

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

---

Case No.: 2014-CP-23-5266  
Appellate Case No.: 2015-001667

**RECEIVED**

JUL 05 2016  
SC Court of Appeals

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Blanche G. Creswell,.....Appellant,

v.

Robin Culbertson, Chip Culbertson d/b/a Asheville Cotton Company, and  
Asheville Cotton Company,.....Respondents.

---

RECORD ON APPEAL

---

Gregory A. Morton  
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STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-23-5266

FILED - CLERK OF COURT  
 BLANCHE G. CRESWELL  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMER

ROBIN CULBERTSON AND CHIP CULBERTSON D/B/A  
 ASHEVILLE COTTON COMPANY, AND ASHEVILLE  
 COTTON COMPANY

2015 JUN 1 PM 1 44

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter came before the Court for a hearing on Defendants' Motion to Dismiss pursuant to Rule 12(b)(2), SCRPC. The Defendants argued that the Circuit Court for Greenville County is unable to exercise personal jurisdiction over any of the named Defendants. This Court finds that Defendants are citizens or residents of North Carolina who lack the minimum contacts with the State of South Carolina which would permit an exercise of personal jurisdiction by this Court. Therefore, Defendants' Motion to Dismiss is GRANTED.

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	/	\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted. A judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

JHL  
Circuit Court Judge

2162  
Judge Code

5/29/15  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 1<sup>st</sup> day of June 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 1<sup>st</sup> day of June 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Gregory Alan Morton  
4 Arbborland Way  
Greenville, SC 29615  
ATTORNEY(S) FOR THE PLAINTIFF(S)

James P Walsh  
PO Box 6728  
Greenville, SC 29606  
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.

STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT CIVIL CASE

RECEIVED  
 JUN 23 2015

CASE NO. 2014 CP-23-5266

BLANCHE G. CRESWELL

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMER

ROBIN CULBERTSON, CHIP CULBERTSON, D/B/A  
 ASHEVILLE COTTON COMPANY, AND ASHEVILLE  
 COTTON COMPANY

2015 JUN 22 PM 4 30

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter came before the Court on Plaintiff's Motion to Alter or Amend Judgment. Plaintiff's Motion is respectfully DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

JHL  
Circuit Court Judge

212  
Judge Code

6/22/15  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 22 day of June, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of June, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Gregory Alan Norton  
4 Arborland Way  
Greenville SC 29615  
ATTORNEY(S) FOR THE PLAINTIFF(S)

James P Walsh  
PO Box 6728  
Greenville SC 29606  
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[Lined area for additional information regarding the decision]

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
IN THE COURT OF COMMON PLEAS  
PAUL B. WICKERSIMER

2014 SEP 24 2014 CP-23-05266

BLANCHE G. CRESWELL,  
PLAINTIFF,

VS.

ROBIN CULBERTSON AND  
CHIP CULBERTSON D/B/A  
ASHEVILLE COTTON COMPANY,  
AND ASHEVILLE COTTON  
COMPANY  
DEFENDANTS.

COMPLAINT  
(Jury Trial Demanded)

Plaintiff, complaining of Defendants, would show as follows:

1. Plaintiff is a resident of Greenville County, South Carolina.
2. The individual Defendants own and operate the Asheville Cotton Company, which is a retail business. The business sells, among other things, bulk fabric.
3. Defendants actively solicit sales in a four or five state area surrounding North Carolina.
4. On October 1, 2011, Plaintiff was a customer at the Asheville Cotton Company retail store during normal business hours.
5. Defendants sell substantial quantities of bulk fabric off of bolt rolls, commonly known as "bolts."
6. Defendants intend for the customers to select fabrics to purchase, and the customers must carry the fabric bolts to a designated area for the desired quantity of fabric to be cut off the bolt and then purchased by the customer.

7. Plaintiff selected a fabric for purchase and was proceeding to carry it to the designated cutting area.

8. Plaintiff had shopped in the Defendant's store previously and had carried bolts of fabric to the cutting area without any problem.

9. On this occasion, Plaintiff was proceeding to walk to the cutting area carrying a bolt of fabric.

10. Defendants, and/or their employees acting in the course and scope of their employment, and unbeknownst to Plaintiff, had set up a low level floor display at the end of one of the fabric displays along the path to the cutting area.

11. Plaintiff proceeded to the cutting area and could not see the floor display due to the bolt of fabric she was carrying, as well as due to the low level nature of the floor display.

12. The floor display was set up in a picnic basket turned on its side, with the handle(s) sticking out from the basket.

13. As she was going to the cutting area with the bolt of fabric, Plaintiff's foot was caught by the basket in the floor display, and Plaintiff fell seriously injuring her foot.

14. At this time, Defendants were negligent in at least the following particulars:

- a. In setting up a low level floor display which could not be easily seen due to the height of the displays;
- b. In setting up a low level floor display which would not be readily seen by customers carrying bolts of fabric to the designated cutting area;
- c. In setting up a low level floor display in a known traffic area;

- d. In setting up a low level floor display in the traffic path from the fabric selection area to the fabric cutting area;
- e. In setting up a low level floor display in an aisle area that was heavily traveled;
- f. In setting up a low level floor display in a traffic aisle;
- g. In failing to maintain clear and safe aisles of travel for customers who are required to carry large bolts of fabric to the cutting area; and
- h. Such other and further particulars as may be revealed by discovery.

16. As a direct and proximate result of Defendant's negligence, Plaintiff was injured and required extensive medical treatment and surgery.

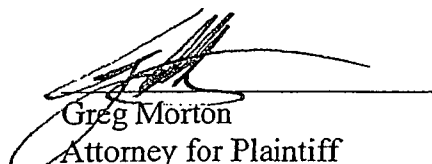
15. As a direct and proximate result of Defendant's negligence, Plaintiff underwent pain and suffering, mental stress, loss of enjoyment of life, medical treatment, and ongoing pain and limitations.

16. Plaintiff is entitled to recover actual damages in an amount to be determined by the jury.

WHEREFORE, Plaintiff prays for the following relief:

- 1. Actual damages in an amount to be determined by the jury;
- 2. A trial by jury; and
- 3. Such other relief as may be deemed just and proper.

Respectfully submitted,



Greg Morton  
Attorney for Plaintiff  
SC Bar No.: 4109

Donnan & Morton, P.A.  
4 Arborland Way  
Greenville, SC 29615  
Phone: (864) 675-6010  
Fax: (864) 675-6015

September 24, 2014.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2014-CP-23-05266
COUNTY OF GREENVILLE	)	
	)	
Blanche G. Creswell,	)	
	)	
Plaintiff,	)	<b>DEFENDANTS' MOTION TO DISMISS</b>
	)	
vs.	)	
	)	
Robin Culbertson and Chip	)	
Culbertson d/b/a Asheville Cotton	)	
Company, and Asheville Cotton	)	
Company	)	
	)	
Defendants.	)	
	)	

---

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Defendants Robin Culbertson and Chip Culbertson d/b/a Asheville Cotton Company, and Asheville Cotton Company, will move the presiding judge of the Greenville County Court of Common Pleas, on the tenth day after service hereof, or at such time and place as the court may deem appropriate, for an Order granting Defendants' Motion to Dismiss all claims of the plaintiffs pursuant to South Carolina Civil Rule 12(b)(2), in that there is a lack of jurisdiction over the defendants in this case. Defendants' motion is based upon the pleadings, affidavits, any other evidence, or legal memorandum that may be received by the Court.

{Signature page to follow}

By: \_\_\_\_\_

James R. Walsh (15180)

John D. Harjehausen (76194)

Clarkson, Walsh, Terrell & Coulter, P.A.

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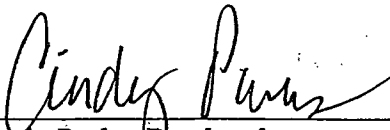
Attorneys for defendant/third-party plaintiff

Greenville, South Carolina  
October 23, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2014-CP-23-05266
COUNTY OF GREENVILLE	)	
	)	
Blanche G. Creswell,	)	
	)	
Plaintiff,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
vs.	)	
	)	
Robin Culbertson and Chip	)	
Culbertson d/b/a Ashville Cotton	)	
Company, and Asheville Cotton	)	
Company	)	
	)	
Defendants.	)	
	)	

I do hereby certify that a copy of the defendants' Motion to Dismiss was served upon all counsel of record by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on this 24<sup>th</sup> day of October, 2014, as follows:

Greg Morton, Esq.  
 Donnan & Morton, PA  
 4 Arborland Way  
 Greenville, SC 29615

  
 \_\_\_\_\_  
 Cindy Parks, Paralegal  
 Clarkson, Walsh, Terrell & Coulter, P.A.

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2014-CP-23-05266
COUNTY OF GREENVILLE	)	
	)	
Blanche G. Creswell,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF DEFENDANTS' MOTION</b>
	)	<b>TO DISMISS</b>
Robin Culbertson and Chip	)	
Culbertson d/b/a Asheville Cotton	)	
Company, and Asheville Cotton	)	
Company	)	
	)	
Defendants.	)	

**I. Introduction**

Defendants Robin Culbertson and Chip Culbertson, d/b/a Asheville Cotton Company, and Asheville Cotton Company,<sup>1</sup> move the court to dismiss all claims of the plaintiff pursuant to Civil Rule 12(b)(2) on the basis that the plaintiff's complaint is insufficient to meet plaintiff's burden of making a prima facie showing of jurisdiction and because this court lacks both general and specific personal jurisdiction over the defendants.

**II. Plaintiff's Complaint**

This is a premises liability case. The plaintiff is a resident of Greenville County, South Carolina. Complaint ¶1. The plaintiff alleges that on October 1, 2011, she was a customer of Asheville Cotton Company, a retail business that sells bulk fabric located at 1378 Hendersonville Road in Asheville, NC 28803. Complaint ¶2. According to the plaintiff, "as she was going to the cutting area

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<sup>1</sup> Asheville Cotton Company is an incorrectly identified defendant. Rather, the business at issue in this case is owned and operated by Culbertson Enterprises, Inc. d/b/a Asheville Cotton Company.

with a bolt of fabric, plaintiff's foot was caught by [a] basket [o]n [a] floor display, and plaintiff fell, seriously injuring her foot. Complaint ¶ 2. The plaintiff alleges that the "floor display was set up in a picnic basket turned on its side, with the handle(s) sticking out from the basket." Complaint ¶ 12. The plaintiff alleges that she "did not see the floor display due to the bolt of fabric she was carrying, as well as due to the low level nature of the floor display." Complaint, ¶ 11. It is undisputed that Asheville Cotton Company is owned by Culbertson Enterprises, Inc., a corporation domiciled in the state of North Carolina. Defendants Chip Culbertson and Robin Culbertson are officers of Culbertson Enterprises, Inc. The plaintiff alleges in her complaint that the Court of Common Pleas in Greenville County, South Carolina, has personal jurisdiction over the defendants because "defendants actively solicit sales in a four or five state area surrounding North Carolina." Complaint, ¶ 3. As discussed below, the plaintiff's claims against defendants Robin Culbertson and Chip Culbertson must be dismissed because there is no evidence that these defendants did any business, much less "solicit[ed] sales" outside the state of North Carolina. Rather, they are simply officers of Culbertson Enterprises, Inc. Further, the plaintiff's claims against Culbertson Enterprises, Inc. d/b/a Asheville Cotton Company, must be dismissed because this court lacks general and specific jurisdiction over this defendant.

### **III. Analysis**

"[T]he party seeking to invoke personal jurisdiction over a nonresident defendant via our long-arm statute bears the burden of proving the existence of personal

jurisdiction.” Moosally v. W.W. Norton & Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct.App.2004). “The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” Id. at 327, 594 S.E.2d at 882. “When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” Coggeshall v. Reprod. Endocrine Assocs. of Charlotte 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

Personal jurisdiction is exercised as “general jurisdiction” or “specific jurisdiction.” Coggeshall v. Reprod. Endocrine Assocs. of Charlotte, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). S.C. Code Ann. § 36-2-802 governs general jurisdiction and states: “A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.” “A court may assert general jurisdiction if the defendant has an ‘enduring relationship’ with the forum state.” To satisfy the “enduring relationship” requirement of general jurisdiction, the defendants’ contacts must be “continuous and systematic,” as well as “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.”

Specific jurisdiction over a cause of action arising from a defendant’s contacts with South Carolina is granted pursuant to the long-arm statute. Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 611 S.E.2d 505 (2005) (citing S.C.Code Ann. § 36-2-803).

