amendments to the Record on Appeal and the extension of the filing deadlines but does not necessarily apply to Appellant's explanation for the amendments recited in this Motion.

Page 45 in the original Record on Appeal is the July 3, 2013 cover letter of Appellant's trial counsel to the Lower Court submitting "Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate Judgment" with exhibits and the affidavit of James R. Gilreath, Esquire. The "Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate Judgment", its exhibits and the affidavit of James Gilreath are duly part of the Record on Appeal.<sup>2</sup> Appellant's undersigned counsel designated the "Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate Judgment" in his Designation of Matter to be Included in the Record on Appeal ("Designation") but inadvertently did not separately list the accompanying July 3, 2013 cover letter in the Designation. Respondent has requested that Appellant remove the July 3, 2013 cover letter from the Record on Appeal. Appellant would submit that the information contained in the July 3, 2013 cover letter is contained elsewhere in the Record on Appeal, though not as succinctly.<sup>3</sup> Appellant thus consents and requests removal of the July 3, 2013 cover letter currently found at page 45 in the original Record on Appeal.

Page 68 in the original Record on Appeal is the September 25, 2013 cover letter of Appellant's trial counsel to the Lower Court submitting "Plaintiff's Memorandum in Support of Entering Settlement Agreement into Evidence." The "Plaintiff's Memorandum in Support of Entering Settlement Agreement into Evidence" is duly part of the Record on Appeal. Appellant's undersigned counsel designated the "Plaintiff's Memorandum in Support of Entering Settlement Agreement into Evidence" in his Designation but

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<sup>2</sup> Respondent previously moved to exclude Exhibit A to the "Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate" – *i.e.*, the Confidential Settlement Agreement – from the Record on Appeal. This Court however denied the motion to exclude the Confidential Settlement Agreement by order filed April 2, 2015.

<sup>3</sup> See Trial Tr. p. 9, lines 8-16 and p. 10, line 23–p. 11, line 1 (R. p. 26, lines 8-16 and p. 27, line 23–p. 28, line 1).

inadvertently did not separately list the accompanying September 25, 2013 cover letter in the Designation. Respondent has requested that Appellant remove the September 25, 2013 cover letter from the Record on Appeal. Appellant thus consents and requests removal of the September 25, 2013 cover letter currently found at page 68 in the original Record on Appeal.

Page 89 in the original Record on Appeal is the August 4, 2014 cover letter of Appellant's trial counsel to the Lower Court submitting Appellant's "Motion for Reconsideration." The "Motion for Reconsideration" is duly part of the Record on Appeal. Appellant's undersigned counsel designated the "Motion for Reconsideration" in his Designation but inadvertently did not separately list the accompanying August 4, 2014 cover letter in the Designation. Respondent has requested that Appellant remove the August 4, 2014 cover letter from the Record on Appeal. Appellant thus consents and requests removal of the August 4, 2014 cover letter currently found at page 89 in the original Record on Appeal.

The final briefs are presently due on September 14, 2015. Appellant with the consent of Respondent requests an extension of the time for both parties to file their final briefs until after the Court rules on this Motion to Amend the Record on Appeal. If the Court grants the request to amend the Record on Appeal, Appellant with the consent of Respondent requests a ten-day (10) period to serve the amended Record on Appeal on Respondent. Appellant, with consent of Respondent, would further ask the Court for twenty (20) days thereafter for both parties to file their final briefs.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan  
William M. Hogan (S.C. Bar No. 65272)  
James R. Gilreath (S.C. Bar No. 02133)  
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**ATTORNEYS FOR APPELLANT**

September 11, 2015  
Greenville, South Carolina.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable DeAndrea Gist Benjamin, Circuit Court Judge

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SEP 14 2015

SC Court of Appeals

Case No. 2001-CP-40-4203R  
Appellate Case No. 2014-001826

EDWIN M. SMITH, JR. .... APPELLANT,

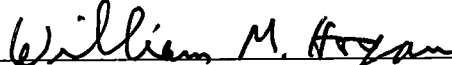
vs.

DAVID FEDOR, ..... RESPONDENT.

**PROOF OF SERVICE**

This is to certify that I have this day served counsel for the Appellant in the foregoing matter with a copy of the **APPELLANT'S MOTION TO AMEND RECORD ON APPEAL AND FOR EXTENSION OF TIME TO FILE FINAL BRIEFS** by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows to:

Katherine Carruth Goode, Esquire  
229 South Congress Street  
P.O. Box 1175  
Winnsboro, South Carolina 29180

  
William M. Hogan (S.C. Bar No. 65272)  
James R. Gilreath (S.C. Bar No. 02133)  
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ATTORNEYS FOR APPELLANT

September 11, 2015  
Greenville, South Carolina.

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September 11, 2015

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SEP 14 2015

SC Court of Appeals

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: *Edwin M. Smith, Jr. v. David Fedor*  
Appellate Case No. 2014-001826

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Appellant's Motion to Supplement the Record on Appeal with Proof of Service. Also enclosed please find the unbound original and fifteen (15) bound copies of the Appendix to the Record on Appeal. Also enclosed are an original and one copy of the Proof of Service. Please return a file stamped copy of the Motion to Supplement the Record on Appeal, the Appendix to the Record on Appeal, and Proof of Service to me in the enclosed envelope.

Also enclosed are the original and seven (7) copies of the Appellant's Motion to Amend Record on Appeal and for Extension of Time to File Final Briefs with Proof of Service. Please return a file stamped copy of the motion and Proof of Service to me in the enclosed envelope.

Enclosed is a check in the amount of \$50 for the filing fee for these motions.

By copy of this letter to opposing counsel, I am serving her with the same.

Thank you for your assistance in this matter. If you have any questions or need anything further, please let me know.

Sincerely,



William M. Hogan

Honorable Jenny Abbott Kitchings

Page 2

September 11, 2015

WMH/kmk

Enclosures

cc: Katherine Carruth Goode, Esquire (w/enclosures)

ORIGIN ID: LQKA (864) 242-4727  
JAMES GILREATH  
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GREENVILLE, SC 29601  
UNITED STATES US

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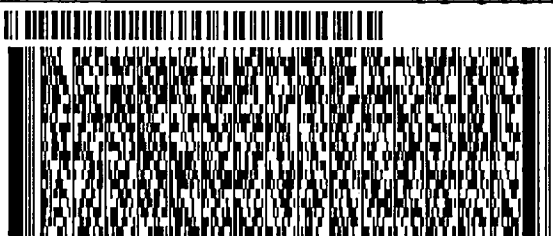
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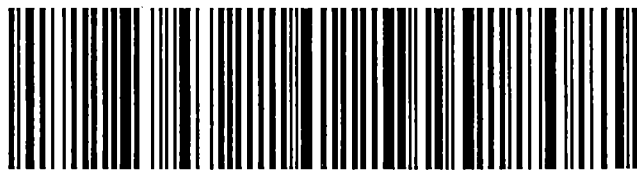
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