The statute states in pertinent part:

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's:

(1) transacting any business in this State;

(4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;

(8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

South Carolina's long-arm statute has been construed to extend to the outer limits of the due process clause. *Id.* Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process. *Id.*

In State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 666 S.E.2d 218 (2008), the South Carolina Supreme Court discussed the test for whether the exercise of personal jurisdiction violates due process:

Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there. Without minimum contacts, the court does not have the "power" to adjudicate the action. The court must also find that the exercise of jurisdiction is "reasonable" or "fair." If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.

NV Sumatra Tobacco Trading, Co., 379 S.C. at 89, 666 S.E.2d at 222 (citations omitted).

"The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendants' conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. This theory of personal jurisdiction is known as the "stream of

commerce” theory. Id. (citing Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 423 S.E.2d 128 (1992). “Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” The due process requirements must be met as to each defendant and thus the Court is to assess individually each defendant's contacts with South Carolina. See Rush v. Savchuk, 444 U.S. 320, 100 S.Ct. 571, 62 L.Ed.2d 516 (1980). Further, the focus must center on the contacts generated by the defendant, and not on the unilateral actions of some other entity. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984)(holding “unilateral activity of another party or a third person is not an appropriate consideration”).

In the instant case, the complaint does not allege any facts that Robin or Chip Culbertson purposefully availed themselves of the laws of South Carolina. See Pitts v. Fink, 389 S.C. 156, 165, 698 S.E.2d 626, 631-32 (S.C.App. 2010)(citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)(“This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person”). Further, the complaint does not allege that Robin or Chip Culbertson transacted any business in South Carolina, caused a tortious injury in South Carolina by an act or omission outside the state, or produced, manufactured or distributed any goods with the reasonable expectation that they would be

consumed outside South Carolina. Accordingly, all claims against these defendants must be dismissed.

The claims against Culbertson Enterprises, Inc. also must be dismissed because it does not have sufficient minimum contacts with South Carolina such that it could reasonably anticipate being haled into court there and because the exercise of jurisdiction would not be "reasonable" or "fair."

In the instant case, the alleged tortious conduct and plaintiff's injury did not occur in South Carolina. Plaintiff's alleged fall and injury was not caused by a good produced, manufactured or distributed with the expectation of consumption in South Carolina. Rather, the plaintiff allegedly tripped over a display located in North Carolina. It is undisputed that Culbertson Enterprises, Inc.'s principal place of business is outside South Carolina. Culbertson Enterprises, Inc. does not solicit or conduct business in South Carolina. Rather, it operates a brick-and-mortar retail store in North Carolina. No goods were produced or services rendered by Culbertson Enterprises, Inc. in South Carolina, and the company has never obtained a business license in South Carolina.

Culbertson Enterprises, Inc., d/b/a Asheville Cotton Company has been in business for 17 years. Affidavit of Chip Culbertson. It is a retail business located 2 miles from downtown Asheville near the Blue Ridge Parkway. Id. The company sells and services sewing machines and also sells fabrics and sewing supplies. The company has a limited area sewing machine dealership agreement and the company is prohibited by the agreement from advertising to sell sewing machines in South Carolina. Id. The company does not use billboards or solicit customers through general mailers distributed to a given

geographic area. Id. It does not advertise on regular or cable television. Id. Rather, the company advertises in women's magazines distributed in Asheville, North Carolina.

The company does maintain a web site at [www.ashevillecottonco.com](http://www.ashevillecottonco.com). Id. However, the web site is not set up for online sales. Id. The web site does not contain a typical web site "Shopping Cart" and there is no ability to buy or pay for items through the site. Although the site lists the general categories of items for sale at the retail store, no specific items are listed and there are no associated prices. Id. In short, Culbertson Enterprises, Inc., d/b/a Asheville Cotton Company, does not transact business in South Carolina. Nor did it cause any tortious injury in South Carolina. Accordingly, all claims against Culbertson Enterprises, Inc. should be dismissed because this court lacks general and specific jurisdiction in regard to the matters alleged in the plaintiff's complaint.

#### IV. Conclusion

For all of the reasons discussed above, the defendants, Robin Culbertson, Chip Culbertson, and Culbertson Enterprises, Inc. (incorrectly identified as Robin Culbertson and Chip Culbertson, d/b/a Asheville Cotton Company, and Asheville Cotton Company), request that the court dismiss all claims asserted against them in this action.

Respectfully submitted,

By: 

James P. Walsh (15180)  
John D. Harjehausen (76194)  
Clarkson, Walsh, Terrell & Coulter, P.A.  
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(864) 232-4400  
(864) 235-4399 (fax)  
Attorneys for defendants

Greenville, South Carolina  
December 12, 2014

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

BLANCHE G. CRESWELL, )  
 )  
PLAINTIFF, )

C. A. No.: 2014-CP-23-5266

VS. )

PLAINTIFF'S MOTION TO  
ALTER OR AMEND JUDGMENT

ROBIN CULBERTSON AND )  
CHIP CULBERTSON D/B/A )  
ASHEVILLE COTTON COMPANY, )  
AND ASHEVILLE COTTON )  
COMPANY )  
DEFENDANTS. )

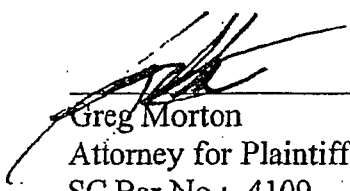
FILED-CLEER OF CO.  
GREENVILLE CO. S.C.  
PAUL B. WICKENS/IMER  
2015 JUN 15 PM 2:18

Pursuant to South Carolina Rule of Civil Procedure 59(e), Plaintiff hereby moves to alter and/or amend the judgment received June 4, 2015 in the office of the undersigned. The basis for this Motion is as follows:

1. As to the business Defendant, the Court failed to consider and recognize the ongoing and regular business contacts with the state of South Carolina, over the course of time, including TV advertising, repeated and regular email solicitations sent every three weeks to the state of South Carolina, the sales to South Carolina residents, and the appearance at an event in South Carolina;
2. The Order did not set forth specific findings of fact and conclusions of law;
3. The Order requires more than the "minimum contacts" which are required by due process; and
4. Defendant's arguments regarding convenience of witness and location of witnesses was improperly considered.

Accordingly, Plaintiff requests the Court to amend and alter its judgment to hold that the business Defendant is subject to personal jurisdiction in South Carolina.

Respectfully submitted,



---

Greg Morton  
Attorney for Plaintiff  
SC Bar No.: 4109

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June 15, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

BLANCHE G. CRESWELL, )  
 )  
PLAINTIFF, )

C.A. No.: 2014-CP-23-5266

VS. )

CERTIFICATE OF SERVICE

ROBIN CULBERTSON AND )  
CHIP CULBERTSON D/B/A )  
ASHEVILLE COTTON COMPANY, )  
AND ASHEVILLE COTTON )  
COMPANY )  
DEFENDANTS. )

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS/MSR  
2015 JUN 15 PM 2 28

I hereby certify that I have this date served a copy of the within and foregoing Plaintiff's Motion to Alter or Amend Judgment upon James P. Walsh, counsel for the Defendants by depositing same in the United States Mail with sufficient postage addressed to:

James P. Walsh, Esquire  
Clarkson, Walsh, Terrell & Coulter, PA  
P. O. Box 6728  
Greenville, SC 29606

This 15th day of June, 2015

*Martha C. Ballard*

Martha C. Ballard  
Secretary to Greg Morton

Donnan & Morton, P.A.  
4 Arborland Way  
Greenville, SC 29615  
(864) 675-6010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2014-CP-23-05266
COUNTY OF GREENVILLE	)	
	)	
Blanche G. Creswell,	)	
	)	
Plaintiff,	)	<b>DEFENDANTS'</b>
	)	<b>OPPOSITION TO PLAINTIFF'S</b>
vs.	)	<b>MOTION TO ALTER OR</b>
	)	<b>AMEND JUDGMENT</b>
	)	
Robin Culbertson and Chip	)	
Culbertson d/b/a Asheville Cotton	)	
Company, and Asheville Cotton	)	
Company	)	
	)	
Defendants.	)	
	)	

Defendants Robin Culbertson and Chip Culbertson, d/b/a Asheville Cotton Company, and Asheville Cotton Company,<sup>1</sup> hereby oppose the Plaintiff's Motion to Alter or Amend Judgment dated June 15, 2015. As discussed below, the plaintiff has failed to raise any new factual allegations or arguments in support of the motion and therefore the motion should be denied. The plaintiff alleges that the court's Order did not set forth specific findings of fact and conclusions of law. Defendants disagree with this assertion. However, to the extent the court is inclined to set forth additional findings of fact and conclusions of law, defendants would respectfully request the opportunity to submit a proposed Order to the court with additional findings of fact and conclusions of law.

In addition, the plaintiff's Motion to Alter or Amend should be denied because the plaintiff has failed to identify an intervening change in controlling law, newly discovered evidence, a clear error of law, or the necessity for

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<sup>1</sup> Asheville Cotton Company is an incorrectly identified defendant. Rather, the business at issue in this case is owned and operated by Culbertson Enterprises, Inc. d/b/a Asheville Cotton Company.

prevention of manifest injustice. It is well established that a trial court may properly deny a Motion to Alter or Amend based on South Carolina Rule of Civil Procedure 59(e) when the moving party fails to raise new facts or arguments warranting alteration of the judgment. See Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 723 S.E.2d 835 (Ct.App. 2012)(affirming the dismissal of plaintiff's complaint and stating: "in both his Rule 59(e) motion and in his appellant brief, [plaintiff] fails to cite any new factual allegations that would impact the jurisdictional issue. The trial court was within its discretion to deny [his] motion to amend his complaint for a second time.").

The plaintiff alleges "[a]s to the business Defendant, the Court failed to consider and recognize the ongoing and regular business contacts with the state of South Carolina, over the course of time, including TV advertising, repeated and regular email solicitations sent every three weeks to the State of South Carolina, the sales to South Carolina residents, and the appearance at an event in South Carolina." However, the Court did not fail to consider these alleged facts in reaching its decision. In advance of the hearing, the plaintiff provided the Court with a document titled "Plaintiff's List of South Carolina Contacts" which incorporated excerpts and exhibits from the deposition of Robin Culbertson. The plaintiff's Motion to Alter or Amend does not allege any new or additional facts regarding personal jurisdiction.

Similarly, at no time has the plaintiff produced any facts or evidence of any contacts by the individually named defendants, Robin Culbertson and Chip Culbertson, as opposed to their business, Culbertson Enterprises, Inc., which

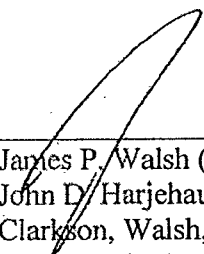
could possibly support the exercise of personal jurisdiction against them. Accordingly, the claims against Robin Culbertson and Chip Culbertson were properly dismissed by the court since there is no evidence of any contacts with the State of South Carolina supporting this Court's exercise of personal jurisdiction over them.

The plaintiff also alleges that the court essentially "require[d] more than the 'minimum contacts' which are required by due process" to exercise personal jurisdiction. However, the Court explicitly noted in this case that evidence of minimum contacts by the defendants with South Carolina was not sufficiently present to support the exercise of personal jurisdiction. The court stated: "The Defendants argued that the Circuit Court for Greenville County is unable to exercise personal jurisdiction over any of the named Defendants. This court finds that Defendants are citizens or residents of North Carolina who lack the **minimum contacts** with the State of South Carolina which would permit an exercise of personal jurisdiction by this Court. Order, dated May 29, 2015 (emphasis added). In short, this Court recognized that only minimum contacts were required to support jurisdiction, but found insufficient evidence of such contacts by the defendants with the State of South Carolina. Since this conclusion is supported by the evidence, this Court did not err in reaching its decision.

Lastly, the plaintiff alleges that the court is required to set forth specific findings of fact and conclusions of law. However, the plaintiff is incorrect. South Carolina Rules of Civil Procedure 52(a) states: "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other

motion except as provided in Rule 41(b).” Civil Rule 41(b) provides that “a defendant may move for dismissal of an action or of a claim against him.” The rule goes on to state: “If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a)... [A] dismissal under this subdivision and any dismissal not provided in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.” In other words, findings of fact and conclusions of law are only required where the Court dismisses an action on its merits. Civil Rule 41(b) indicates that a dismissal for lack of jurisdiction is not a dismissal on the merits. Accordingly, defendants believe that the Court has discretion as to whether to set forth detailed findings of fact and conclusions of law in regard to Defendants’ Motion to Dismiss. However, if the Court believes in its discretion that additional findings of fact would prove beneficial, the defendants would respectfully request the opportunity to submit a proposed Order to the court setting forth additional findings of fact and conclusions of law. Otherwise, the defendants respectfully oppose the plaintiff’s motion to alter or amend judgment, and request that the Court’s order dismissing this case remain undisturbed.

By:



---

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Attorneys for defendants

Greenville, South Carolina  
June 19, 2014

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
2 COUNTY OF GREENVILLE

3  
4 BLANCHE G. CRESWELL,  
5 Plaintiff,

6 vs. CASE NO. 2014-CP-23-5266

7 ROBIN CULBERTSON AND  
8 CHIP CULBERTSON d/b/a  
9 ASHEVILLE COTTON COMPANY,  
10 AND ASHEVILLE COTTON COMPANY,  
11 Defendants.

---

12 DEPOSITION OF ROBIN B. CULBERTSON

---

13 DATE TAKEN: Thursday, April 9, 2015

14 TIME BEGAN: 11:09 a.m.

15 TIME ENDED: 12:29 p.m.

16 LOCATION: Jay Kerr Law  
17 84 Peachtree Boulevard  
18 Asheville, North Carolina 28803

19 REPORTED BY: Lori McCoin Jones  
20 Registered Professional Reporter

21 EVERYWORD, INC.  
22 Post Office Box 1459  
23 Columbia, South Carolina 29202  
24 803-212-0012  
25

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13  
14 I N D E X

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22 Approximately 2011 - 2015	19
23 2 Nine-page list of South Carolina	
24 customers	29

25



1 If you need me to rephrase something, ask me to do  
2 it.

3 Under our court rules, you cannot ask  
4 questions of your attorney during the deposition.  
5 If I ask you something improper like what did you  
6 and he talk about this morning, he is going to  
7 object because I can't ask about conversations you  
8 had with him. But other than that, at  
9 depositions, objections are really limited under  
10 South Carolina law.

11 And Jim and I have worked together  
12 before, so if we have some problem, I think we'll  
13 be able to work it out.

14 And I normally say if you need a  
15 break, let me know. If you need another break,  
16 let me know, and we will handle that.

17 If you would, give me your full name,  
18 please.

19 A. Robin Ballew Culbertson.

20 Q. And do you currently live in  
21 Asheville?

22 A. I currently live in Black Mountain,  
23 North Carolina.

24 Q. Is that where you grew up?

25 A. I grew up in Nebo, North Carolina.

1 Q. And have you always lived in the state  
2 of North Carolina?

3 A. Yes.

4 Q. And have you ever been a party to a  
5 lawsuit before or has your company ever been a  
6 party to a lawsuit before?

7 A. Yes.

8 Q. And I'm sorry. Have you personally  
9 ever been a party to a lawsuit before?

10 A. I don't know if that -- I don't really  
11 know whether it was a corporate thing or personal.

12 Q. Okay. How many prior lawsuits were  
13 there that you know of?

14 A. One.

15 Q. Okay. That helps me.  
16 And was that one here in North  
17 Carolina?

18 A. Yes.

19 Q. What was the subject of that lawsuit?

20 A. It was a contract disagreement with a  
21 landlord.

22 Q. And that related to the store itself?

23 A. Yes.

24 Q. Okay. I understand.

25 Did you have to give a deposition in

1 that case like you're doing today?

2 A. I did.

3 Q. Did that case go to trial?

4 A. No.

5 Q. Or did it get resolved?

6 A. It was resolved.

7 Q. I understand. Or settled, however you  
8 want to phrase it.

9 A. Whatever.

10 Q. Okay. And I had asked you, you said  
11 you'd lived in North Carolina. I just want to  
12 make sure. Have you ever lived in South Carolina?

13 A. No.

14 Q. And you currently are employed where?

15 A. Self-employed at Asheville Cotton  
16 Company.

17 Q. And as I understand from the materials  
18 your attorney sent me, you and your husband are  
19 the sole owners of that company; is that correct?

20 A. Yes.

21 Q. And do you each own 50 percent or is  
22 it split differently?

23 A. I guess that would be a question for  
24 my husband, but I think it's 50 percent.

25 Q. Just as best you know. If you don't

1 know, it's fine, just tell me you don't know.

2 A. I know that we have titles.

3 Q. What is your title?

4 A. I am, I think, vice-president.

5 Q. All right. And when did the company  
6 start?

7 A. Another question for my husband. He  
8 knows the numbers.

9 Q. Where is the company currently  
10 located? Where is the business address?

11 A. 1378 Hendersonville Road, Asheville.

12 Q. Has it ever been located anywhere  
13 else?

14 A. Yes.

15 Q. All right. Where was it previously?

16 A. 800 Fairview Road, Asheville, North  
17 Carolina --

18 Q. Do you remember --

19 A. -- and one more -- or two more  
20 locations.

21 Q. Okay. Just walk me through them.  
22 What was the first location?

23 A. 4 South Tunnel Road, and there were  
24 two different buildings in that location, same  
25 address.

1 Q. Did you occupy two buildings  
2 simultaneously?

3 A. No.

4 Q. Or you started in one building and  
5 moved to the other one?

6 A. Yes.

7 Q. All right. And after 4 South Tunnel  
8 Road, where did the business go?

9 A. The second location at 4 South Tunnel  
10 Road. So there is two there, and then the 800  
11 Fairview Road, and now 1378 Hendersonville Road.

12 Q. Do you remember when the business  
13 moved to the 1378 Hendersonville Road?

14 A. My husband would be able to tell you.

15 Q. Besides you and your husband, how many  
16 people currently work in the business?

17 A. Let's see, Karen and Ginny and  
18 Michelle and Drue --

19 Q. I'll make it easier.

20 A. There's about eight.

21 Q. Can you just tell me their names and  
22 sort of their general job description? I mean I  
23 understand you don't really have an IT person or a  
24 marketing person from what your attorney was  
25 telling me; is that correct?

1 A. That's correct.

2 Q. And tell me about the employees you  
3 have and just kind of briefly their areas of  
4 responsibility.

5 A. Okay. There is one sewing machine  
6 technician.

7 Q. And who is that?

8 A. Tylor.

9 Q. All right.

10 A. Do you want whole names or do you  
11 care?

12 Q. No, you can just give me that for  
13 right now.

14 A. Okay.

15 Q. Well, go ahead and give me full names.

16 A. Tylor Bailey.

17 Q. Okay.

18 A. And then we have just sales -- they're  
19 not really sales staff, but employ -- yeah, sales  
20 staff, I guess you'd say.

21 Q. Okay.

22 A. They don't really have titles.

23 Q. All right. Tell me who they are.

24 A. Michelle, Karen, Bethany, Holli, Drue,  
25 Charlie, Ginny.

1 Q. Ginny was the last one?

2 A. Ginny, uh-huh. I think that's it.

3 Q. And are certain days more busy than  
4 other days at your store?

5 A. Yes, depending on events and things  
6 like that.

7 Q. Okay. Like in a typical week without  
8 any events, are weekends more busy than weekdays?  
9 Does it vary?

10 A. It's -- really, it varies.

11 Q. Okay. When you told me it's busier  
12 with events, what are events?

13 A. When I have a class, for example, or a  
14 sale.

15 Q. Okay. And what kind of classes do you  
16 have?

17 A. Teach people how to use sewing  
18 machines, quilting.

19 Q. Any other classes besides sewing and  
20 quilting classes?

21 A. Well, like basic computers for sewing  
22 machine users. It would be all -- everything  
23 would be sewing related as far as I can think of.  
24 We've never done anything else.

25 Q. Got you. And of the employees you

1 mentioned to me, if somebody calls in and orders  
2 something, is there a certain employee that  
3 handles that and is responsible for shipping it  
4 out or is it just whoever they talk to when they  
5 call in?

6 A. The procedure is that whoever they --  
7 whoever answers the call kind of writes down what  
8 needs to be done or what needs to be gathered up  
9 or ordered or whatever and then packages it ready  
10 to go to the mail.

11 Q. Is everything that's shipped out by  
12 regular mail?

13 A. Not everything, but most everything is  
14 postal service.

15 Q. Do you all have an account with like  
16 FedEx or UPS or anything?

17 A. No. We have a place where we take  
18 sewing machines sometimes to send to -- back to  
19 the factory if they need more help than what we  
20 can do.

21 Q. And with regard to Asheville Cotton  
22 Company, has the company had a website since it  
23 started or did that come into being further down  
24 the road?

25 A. I guess it was pretty much since we

1 started. I remember it was very early on. There  
2 might have been six months without one.

3 Q. I understand. Who is the company  
4 employee who is sort of responsible for the  
5 website and its content?

6 A. That would be me.

7 Q. Do you all have an outside contractor  
8 you use to do that or do you handle it?

9 A. No. I handle it.

10 Q. And are there certain programs you use  
11 to set it up or design it?

12 A. There is a sewing-related website  
13 company that is who I use, and it's just a  
14 template, basically, that I enter stuff into.

15 Q. And do you know the name of that  
16 company?

17 A. Like; L-I-K-E; S-E-W, Like Sew  
18 website.

19 Q. Do you know where they're located?

20 A. I have no idea. I think it's out  
21 west.

22 Q. Does the website have a place on it  
23 where you click on it for doing online shopping?

24 A. Yes.

25 Q. Okay. Tell me how that process works.

1 A. For the customer?

2 Q. Yes, for the customer.

3 A. We just recently set it back up again.

4 It's never done very well for us because I don't  
5 really advertise it. I only have probably four or  
6 five items on there right now. I should have  
7 looked to see. And it's basically our patterns  
8 for quilts that I have actually designed.

9 And the customer would have to  
10 basically be searching it out just to find it.  
11 And then they would click on it, and I'm assuming  
12 they would enter their credit card information and  
13 it would work, but we haven't had any orders.

14 Q. I should have asked you, you talked  
15 about sewing machines. What all does the  
16 Asheville Cotton Company sell?

17 A. We sell sewing machines. We have  
18 three different brands.

19 Q. What are those?

20 A. Bernina, Baby Lock, and most recently  
21 Janome.

22 Q. What do you sell besides sewing  
23 machines?

24 A. We sell fabric, quilting fabric  
25 specifically, and notions related to quilting.

1 Q. And explain for me what notions are  
2 since I'm not familiar with sewing.

3 A. Rulers, thread, patterns, books.

4 Q. Sort of tools and supplies --

5 A. Yes.

6 Q. -- from a male's perspective --

7 A. Yes.

8 Q. -- of what you need to do to do  
9 quilting?

10 A. Yes.

11 Q. When you use the website to shop  
12 online, can you purchase fabrics online?

13 A. Currently I don't know. I could  
14 answer that for you if you want me to look at my  
15 phone and look at the website, but I honestly --  
16 my daughter set up a couple of things in December,  
17 and like I said, we haven't had any sales. I  
18 really don't remember what's on there. I don't  
19 know if she put a fabric kit or not.

20 Q. I was thinking when I was looking at  
21 it that you could look at fabrics and then call in  
22 to discuss them with people. Does that sound  
23 familiar?

24 A. Correct. Yes. That is not the online  
25 ordering part. That is more of like here is

1 products that we have, you know, and it's a direct  
2 link to the manufacturer's website, and then they  
3 would need -- and it says they need to call in and  
4 see if we have the ones they're looking for in  
5 stock.

6 Q. That's referring to sewing machines?

7 A. No.

8 Q. Oh, to fabrics?

9 A. To fabrics. There is a link also to  
10 the sewing machine companies.

11 Q. Okay. From your website?

12 A. From our website.

13 Q. Are there links that go anywhere else  
14 besides the sewing machine companies and the  
15 fabric manufacturers?

16 A. Not that I can think. I mean we have  
17 other pages like who we are.

18 Q. Right. I meant links.

19 A. Not outside links that I can think of,  
20 no.

21 Q. I was asking you about outside links.

22 A. No, not that I can think of.

23 Q. But you think there is something on  
24 there where you can order and enter the credit  
25 card information directly for fabrics?

1           A.    I don't know that it's for fabrics.  I  
2    can't remember if she -- I think she put the  
3    patterns, a few of the patterns.  I do not  
4    remember about the fabrics.

5           Q.    Okay.  And can you order sewing  
6    machines online?

7           A.    No.  It's against our -- it's against  
8    our relationships with or agreements with all of  
9    our machine companies.

10          Q.    So the three sewing machine  
11    manufacturers that you represent have limited  
12    territories within which you can sell or ship; is  
13    that correct?

14          A.    Yeah.  Well, actually, Bernina and  
15    Baby Lock do not allow online sales at all.  
16    Janome does allow it; we don't do it.

17          Q.    Are there any restrictions on selling  
18    fabrics or patterns or notions online?

19          A.    No.  There is no parent company that  
20    would set that.

21          Q.    And you said that if somebody does  
22    call in to order something, whichever of your  
23    sales employees answers the phone handles that  
24    from start to finish?

25          A.    Well, I would say sometimes it's a

1 combination of who gets to the computer first and  
2 things like that. It could be more than  
3 one person taking care of the transaction.

4 Q. Okay. How is the transaction entered  
5 into the computer? Is there a program that you  
6 use?

7 A. We have a point-of-sale system.

8 Q. And who is the manufacturer or  
9 supplier of that system?

10 A. JMM Software.

11 Q. Are they national or local?

12 A. It's a national sewing related  
13 point-of-sale system.

14 Q. And sometimes you get those calls when  
15 they come in; is that correct?

16 A. Yes.

17 Q. Walk me through how it works and what  
18 information you get from the customer and enter  
19 into the computer.

20 A. Hi, I'd like some fabric.

21 Okay.

22 You know, do you have whatever they're  
23 looking for there.

24 Q. Right. Once you get to the item  
25 that's identified, what do you do?

1 A. Yes, we do.

2 Can you ship it to me.

3 Yes. What is your name and address,  
4 and what is your credit card number. Okay, we'll  
5 get it into the mail to you.

6 Key it in the system.

7 You want really specific here, right?

8 Q. I'm asking what, you're keying in all  
9 the customers --

10 A. So as of about a year ago, we've  
11 refined the policy a bit. So we now have a  
12 customer named shipping.

13 Q. Okay.

14 A. And we put it in the system under  
15 shipping until the whole transaction is completed  
16 where we know the shipping costs and everything.  
17 And then once we do, we run the credit card number  
18 through, and then finish the transaction, and then  
19 get it into the mail.

20 Q. Okay. And is that the system that  
21 this information for the shipping log records came  
22 off of?

23 A. This is a -- this came from a notebook  
24 about yay thick.

25 MR. MORTON: Okay. Hold on for one

1 minute. Let's mark it as an exhibit so  
2 we'll know what we're referring to.

3 (Plaintiff's Exhibit 1 marked.)

4 BY MR. MORTON:

5 Q. Let me show you what I've marked as  
6 Exhibit 1. You were starting to tell me what this  
7 came out of.

8 A. Okay. So I guess I skipped a step.  
9 Sorry.

10 So there is a shipping log, we call  
11 it, that is a notebook, physical notebook, where  
12 we keep the credit cards so it's just like kept  
13 away from everything. So it's got the credit card  
14 information in it and the address and the name of  
15 the item.

16 Q. And does it have the date it would  
17 have shipped on also?

18 A. Not usually. We're not very good  
19 about that.

20 Q. In the physical notebook you're  
21 telling me about, does it have sheets that you're  
22 filling out or your employees are filling out by  
23 hand or is that sheet generated out of the  
24 software that you were telling me about?

25 A. No. It's by hand.

1 Q. So is that the step you skipped when  
2 you were telling me how an order works when a  
3 customer calls in?

4 A. The fact we write it. We write it in  
5 the phone log -- I mean not the phone log, in the  
6 shipping log.

7 Q. Okay.

8 A. We write it there because we don't  
9 want people's credit card numbers all over the  
10 front counter. We have a special place for it so  
11 that it's secure.

12 Q. And you were -- of course the court  
13 reporter can't see. You said that you have a  
14 notebook that's like an inch or two inches thick  
15 that has a shipping log.

16 A. Actually more like a half inch.

17 Q. Half inch. Okay.

18 A. We started that system, as far as I  
19 can tell -- like I said, we don't have dates on it  
20 because we just do them as they come in. There is  
21 really no reason to have a date. As far as I  
22 could tell, we've kept that about three years or  
23 something like that.

24 Q. Was there anything you kept like that  
25 before this shipping log or that was the first one

1 you're aware of?

2 A. No. That's the first one. We didn't  
3 have a shipping log prior to that. We just --  
4 there wasn't that much to do prior to that. There  
5 wasn't that many things to mail so we would just  
6 take care of them one at a time.

7 Q. All right. Plaintiff's Exhibit 1, is  
8 this a document that was kept in the shipping log  
9 or this was prepared from the information that's  
10 in that notebook.

11 A. This?

12 Q. Yes, Exhibit 1.

13 A. This document I put together in  
14 response to one of your questions. I had never  
15 compiled that before.

16 Q. And so at the top where it says,  
17 Shipping Log Records - Approximately 2011 - 2015,  
18 did you do that based on when you thought the  
19 notebook started?

20 A. That was based on me looking at the  
21 earliest records and trying to remember what it  
22 was.

23 Q. And tell me what's the information  
24 that you compiled. What do the numbers on this  
25 sheet represent?

1           A.    I had an employee basically go through  
2 and just make a tick mark for every state one by  
3 one --

4           Q.    Okay.

5           A.    -- to try to answer one of your  
6 questions.

7           Q.    So is it accurate to say that for  
8 approximately starting in 2001 --

9           A.    2011.

10          Q.    2011. Thank you.

11          A.    Sorry.

12          Q.    No. No. It was my fault.

13                This shows the orders that were  
14 shipped to the various states based on what's in  
15 that shipping log notebook?

16          A.    Yes.

17          Q.    Okay. And so when it says North  
18 Carolina, 146, that would show the majority of  
19 your orders were shipped to customers in North  
20 Carolina?

21          A.    To addresses in North Carolina.

22          Q.    Addresses in North Carolina, correct?

23          A.    Uh-huh.

24          Q.    And then the next state that received  
25 the most orders was South Carolina?

1           A.    Uh-huh.  And I didn't really put those  
2   in order, obviously.

3           Q.    I was going to say the rest of them  
4   really aren't in numerical order except for the  
5   top four.

6           A.    Right.  I kind of put those together.  
7   Georgia should have been up a little higher.

8           Q.    Sure.  I see it down there at nine  
9   that you're talking about.

10          A.    And New York for some reason.

11          Q.    Yeah.  Six, got it.  And even one to  
12   Australia?

13          A.    Yeah.  England.

14          Q.    England.  All right.

15                And is the same data that's entered in  
16   the shipping log also entered into the computer  
17   simultaneously?

18          A.    Not the same data.

19          Q.    What's different?  The credit card  
20   number is only in the shipping log; is that right?

21          A.    Correct.  And we don't transcribe the  
22   address to the computer either.

23          Q.    So the computer records just show the  
24   name and --

25          A.    Shipping, it would just say shipping.

1 Q. Okay. Does it show the customer's  
2 name and address in the computer?

3 A. It has a last name and a city just so  
4 that we can make sure the records are correct when  
5 we key in the shipping amount.

6 Q. Does the computer have more records on  
7 it regarding shipping than in the shipping log  
8 notebook or would they match up?

9 A. I guess there may be a discrepancy if  
10 for some reason we didn't need to write it in the  
11 shipping log. Like if they paid for something  
12 including shipping in the store, they were  
13 standing in front of me, there may not be any need  
14 to put it in the shipping log.

15 Q. For the most part, I mean, you would  
16 think there would sort of be like a 99 percent  
17 correlation or something? You know, unless there  
18 was an odd circumstance, most of what goes in the  
19 shipping log is going to be in the computer also.

20 A. I'm not sure I understand your  
21 question.

22 Q. I'm just trying to figure out if the  
23 computer records, if you ran them, are they going  
24 to -- for the same time period as Exhibit 1, are  
25 they going to match up other than maybe a little

1 odd variance here and there?

2 A. It should because, of course, there's  
3 got to be a point-of-sale record to have received  
4 money. So it should. Now, whether you're going  
5 to be able to find it over three years or  
6 four years time, I don't know.

7 Q. Do the computer records go back beyond  
8 2011?

9 A. Yes.

10 Q. So they would have -- if the shipping  
11 log didn't start until 2011, the computer would  
12 have the pre-2011 records of showing the name and  
13 the city to which orders went; is that correct?

14 A. No.

15 Q. Okay.

16 A. Prior to the shipping log, we would  
17 have just put an anonymous sale without a name if  
18 they didn't need to be on our mailing list, you  
19 know, somebody in California. So I don't really  
20 know how to find records of things being shipped  
21 prior to when we started keeping this log.

22 Q. Okay.

23 A. It may be in there, but it would be a  
24 one by one trying to find it.

25 Q. To track it down, okay. And they may,

1 as you noted, just be listed as an anonymous  
2 customer or something in the computer?

3 A. Yeah, for the most part. Now, on  
4 occasion I guess there would be a name attached if  
5 it were Susie that lives in Canton, North  
6 Carolina, who doesn't want to -- feel like driving  
7 to Asheville. But without doing every single sale  
8 over the last -- there would be no way of finding  
9 it as far as I know.

10 Q. And that's what I wanted to know.

11 And anybody in the store, your sales  
12 staff, they all know how to fill out a physical  
13 shipping log record as well as enter the data in  
14 the computer; is that correct?

15 A. We're working on it. We've got some  
16 new employees.

17 Q. You may have some in training, but  
18 that's what you're trying to do?

19 A. I run across one every now and then  
20 that I'm like, oh.

21 Q. How did that happen?

22 A. Yeah.

23 Q. Okay. And you said your outgoing  
24 shipping, you all normally just take them to the  
25 post office?

1 A. (Nodding head up and down.)

2 Q. For instance, our office sends a lot  
3 of stuff by Federal Express, so on our monthly  
4 bill, it shows me every shipment and exactly where  
5 it went to. You don't have any records like that?

6 A. Uh-uh.

7 Q. You don't have an account with Federal  
8 Express or UPS or anything of that nature?

9 A. No, we don't.

10 Q. And with regard to Exhibit 1, as well  
11 as the records in the computer, do these show what  
12 was shipped to this address or it just shows the  
13 address and the customer name?

14 A. On occasion we'll write down 2 yards  
15 of fabric or something like that just to help keep  
16 track, but for the most part they do not have --  
17 do not list what it is.

18 Q. And is it accurate to state that all  
19 the shipments that go out to any state beyond  
20 North Carolina would have to be fabric or notions  
21 or patterns as opposed to sewing machines?

22 A. We are not allowed to ship sewing  
23 machines.

24 Q. That was what I was asking.

25 A. It's against our contracts with our

1 sewing machine companies.

2 Q. That's what I thought. I just wanted  
3 to make sure. So anything you're shipping has to  
4 be an item in the store other than a sewing  
5 machine?

6 A. Yes.

7 Q. Now let me -- you mentioned a mailing  
8 list which I was going to ask you about. Does the  
9 store keep -- and I guess I should be specific.  
10 Do you keep a mailing list in the sense you  
11 actually mail stuff by the U.S. Postal Service to  
12 people as opposed to email?

13 A. We do.

14 Q. Tell me about the mailing list that is  
15 kept. How is that generated and is it on the  
16 computer or manually? What is it?

17 A. Our point-of-sale system keeps track  
18 of addresses for people who want to give us their  
19 physical mailing address.

20 Q. Okay.

21 A. And I'm not sure what else you need me  
22 to answer about that.

23 Q. So if somebody is in the store buying  
24 something, is it typical to ask them, Do you want  
25 to be on our mailing list?

1 A. Yes.

2 Q. Is there a signup sheet out on the  
3 counter or is that something that is done  
4 verbally?

5 A. Verbally. We say would you like to be  
6 on our mailing list. And if they say yes, we ask  
7 them would they like to do physical mail or email  
8 or both.

9 Q. Okay. And then what happens if they  
10 say yes?

11 A. Then we take whatever information.  
12 It's mostly emails now.

13 Q. And is that entered in the --

14 A. It's entered into the point-of-sale  
15 system with their name.

16 MR. MORTON: Mark this as Exhibit 2,  
17 please.

18 (Plaintiff's Exhibit 2 marked.)

19 BY MR. MORTON:

20 Q. Let me show you what's marked as  
21 Exhibit 2 and ask you if you can identify that.  
22 And this is just a partial printout off the CD I  
23 was provided.

24 A. I started to say, this is a very small  
25 portion of my mailing list.

1 Q. Is this the mailing list based on  
2 what's entered in the point-of-sale system?

3 A. This was generated from our  
4 point-of-sale system.

5 Q. Okay.

6 A. But this is only a partial listing of  
7 what --

8 Q. Right. And for the record, on  
9 Exhibit 2, I primarily printed the pages that had  
10 all the South Carolina people grouped together, as  
11 you can see from there. I realize it was 2- or  
12 300-some pages if I remember correctly.

13 So the point-of-sale system lets you  
14 print out the customer list. Does this designate  
15 on Exhibit 2, can I tell who asked for email  
16 versus who asked for physical mail?

17 A. No.

18 Q. How do you know that or keep up with  
19 that?

20 A. How do I keep up with what?

21 Q. What type of mail they wanted, whether  
22 physical mail or email or both.

23 A. Well, I don't really keep up with it,  
24 but if I get ready to send emails, I gather the  
25 emails.

1 Q. They come out of the point-of-sale  
2 system?

3 A. Uh-huh, and then into my email system,  
4 and then I send an email. If I decide to send  
5 some kind of a postcard, quite frankly, typically  
6 I take all of the addresses out of them if I'm  
7 going to send a mailing except for the North  
8 Carolina. And I take out a lot of the North  
9 Carolina if they're, like, Charlotte or, you know,  
10 outside of the 28, 287 kind of area code -- I mean  
11 ZIP codes. I try to send pretty locally. On  
12 occasion, I won't, but for the most part, I do.

13 Q. So I'm clear when you tell me that,  
14 that you're narrowing this distribution area,  
15 you're talking about when you're using the U.S.  
16 Postal Service --

17 A. Yes.

18 Q. -- instead of email?

19 A. Correct.

20 Q. And when you're sending email, it just  
21 goes to everybody, right?

22 A. Correct. I have no way of knowing  
23 where it's going.

24 Q. Right. Other than printing Exhibit 2  
25 and looking at it, that shows us which states and

1 where they are.

2 A. But that doesn't show whether they get  
3 email or not. I mean, I don't know if these  
4 people get email or don't get email.

5 Q. Okay. That's what I was trying to  
6 figure out. How do I know if somebody is an email  
7 recipient?

8 A. Well, I could look up someone in  
9 particular. You could tell me a name and I could  
10 do one record at a time and tell you whether I  
11 have their email address on file or whether I have  
12 their regular address on file.

13 Q. So the ones here on South Carolina,  
14 you would just have to physically look in the  
15 computer and say no. I'm assuming most people do  
16 give you an email address, is that accurate, these  
17 days?

18 A. It's mostly email, yes.

19 Q. So that is something that I would have  
20 to -- you could take this list and do that for  
21 South Carolina? Again, not for every other state,  
22 but --

23 A. It could be done. Now, whether the  
24 e-mail addresses are accurate or not, I also have  
25 no way of knowing.

1 Q. I understand that. I just wanted to  
2 know if some percentage that I could calculate  
3 based on how many did provide email addresses that  
4 would be, that email address would be included in  
5 a distribution even though it might not be a valid  
6 email address. I just needed to figure that out.

7 MR. MORTON: Jim, do you all have any  
8 objection to doing that and giving it to  
9 me?

10 MR. WALSH: I'm going to have to ask  
11 her how much time and effort.

12 MR. MORTON: Okay.

13 MR. WALSH: Maybe you can ask her.

14 MR. MORTON: I'm just asking her for  
15 South Carolina.

16 BY MR. MORTON:

17 Q. I mean how long would it take you to  
18 go through? Do you just pull it up and look at it  
19 on the computer screen? What's the process?

20 A. Let me think. There may be a way to.  
21 It's going to be pulling up each individual  
22 customer by name, and it's going to be -- it will  
23 be time intensive. Because if I look up Connor,  
24 it goes by the last name, I'm going to come up  
25 with probably ten different Connors. I'm going to

1 have to search through to see which Lisa Connor,  
2 you know, which Lisa I want and then see if she  
3 has an email.

4 Q. Well, like this last that was printed  
5 for me, it doesn't show up in your computer in  
6 this order where they're sorted by state?

7 A. No. That's -- I'm sorry. I think I  
8 understand your question. Your question is when I  
9 try to look for someone, how does it pop up on the  
10 screen; is that what you're asking?

11 Q. Well, I'm asking you does it appear on  
12 the screen sorted the same way it does on  
13 Exhibit 2?

14 A. No.

15 Q. Or can you sort it that way in the  
16 software?

17 A. No. I have to run a report to get  
18 this.

19 Q. When you say this, you're talking  
20 about Exhibit 2?

21 A. Exhibit 2, yes.

22 Q. Okay.

23 A. So somebody, I would, probably me,  
24 would have to go through each one of these last  
25 names, find the correct first name, bring up the

1 record and check, you know, write down whether or  
2 not I have an email address. It would be very  
3 time intensive. Not impossible, but very time  
4 intensive.

5 MR. WALSH: Can we go off the record?

6 MR. MORTON: Sure.

7 (Discussion off the record.)

8 BY MR. MORTON:

9 Q. First let's clarify what Exhibit 2  
10 actually shows. And of course we've already said  
11 Exhibit 2 is just a portion of the entire list,  
12 but am I accurate that as to the ones designated  
13 in South Carolina, these are customers who gave  
14 you a physical mailing address?

15 A. Yes. Well, actually no. The whole of  
16 Exhibit 2, not just this part, the whole would  
17 actually be all of the customers who have ever  
18 given us their name whether they give us an email  
19 address or mailing address. Because at the end of  
20 this file, there is a list of people with no  
21 address.

22 Q. Okay. I understand. And I didn't  
23 print them since they weren't designated South  
24 Carolina. You don't know where they're from.

25 A. Right. So they're in my point-of-sale

1 system but are not going to show up on this.

2 MR. WALSH: Now, just so I'm clear,  
3 you said something to the effect of the  
4 entire Exhibit 2. So this is only a  
5 portion of what you produced, Exhibit 2?

6 THE DEPONENT: Yes. I produced the  
7 whole customer file.

8 MR. MORTON: Yes. The CD that your  
9 office provided to me was -- had -- I think  
10 this was an Excel file that had a large  
11 volume of pages, and all I printed was the  
12 section where the South Carolina customers  
13 started and ended. And there may have been  
14 a page here and there that had a South  
15 Carolina customer in the wrong place. I  
16 didn't print all of those.

17 THE DEPONENT: Right.

18 BY MR. MORTON:

19 Q. I just printed the primary ones. So  
20 this shows you anybody in South Carolina that gave  
21 a physical address or a physical city? Like I see  
22 on the first page, there is one that doesn't have  
23 a mailing address, but it does have the city.

24 A. Right.

25 Q. And so this is out of the

1 point-of-sale software. And now when I'm looking  
2 at this list, Exhibit 2, you said there is some  
3 way to determine if these people also gave an  
4 email address?

5 A. Yes.

6 Q. And how do you do that?

7 A. The point-of-sale system, when I ask  
8 it to produce a report for me, it asks would you  
9 like to -- when I ask for it to produce a mailing  
10 report, mailing list, it asks would you like to  
11 exclude those with email addresses, and I can  
12 simply say yes, and it would take out everyone  
13 that has an email address on file.

14 Q. All right. Okay. So I think what  
15 you're going to do is furnish that complete report  
16 to me also. So I'll have the complete Excel  
17 spreadsheet along when it was sent --

18 A. Yes.

19 Q. -- and then the one --

20 MR. WALSH: Can you give her a piece  
21 of paper?

22 And let me make sure I understand  
23 because I thought you both said something  
24 slightly different. I thought that  
25 Exhibit 2 was the South Carolina customers

1 who gave you their name is what you said, I  
2 thought. And then I think Greg said gave  
3 you their physical address. So which one  
4 is it?

5 THE DEPONENT: I'm not sure if  
6 Exhibit 2 -- I don't understand whether  
7 Exhibit 2 is this piece of paper or the  
8 whole entire file.

9 MR. WALSH: It's this piece of paper  
10 in front of you. That's the only Exhibit 2  
11 there is.

12 THE DEPONENT: So this particular  
13 document just includes the ones that I know  
14 their address. There is other people on  
15 the list I have no idea who they are -- I  
16 mean where they're from.

17 MR. WALSH: So to make sure I'm clear,  
18 you're going to produce more names of South  
19 Carolina customers who have email addresses  
20 or are they already on here?

21 THE DEPONENT: No. They're already on  
22 here.

23 MR. WALSH: That's what I'm trying to  
24 make sure. So this Exhibit 2, will that  
25 essentially be, then, divided? It will be

1 the same number that's on here, it will  
2 just be divided between email and physical?

3 THE DEPONENT: No. It won't be the  
4 same number.

5 BY MR. MORTON:

6 Q. It won't be the same number. It's not  
7 going -- it's going to just give us the ones that  
8 do not have email addresses or that do?

9 A. No, that do.

10 Q. So it's going to give us -- you're  
11 going to -- it lets you exclude the ones who have  
12 email addresses, right?

13 A. Yes.

14 Q. So when you print the report for me,  
15 it's going to show the South Carolina people for  
16 which you have a physical address but no email  
17 address; is that accurate?

18 A. Exclude -- I'm sorry. It's starting  
19 to muddle.

20 MR. WALSH: Oh, it's muddled for me  
21 already.

22 BY MR. MORTON:

23 Q. The computer program, when you go to  
24 print the report, will ask you do you want to  
25 exclude people that have email addresses.

1           A.    Exclude people that have email  
2 addresses.

3           Q.    And you click yes?

4           A.    If I click yes, then it will take out  
5 everybody that has an email address.

6           Q.    So the report you're going to print  
7 and send --

8           A.    So it will be simply people without an  
9 email address of all the states because that's the  
10 way -- I can't sort it. I can afterwards.

11          Q.    Right. It will be sorted by states  
12 but it will be just like the first one you gave  
13 me, it will have all the states on there?

14          A.    Right.

15          Q.    So if you can print that.

16          MR. WALSH: Okay. And I just want to  
17 make sure, then, I get that, but that the  
18 total population of people from South  
19 Carolina is on Exhibit 2, and we're --  
20 isn't that right?

21          THE DEPONENT: As far as I know and my  
22 system understands.

23          MR. MORTON: Because she's saying she  
24 had some people on exhibit -- not on  
25 Exhibit 2, but on the file from which

1 Exhibit 2 came, there are some people at  
2 the end that you don't know what state  
3 they're from. They could be South Carolina  
4 or they could not be. There is no way of  
5 telling. All you have is an email address  
6 for those people.

7 MR. WALSH: Right. But what I'm  
8 saying is from Exhibit 2, when we get the  
9 new report, we should be able to -- we can  
10 subtract that number from Exhibit 2 to know  
11 what's left. That's what I want to make  
12 sure we're clear about.

13 MR. MORTON: That's correct.

14 MR. WALSH: All right. That's what I  
15 wanted to know.

16 MR. MORTON: Clear as mud.

17 MR. WALSH: Good.

18 BY MR. MORTON:

19 Q. All right. And then you were telling  
20 me when the business sends out an email, are you  
21 the person that handles that?

22 A. Yes.

23 Q. Is there anybody else that ever sends  
24 out emails on behalf of the business to all the  
25 customers?

1 A. No.

2 Q. Okay. I realize people may correspond  
3 with a particular customer on a sewing machine  
4 issue or repair issue or whatever.

5 A. No.

6 Q. So you handle that yourself?

7 A. Yes.

8 Q. How often do you send out those  
9 emails? Is there any particular schedule or is  
10 it --

11 A. No schedule, just when the need  
12 arises. I would say about every three weeks or  
13 so.

14 Q. Okay. And those emails go to everyone  
15 in the point-of-sale system that has provided an  
16 email address.

17 A. As well as there are people who can  
18 sign up by themselves on our website. There is a  
19 way to do that.

20 Q. When somebody signs up on the website,  
21 does their data show on the point-of-sale reports  
22 after that date?

23 A. No. Our point of sale is not tied to  
24 my email system that way.

25 Q. What information does someone signing

1 up on the website to be on your email list -- do  
2 they provide you their physical address also?

3 A. No. There is no --

4 Q. They only provide you their email  
5 address?

6 A. Yeah. There is no way to do that.

7 Q. When you referred to your email  
8 system, what system is that?

9 A. The system I use is from another quilt  
10 related business called Quiltropolis, quilt  
11 T-R-O-P-O-L-I-S.

12 Q. So that pulls -- or you tell me if I'm  
13 stating this correctly. That pulls the email  
14 addresses from the point-of-sale system, as well  
15 as from your online email signup list, and it  
16 sends the email to that entire population.

17 A. The Quiltropolis doesn't automatically  
18 pull from the point of sale. I gather from the  
19 point of sale and add it to the Quiltropolis  
20 system.

21 Q. Does it tell you, do you know, like,  
22 how many total are on the list when you send out  
23 an email?

24 A. I could look it up. I never pay any  
25 attention.

1 Q. But it tells you that sort of easily?  
2 You can provide that? You can answer that  
3 question?

4 A. Yes.

5 Q. So if you would write that down on  
6 your list, just the total number of email  
7 recipients, 2,000, 3,000, whatever it is because I  
8 can't tell.

9 When you send out an email  
10 approximately every three weeks or so, kind of  
11 tell me what's generally the content of the  
12 emails.

13 A. We're having a sale.

14 Q. Okay.

15 A. We're having some classes. Here are  
16 the new classes. Refer back to the website, see  
17 what's new.

18 Q. Is it accurate to say you're  
19 soliciting customers to come to the store by  
20 providing them this information via email?

21 A. I would say that's accurate.

22 Q. And I didn't see any of those emails  
23 or anything. Are those archived? Can you print  
24 out the ones you've sent? Are they saved somehow?

25 A. I can. But, I mean, it depends on how

1 long you want to go back, how long it would take  
2 to do it, but they are in the Quiltropolis system.

3 Q. Let me think about that. And then  
4 I'll try to narrow it some and send it to Jim, and  
5 he can object and say it's too broad or whatever.  
6 So don't put anything on your list yet.

7 I just didn't even know if they -- I  
8 know most email systems have a sent mail folder,  
9 but I didn't know if you had one or how far back  
10 it went.

11 A. It's archived.

12 Q. So those are saved, okay.

13 Computers make things easier and they  
14 make things difficult.

15 A. That's true.

16 Q. Again, your husband is not going to  
17 know anything about the email system or the thing,  
18 this Exhibit 2, point of sale; is that correct?

19 A. That's correct.

20 Q. Good. I'm just going to skip all that  
21 with him.

22 A. Yeah. He is going to have no idea.

23 Q. When emails are sent out, you're the  
24 one that's responsible for doing that?

25 A. Yes.

1 Q. And does Quiltropolis give you a  
2 template also, sort of to use for sewing  
3 companies, or more of a blank screen like AOL?

4 A. More of a blank screen.

5 Q. And then print advertising, I had  
6 gotten copies of the documents we were provided  
7 through discovery. Just tell me an overview of  
8 where you all advertise in printed publications.

9 A. He actually does the printed -- my  
10 husband does the printed advertising, so he would  
11 be better off to answer that.

12 Q. Okay. That's fine. I'll be glad to  
13 defer to him.

14 All right. Do you know about TV  
15 advertising or is your husband the one that knows  
16 about that?

17 A. He is the one that would be able to  
18 answer that better than I can.

19 Q. Have you ever -- do you know the  
20 content of the TV ads? I mean I saw one time you  
21 all were on WLOS, then you use a local cable  
22 station now.

23 A. It's been a really long time since  
24 we've even run the TV ads. He could tell you.  
25 I'm pretty sure he can tell you dates and things.

1 Q. Were you ever in the ads?

2 A. I never was in front of the camera  
3 saying hey.

4 Q. I'm such-and-such, I teach the  
5 classes?

6 A. I don't remember that. They may have  
7 had a picture of me in there. I don't remember  
8 that being true.

9 Q. Okay. I'll ask him about that. I'll  
10 skip that with you.

11 Are there trade shows that you go to  
12 on behalf of Asheville Cotton Company?

13 A. On occasion we'll do a quilt show.

14 Q. That's a -- tell me about -- explain  
15 what a quilt show is to me because I do not know.

16 A. A quilt show would be where people  
17 display their quilts, and they're judged, and they  
18 win prizes. There are vendors that have booths  
19 there.

20 Q. And is a quilt or are quilt shows  
21 something that you are organizing or you are going  
22 to?

23 A. The ones that I'm talking about would  
24 be ones that we go to. We're invited.

25 Q. Okay. So that's somebody else putting

1 those on?

2 A. Yes. We have a customer quilt show  
3 but that's in the store.

4 Q. And I was going to ask you about that  
5 separately. I had seen that on the website, so  
6 we'll come back to that.

7 The ones that you're invited to, is  
8 there a typical number you go to per year?

9 A. As few as we can. Typically we don't  
10 go. We went last year -- was it last year -- to  
11 the Asheville quilt show.

12 Q. Okay. Have you been to --

13 A. And prior to that we hadn't been in a  
14 long time.

15 Sorry.

16 Q. That's all right.

17 Have you been to any quilt shows in  
18 South Carolina?

19 A. No.

20 Q. Have you been -- other than the time  
21 you went and spoke at a sewing group that I'll ask  
22 you about separately, have you been to any other  
23 events or functions in South Carolina related to  
24 quilting or sewing?

25 A. No.

1 Q. Okay. Tell me about the one, I think  
2 it said you went to Landrum in 2012. Does that  
3 sound right?

4 A. I'm not a hundred percent sure of the  
5 date, but I was invited to come speak to a group.

6 Q. All right. Do you know who invited  
7 you?

8 A. I do not remember.

9 Q. Okay. Was it somebody that came into  
10 the store and talked to you? Do you recall how it  
11 came about?

12 A. I don't remember if whoever it was was  
13 in the store or called. I don't remember.

14 Q. Who from the store went to that  
15 function; was it just you?

16 A. Just me.

17 Q. And did you just drive down and drive  
18 back the same day?

19 A. Yes.

20 Q. And how far is Landrum, approximately,  
21 from the store?

22 A. I have no idea, took an hour and 15  
23 minutes maybe.

24 Q. Okay. Close enough.

25 And I should have said, that was in

1 Landrum, South Carolina, correct?

2 A. Correct.

3 Q. Was there anybody else speaking at  
4 that?

5 A. Not -- I mean, you mean like a  
6 lecturer or anything?

7 Q. Yes.

8 A. No.

9 Q. How long did you -- were you up in  
10 front of the group?

11 A. Forty minutes.

12 Q. And what was the topic you were  
13 covering?

14 A. As far as I remember, I was showing  
15 the -- my quilted jackets.

16 Q. Okay. Is that like a specialty?

17 A. That's something I enjoy doing,  
18 making.

19 MR. WALSH: Let's go off the record.

20 (Discussion off the record.)

21 BY MR. MORTON:

22 Q. And at the thing that you went to, was  
23 it at somebody's house or at a store?

24 A. It was at a church.

25 Q. And about how many people were there?

1 A. Thirty, 40.

2 Q. And at that did you talk about the  
3 store and what the store sells?

4 A. Probably. I don't really remember the  
5 exact.

6 Q. Did you hand out business cards or  
7 flyers for the store?

8 A. Probably not. I don't have any  
9 flyers, and I always forget my business cards.

10 Q. If you had had the business cards,  
11 would that have been something you would have  
12 handed out?

13 A. I may have had them out setting, but I  
14 do not remember that that happened. I would doubt  
15 that that happened.

16 Q. Was there a way at that meeting to  
17 sign up for the email list or the physical mailing  
18 list?

19 A. I don't recall.

20 Q. And you only went and spoke to that  
21 group that one time?

22 A. Yes.

23 Q. Do you recall if there was an email or  
24 anything you sent out notifying people you were  
25 going to be speaking?

1           A.    I would not have done that.  I don't  
2 remember, but that would not be typical of  
3 something I would have done.

4           Q.    Do you recall if any of the people  
5 that were at that meeting later came to the store  
6 and may have said to you, Oh, yeah, I heard you  
7 speak in Landrum, I wanted to come up here?

8           A.    I don't remember.

9           Q.    You don't remember anything like that?

10          A.    I don't remember.

11          Q.    And I think, just so I'm sure, are  
12 there any goods you all purchase from suppliers in  
13 South Carolina that you're aware of?

14          A.    My husband does most all the  
15 purchasing of stuff.  He could probably answer  
16 that better.

17          Q.    Are there any that you're aware of?

18          A.    Not that I -- he deals with that.  He  
19 orders all the fabric, and that would be the only  
20 thing it could be.

21                MR. MORTON:  So I'll ask him about  
22 that.  We'll take a break for a minute.

23                (Recess.)

24 BY MR. MORTON:

25          Q.    I failed to ask you about you said you

1 had a quilt show at the store.

2 A. Uh-huh.

3 Q. Is that an annual deal or semiannual?

4 A. We've been doing it for about, I want  
5 to say, four years.

6 Q. And when is it normally?

7 A. Spring.

8 Q. So when is the one coming up or have  
9 you already had it?

10 A. May, end of May.

11 Q. And is that -- well, tell me. Are you  
12 asking your customers to bring in their quilts to  
13 display; is that accurate?

14 A. Uh-huh.

15 Q. You've got to say yes.

16 A. Yes. I'm sorry.

17 Q. And how many customers normally do  
18 that, bring in their wares or their goods?

19 A. Sixty quilts, I believe we get about  
20 60 quilts.

21 Q. And is this held at the store or  
22 somewhere else?

23 A. At the store.

24 Q. So you have enough room to display?

25 A. We squeeze them in.

1 Q. And is it an all day or multiday  
2 event?

3 A. About a week and a half.

4 Q. All right. And is it accurate to say  
5 that week and a half is your busiest time of the  
6 year or is that --

7 A. Not really accurate.

8 Q. What is the busiest time?

9 A. November, January.

10 Q. And with regard to the quilt show, do  
11 you keep records of the people that are displaying  
12 and where they are from?

13 A. We take a name and phone number so we  
14 can return the quilt.

15 Q. Okay. Anything about the state that  
16 they're from --

17 A. Not --

18 Q. -- in the records?

19 A. Not listed.

20 Q. Okay. I mean I understand it may not  
21 be listed on the display. I want to make sure.  
22 Is it listed in the store records?

23 A. There is no correlation. I mean, if I  
24 looked up their name in my system and if it had an  
25 address, then I could find the address if I had

1 it, but it's not listed with the quilt show  
2 information.

3 Q. I understand. Are emails sent out to  
4 the email list regarding the quilt show? Is that  
5 an event, is that a way you publicize it and  
6 solicit people to participate?

7 A. Yes.

8 Q. And then who -- do you judge them and  
9 award prizes?

10 A. In our store, we don't judge the  
11 quilts. We are basically just earning money for  
12 MANNA FoodBank as a charity.

13 Q. Okay.

14 A. So it's not like a normal quilt show  
15 in the way that it's handled.

16 Q. How is money earned for the charity?  
17 Do people pay to come to the quilt show or do they  
18 just make donations?

19 A. They make donations towards quilts  
20 that they like.

21 Q. Okay.

22 A. And then the money goes to the  
23 charity.

24 Q. So you sort of vote with your  
25 pocketbook for a good cause?

1 A. Exactly.

2 Q. Got it. And then I also saw on the  
3 website that you have a try before you buy party.  
4 I guess that's a chance to use the different  
5 sewing machines; is that correct?

6 A. Uh-huh.

7 Q. And are those also advertised via your  
8 email list?

9 A. Yes.

10 Q. And that's hoping people come in off  
11 the email list and try the machines and then buy  
12 one from your store; is that correct?

13 A. Yes.

14 Q. And with those emails including  
15 different states, that doesn't violate your sales  
16 agreement with the three sewing machine  
17 distributors?

18 A. No.

19 Q. Because if they buy, they're buying in  
20 North Carolina; is that -- am I stating that  
21 correctly?

22 A. In my store. In my store. That's the  
23 differentiation.

24 Q. Got you. So you can solicit them to  
25 come buy in your store, but you can't sell to them

1 online or anything, on the sewing machines?

2 A. The current -- I don't know the  
3 current wording of the agreements because that  
4 changes -- that has changed with the advent of the  
5 Internet. I do not try to solicit business  
6 outside of my area because it's -- the spirit of  
7 the law is to not do that according to my  
8 agreements.

9 Q. And we're talking about the agreements  
10 that I listed?

11 A. Yes, with our companies. Quite  
12 frankly, it's still a bit unclear.

13 Q. When you say unclear, tell me what you  
14 are referring to. Are you referring to the sewing  
15 machines?

16 A. The sewing machine agreements.  
17 They're still finding their way through this  
18 Internet thing.

19 Q. But as far as you, is it accurate to  
20 say you feel you're in compliance as long as you  
21 only sell to a person physically standing there in  
22 your store and buying from you at that time?

23 A. Yes.

24 MR. MORTON: I think that's all I have  
25 right now. If you'll answer anything Jim

1 has.

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. WALSH:

6 Q. Yes. I just had a couple of  
7 questions, Mrs. Culbertson.

8 I just want to make sure that I'm  
9 understanding the information in Exhibit 2, the  
10 customers that you have listed there. Do those  
11 names come from them when they come into the  
12 store; is that how you get those?

13 A. Yes.

14 Q. So when they're doing business with  
15 you, then you ask them for their name?

16 A. Yes.

17 Q. You're not getting that from some  
18 solicitation, they're actually in there?

19 A. Never have.

20 Q. And then you talked about your online  
21 shopping. Is that a recent phenomenon where you  
22 can actually click on and purchase something?

23 A. We started in December. There was a  
24 trial run a long time ago, and I couldn't tell you  
25 when, but I don't think we ever sold anything.

1 Q. Right. Because when I went, I guess a  
2 few months ago, I went on your website, and I saw  
3 there was no way to click on to purchase.

4 A. No shopping, no.

5 Q. But now you've just started that in  
6 the last few months?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. Yes. Sorry.

10 Q. So back in 2011, you didn't have the  
11 option to click online and purchase anything?

12 A. As far as I remember, I did not. I  
13 could not tell you. I know there was a moment  
14 when I tried it for about two months and it did  
15 not work, but I don't know when that was.

16 Q. When you say it did not work, you mean  
17 you didn't get any sales?

18 A. I got no sales.

19 MR. WALSH: All right. That's all the  
20 questions I have. Thank you.

21 MR. MORTON: All right. You did just  
22 have a couple. Signature?

23 MR. WALSH: We didn't talk about this,  
24 but you have the right to get the  
25 transcript before it's deemed to be an

1 official transcript and read it over and  
2 make any corrections or check the court  
3 reporter for accuracy or you can just rely  
4 on her getting it down accurately in the  
5 right way and not have to review it and you  
6 won't have to do that. But you do have the  
7 right to get it, review it, and then sign  
8 off on that as being the official correct  
9 transcript.

10 I don't have any problem with you  
11 waiving that and just saying I don't need  
12 to review it, but you can.

13 THE DEPONENT: I waive.

14 THE COURT REPORTER: Mr. Morton, did  
15 you want to order this?

16 MR. MORTON: Yes, please.

17 THE COURT REPORTER: Do you need a  
18 copy?

19 MR. WALSH: Yes, everything, etrans,  
20 everything you can provide.

21 (The deposition was concluded at 12:29  
22 p.m.)

CERTIFICATE OF REPORTER

I, Lori McCain Jones, Registered Professional Reporter, and Notary Public for the State of North Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal April 21, 2015, at Forsyth County, North Carolina.

*Lori McCain Jones, RPR*

Lori McCain Jones, RPR  
Registered Professional  
Reporter and Notary Public  
No: 201412800042 in and  
for Forsyth County, North  
Carolina, and the State at  
Large.  
My Commission expires  
May 6, 2019

Shipping Log Records – Approximately 2011 – 2015

NC - 146  
SC - 47  
TN - 33  
FL - 28  
TX - 5  
MO - 4  
NM - 1  
KY - 3  
WA - 3  
VT - 1  
NE - 1  
WY - 1  
WV - 2  
DE - 1  
ME - 1  
GA - 9  
MD - 1  
WI - 2  
CA - 3  
NY - 6  
OH - 5  
MA - 4  
CT - 2  
VA - 5  
PA - 2  
AL - 3  
RI - 1  
MI - 2  
OK - 1  
AZ - 1  
IL - 1  
Australia - 1  
ND - 3  
ID - 1  
  
DC - 1  
HI - 1  
  
Ontario - 1  
England - 1  
IN - 1  
MN - 1



Gigi	Turner	24 Grand View La	Murphy	NC	28906
Sandy	Espenschied	563 Evans Hollow	Murphy	NC	28906
Gail	MacLean	50 Red Bud Lane	Murphy	NC	28906
Sheree	Peters	700 Wolfe Trail	Murphy	NC	28906
Edna	Hartley	531 Greasy Creek	Murphy	NC	28906
Audra	Fowler	PO Box 533	Murphy	NC	28906
Becky	Garrett	PO BOX 72	Warne	NC	28909
Santeala	Bradford	65 Poors Lane	Burnsville	NC	28914
Sonja	Smith	522 Russell Road	Camden	SC	29020
Julia	Belk	PO BOX 339	Chapin	SC	29036
Donna	Kerr	1050 Tookiedoo	L Elgin	SC	29045
Rosemary	Lytle	109 Stonemill Ct	Irmo	SC	29063
Catherine	Ebling	101 River Run Rd	Irmo	SC	29063
Terry	Caughen	180 youngs bend	Kershaw	sc	29067
Wilma	Grubbs	1037 Summerlan	leesville	SC	29070
Bonnie	Shumpert	3806 Fairview Ro	Leesville	SC	29070
Bivens	Rinehart	115 Carriage Hill	I Lexington	SC	29072
Ann	Alexander	180 Morgan Drive	Lexington	SC	29072
brooke	barnes	164 Harek	Lexington	SC	29072
Elsie	Porter	106 Ashe Street	Lexington	SC	29073
June	McCaskill	130 Wildwood Ln	Lugoff	SC	29078
Jill	Leasure	1683 Ethan Stone	Manning	SC	29102
Christine	Milstead	311 Ballentine Dr	Newberry	SC	29108
Anna	Jones	132 Avoaks Lane	North	SC	29112
Sharon	Spearman	PO Box 231	North	SC	29112
Peggy	Fogle	3415 Tamara Lan	Orangeburg	SC	29118
Christine	Hepfer	2810 Lillington Dr	Sumpter	SC	29150
Harriette	Newell	418 White Ave	West Columbia	SC	29169
Margaret	Bauer		Columbia	SC	29205
E.A.	Gaffney	1342 Sanford Driv	Columbia	SC	29206
Ethel	MacInnis	1725 Gamewell D	Columbia	SC	29206
Sally	Aldridge	415 Chimney Hill	Columbia	SC	29209
Linda	Register	209 Waterview Dr	Columbia	SC	29212
Teresa	Jones	PO BOX 211241	Columbia	SC	29221
Bambi	Davis	2212 East Foundr	Columbia	SC	29223
Dorothy	Bird	4741 Worden Dr	Spartanburg	SC	29301
Cindy	Ullery	4126 Shepard Rd	Spartanburg	SC	29301
Gloria	Ward	203 Collingwood I	Spartanburg	SC	29301
Sue	Rothemich	626 Palmetto St	Spartanburg	SC	29302
Helen	Williams	291 Wedgewood	Spartanburg	SC	29302
Dianne	Bagnal	5 Woodburn Ridg	Spartanburg	SC	29302
Louisa	Berry	576 Otis Blvd	Spartanburg	SC	29302
Anne	Hardy	651 Archer Road	Spartingburg	SC	29303
Donna	Lanford	346 Templeton Dr	Spartanburg	SC	29306
Linda	Patterson	1861 Goldmine R	Spartanburg	SC	29307
Ethel	Turner	6 Wisteria Ct.	Spartanburg	SC	29307
Joan	Wheatley	707 Turning Leaf	Boiling Springs	SC	29316



Kate	Lominack	123 Shining Rock	Boiling Springs	SC	29316
Carol	Distiso	3740 Boiling Sprir	Boiling Srping	SC	29316
Phyllis	Cole	320 Bright Wick C	Boiling Springs	SC	29316
Judy	Witherow	455 Cole Rd.	Campobello	SC	29322
Lynn	Gore	1001 Motlow Sch	Campobello	SC	29322
Carol	Jones	135 Point Drive	Campobello	SC	29322
Jennie	Sullens	13725 HWY 11	Campobello	SC	29322
Laurie	Blair	217 Saint Andrew	Campobello	SC	29322
Christine	Wilde	1570 Roddy Rd	Campobello	SC	29322
Judy	Payne	323 Sadlers Run	Chesnee	SC	29323
Orleathe	Bradley	PO Box 214	Chesnee	SC	29323
Sheri	Kuykendall	181 Beaver Creek	Chesnee	SC	29323
Diane	Willard	426 Green Valley	Chesnee	SC	29323
Cecelia	Bailey	67 Edgewood Circ	Clinton	SC	29325
Jo	White	606 Jefferson St.	Clinton	SC	29325
Diana	Evatt	364 Old Colony R	Clinton	SC	29325
Laura	Fox	284 Hopewell Ch	Clinton	SC	29325
Tosha	Cichon	1908 Bonner Rd.	Cowpens	SC	29330
Dolly	Buelter	214 Water Mill R	Cowpens	SC	29330
Cheri	Cerny	952 Swafford Driv	Cowpens	SC	29330
Dolly	Boelter	214 Water Mill R	Cowpens	SC	29330
Claire	Emory	285 Main Street	Cowpens	SC	29330
Vicki	Barton	102 Overhill Dr.	Duncan	SC	29334
Lona	Brier		Gaffney	SC	29340
Sylvia	Caldwell	1605 Rutledge Av	Gaffney	SC	29341
Nancy	Patterson	333 Ross Hill Roa	Gaffney	SC	29341
Dottie	Kerns	147 Lakewood Ac	Gaffney	SC	29341
Tammy	Brank	1380 Foster Rd.	Inman	SC	29349
JennaVee	Cox	262 Jacob Creek	Inman	SC	29349
Sandra	Brannon	114 Timberlake D	Inman	SC	29349
Fran	Gwinn	205 Plantation La	Inman	SC	29349
Geri	Hyder	3310 New Cut Rd	Inman	SC	29349
Karen	Dellinger	160 Cothran Rd.	Inman	SC	29349
Nancy	Morgan	705 Lake Winds B	Inman	SC	29349
Margaret	Jamison	34 Coastline Drive	Spartanburg	SC	29349
Sarah	Bosko	710 Jordan Creek	Inman	SC	29349
Frieda	Taylor	10 Blue bird Lane	Inman	SC	29349
Eileen	Andreassen	10 Outter Drive	Inman	SC	29349
Cathy	Stokes	104 Lakewinds Ct	Inman	SC	29349
Betty	Greene	337 Wittenberg V	Inman	SC	29349
Jo Ann	Painter	112 Inn.View Dr	Inman	SC	29349
Linda	Luther	317 Jacob Creek	Inman	SC	29349
Linda	Abrams	528 Blalock Dr	Joanna	SC	29351
Mary Elizabeth	Wall	Po Box 576	Landrum	SC	29356
Ellen	Henderson	311 North Cambe	Landrum	SC	29356
Mary	Corn	PO Box 83	Landrum	SC	29356
Judy	Gallman	312 Lister Rd.	Landrum	SC	29356

Tammy	Carruth	310 South Bomar Landrum	sc	29356
Mary Margaret	Lejeune	PO Box 444 Landrum	SC	29356
Lee	Stehlik	34 Moss Pink Way Landrum	SC	29356
Sharon	Kolbye	303 Moss Lane Landrum	SC	29356
Barbara	Adams	Landrum	SC	29356
Kay	Maupin	310 Belue Mill Rd Landrum	SC	29356
Diane	Christopher	407 Fairwinds Rd. Landrum	SC	29356
Debbie	Young	5 Misty Vale Cour Landrum	SC	29356
Laraine	Wells	199 Caledonia Ro. Landrum	SC	29356
Cindy	Pipes	203 Eagle Rock R Landrum	SC	29356
Donna	Coburn	1725 Neely Ferry Laurens	SC	29360
Virginia	Oleson	60 Shenandoah D Laurens	SC	29360
Linda	Tripp	115 Angler Drive Laurens	SC	29360
Ann R.	Johnson	303B Ashley Lane Laurens	SC	29360
Gail	Parker	404 Powderhorn I Laurens	SC	29360
Karla	Glova	430 Tyger Ridge L Lyman	SC	29365
Wanda	Pace	1722 Hwy 357 Lyman	SC	29365
Shelley	Morris	431 Glen Crest Dr Moore	SC	29369
Janet	Scott	105 Memory Lane Moore	SC	29369
Dianna	Satterfield	123 Sunset Lane Moore	SC	29369
Tracy	Westmoreland	201 Bailey Rd. Moore	SC	29369
Crystal	Short	705 Bayshore Lane Moore	SC	29369
Joyce	Hardin	685 Bancroft Dr. Rock Hill	SC	29370
Kathy	Morgan	128 Watts Lane Pauline	SC	29374
Bonnie	Hyatt	130 Sunset Dr. Roebuck	SC	29376
Cathy	Stapleton	770 Gatewood Dr Roebuck	SC	29376
Linda	Peeler	100 Brook Lane Roebuck	SC	29376
Melissa	Bailes	713 Thornridge R Union	SC	29379
Georganne	Rouse	410 Rice Ave. Union	SC	29379
Debbie	Spiers	121 Cherokee Ave Union	SC	29379
Linda	Collins	15303 Neely Ferry Waterloo	SC	29384
Jean	Knighton	PO Box 291 Wellford	SC	29385
Karen	Neal	1020 Switzer Gre Woodruff	SC	29388
Linda	Taylor	261 Lakewood Dr Woodruff	SC	29388
Paula	Easler	PO Box 301 Woodruff	SC	29388
Faith	Reitmeier	8 Angi Drive Woodruff	SC	29388
Harolyn	Johnson	424 Winding Oak Woodruff	SC	29388
Cathey	Skinner	1950 S J Workma Woodruff	SC	29388
Richard Sr.	Grimball	52 Legare Charleston	SC	29401
Marilyn	McGuire	5400 Langston Pa North Charleston	SC	29420
Sandy	Wetstone	827 School house Branchville	SC	29432
Kelly	Mills	337 Chester Way Huger	SC	29450
Lillian	Lawrence	118 Surlington Dr Ladson	SC	29456
Susan	Clark	611 Detyens Ct Mt.-Pleasant	SC	29464
Gloria	Grant	206 Lakeview Dr Summerville	SC	29485
Jewel	Clifton	264 Volunteer Lar Walterbourough	SC	29488
Suzanne	Cullom	1907 Effie's Lane Florence	SC	29505

Linda	Russ	128 East Country	Conway	SC	29526
Sharon	Gilbert	799 Helms Way	Conway	SC	29526
Carol	Lindler	721 West Home A	Hartsville	SC	29550
BJ	Lindler	721 West Home A	Hartsville	SC	29550
Lou Anne	Dayton	1840 Regency Dr.	Hartsville	SC	29550
Dale	Williams	1947 Lakeview Cir	Surfside Beach	SC	29575
Rene	Sanderson	309 Ashwood Ln	Myrtle Beach	SC	29588
Brenda	Lowder	1032 West Camp	Scranton	SC	29591
Linda	Price	6 Pickney St	Greenville	SC	29601
Lisa	Conner	20 Rowley St	Greenville	SC	29601
Sara	Conrad	415 nTownes Stre	Greenville	SC	29601
Linda	Bauer	PO Box 8737	Greenville	SC	29604
Ginger	Green	21 Crescent Ave	Greenville	SC	29605
Joan	Roper	139 Kathryan Cou	Greenville	SC	29605
Elaine	Loucks	39 Terrain Dr.	Greenville	SC	29605
Colleen	Ramirez	103 Waccamaw A	Greenville	SC	29605
Scottie	Brandt	120 Byrd Blvd	Greenville	SC	29605
Betty	Adams	792 Fowler Circle	Greenville	SC	29607
Gloria	Taliaferro	10 Holly Circle	Greenville	SC	29607
Alpha	Lockaby	152 Woodridge Ci	Greenville	SC	29607
Dee Ann	Blood	501 Cannon Circle	Greenville	SC	29607
Maudie	Blackwell	505 McCrary Stre	Greenville	SC	29609
Lesia	Graybill	1069 Altamont Rc	Greenville	SC	29609
Donna	Kazia	221 Randall St	Greenville	SC	29609
Pat	Goßnell	651 Mountain Cre	Greenville	SC	29609
Susan	Lambert	200 Lake Circle Dr	Greenville	SC	29609
Shannon	Garrett	325 Townes St ex	Greenville	SC	29609
Laurel	Green	327 Ridgecrest Dr	Greenville	SC	29609
Kathleen	Conner	4 Wren Dr.	Greenville	SC	29609
Pat	Tanner	650 Forrest Haver	Greenville	SC	29609
Alice	Smith	P.O. Box 14245	Greenville	SC	29610
Ellen	Garrett	121 Old Bramlett	Greenville	SC	29611
Deane	Johnston	1228 Green Fern I	Greenville	SC	29611
Kathy	Wilson	205 Strubridge Dr	Greenville	SC	29615
Shelia	Chandler	16 Prestige Court	Greenville	SC	29615
Kathy	Kincaid	5 McSwain Drive	Greenville	SC	29615
Joanna	Yost	510 Imperial Dr.	Greenville	SC	29615
Janet	Gregory	28 Rocky Pt. Way	Greenville	SC	29615
Sandy	Wolf	112 Binam Ct.	Greenville	SC	29615
Gale	Pemberton	317 Ivystone Driv	Greenville	SC	29615
Carol	Johnson	12 Rivoli Lane	Greenville	SC	29615
Bonnijean	Marley	17 Doverdale Rd	Greenville	SC	29615
Anita	Griggs	111 St Augustine	Greenville	SC	29615
Sherri	Allred	26 Lisa Drive	Greenville	SC	29615
Kaye	Eggerding	4 Welsh Cobb Ct.	Greenville	SC	29615
Betty	Riddle	12 Wildwood Rd	Greenville	SC	29615
Elaine	Labadie	22 Strawberry Dr.	Greenville	SC	29617

Tammy	Medlin	6 Linden Drive	Greenville	SC	29617
Shanna	Creswell	101 Monaghan Av	Greenville	SC	29617
Marilyn	Bixler	1 Maitland Drive	Greenville	SC	29617
Jackie	Patton	167 Newington Ci	Anderson	SC	29621
ELizabeth	Thackery	616 Laurens Dr	Anderson	SC	29621
Clarence	Tupper	402 North Main S	Anderson	SC	29621
Debra	Madden	103 Buttercup Træ	Anderson	SC	29621
Shannon	Johnson	213 Huntington D	Anderson	SC	29625
Cindy	Starowesky		Anderson	SC	29625
Eleanor	Shultz	118 Coachmen Dr	Anderson	SC	29625
Anna M	Johnson	213 Huntington D	Anderson	SC	29625
Stacy	Dodds	139 Steeplechase	Belton	SC	29627
Christine	McClaren	901 Central Rd.	Central	SC	29630
Kae	Bridges	748 Greenville Hv	Central	SC	29630
Donna	Barnhill	214 Strawberry Læ	Clemson	SC	29631
Margaret	Hurley	103 Riggs Dr	Clemson	SC	29631
Susan	Wagener	216 Strawberry Læ	Clemson	SC	29631
Paige	Alexander	4435 Farris Bridge	Easley	SC	29640
Mary	Fellows	202 Gilliland Ave.	Easley	SC	29640
Marabee	Seifert	176 Brandywood	Easley	SC	29640
Sharon	Swede	102 Walnut Hill	Easley	SC	29640
Martha	McKie	629 Elljean Rd	Easley	SC	29640
Mary	Pruitt	201 Heathwod Pl	Easley	SC	29640
Jolanta	Serafin	102 Misty Oak Co	Easley	SC	29640
Karen	Carson	405 Perry Hill Rd.	Easley	SC	29640
Lynda	Johnson	132 East Church P	Easley	SC	29642
Cynthia	Oliver	404 Roosevelt Dr.	Easley	SC	29642
Deb	Fowler		Easley	SC	29642
Leslie	Salley	524 Watson Rd	Easley	SC	29642
Debra	Tindall	105 Wellington Ræ	Easley	SC	29642
Cassandra	Reller	336 Odom Rd	Easley	SC	29642
Beth	Holcombe	304 Pearle Dr	Easley	SC	29642
Charlotte	Brooks	525 Brighton Circl	Easley	SC	29642
Heidi	Wolko	7 Osceola Trail	Fair Play	SC	29643
Carolyn	Harris	650 Deer Creek Lr	Fair Play	SC	29643
Margaret	Seel	1916 Fairview Rd	Ft. Inn	SC	29644
Paige	Maddos	109 Maple Drive	Fountain Inn	SC	29644
Marcia	whaley	11 canterbrooke r	Fountain Inn	SC	29644
Faye	Bayne	6 Treaty Point Wa	Fountain Inn	SC	29644
Pam	Gordon	279 Greenpond Fæ	Gray Court	SC	29645
Misty	Miller	31 Durbin Farms I	Gray Court	SC	29645
Betsy	McLeod	1725 Crawford Rc	Graycourt	SC	29645
Beverly	Hill	414 Abbott Ave.	Greenwood	SC	29646
Betty	Andriano	507 Pembroke Rd	Greenwood	SC	29646
Karen	Hyatt	308 Salak Road	Greenwood	SC	29646
Jeanie	Jenkins	205 Kenilworth Dæ	Greenwood	SC	29649
Sandy	West	114 Lupo Dr.	Greenwood	SC	29649

Connie	Stover	135 Hutira Lane	Greenwood	SC	29649
Karen	Stover		Greenwood	NC	29649
Kristin	Kipper	117 Tuscany Way	Greer	SC	29650
Debbie	Nelson	117 W Spindletre	Greer	SC	29650
Debbie	Doyal	112 Caedmon Co	Greer	SC	29650
Brandi	Westmoreland	8 Furwood Ct	Greer	SC	29650
Suzanne	Albritton	1101 Thornblade	Greer	SC	29650
J.	Findlay	105 Northridge R	Greer	SC	29650
Jill	Muth	303 Rosebud Cou	Greer	SC	29650
Carol	Reid		Greer	SC	29650
Sabrina	Walker	208 Durand Court	Greer	SC	29650
Katherine	Hultstrand	710 Sugar Mill Rd	Greer	SC	29650
Brenda	Wall	103 Denmark Dri	Greer	SC	29650
Elizabeth	King	112 Bascom Cour	Greer	SC	29650
Nancy	Taylor	36 Bailless Ct.	Greer	SC	29650
Pat	Hodur	137 Tanager Circ	Greer	SC	29650
Donna	Morschauser	4 Claymore Ct	Greer	SC	29650
Dorothy	Michalek	304 Hillside Dr	Greer	SC	29651
Pat	Ruff	3450 McAbee Ro	Greer	SC	29651
Charlotte	Parris	825 Taylor Rd.	Greer	SC	29651
Darlene	Roberts	535 Mahaffey Rd.	Greer	SC	29651
Polly	Thornhill	2290 Hwy 101 So	Greer	SC	29651
Carolyn	Jones	709 N Main St	Greer	SC	29651
Faye	Kiser	102 Vaughn St	Greer	SC	29651
Kathy	Hind	3731 North Hwy.	Greer	SC	29651
Linda	Gysin	790 W Gap Creek	Greer	SC	29651
Penny	Fulmer	10 Woodway Ct.	Greer	SC	29651
Linda	Bennett	4128 Jug Factory	Greer	SC	29651
Janine	Allen	225 Abigail Lane	Greer	SC	29651
Kay	Guess		Greer	SC	29651
Kathy	Campbell	1281 Durham Snc	Greer	SC	29651
Leslie	Garza	8 Silver Ridge Ct.	Greer	SC	29651
Paula	McDonald	PO Box 1141	Greer	SC	29652
Hilda	Swansey	PO Box 65	Hodges	SC	29653
Donna R	Kelley	194 Sky View Circ	Liberty	SC	29657
Alice	Higdon		Lowndesville	SC	29659
Becky	Greene	301 Devils Fork R	Marietta	SC	29661
Eileen	Ash	206 Freeman Brid	Marietta	SC	29661
Betty	King	202 Edmondston	Mauldin	SC	29662
Marilyn	Harmon	106 Salado Ln.	Mauldin	SC	29662
Nieves	Lehmann	217 Vesper Circle	Mauldin	SC	29662
Ruth	Bartholomew	116 Basswood Dri	Mauldin	SC	29662
Mickie	Day	912 Fargo St.	Mauldin	SC	29662
Joy	George	105 Braddock Dr	Mauldin	SC	29662
Emily	Kear	1301 Alexandrite	Mauldin	SC	29662
Shelva	Lutz	203 Leake Street	Mauldin	SC	29662
Rebecca	Anderson	1318 Alexanderite	Mauldin	SC	29662

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
 2 COUNTY OF GREENVILLE  
 3  
 4 BLANCHE G. CRESWELL,  
 5 Plaintiff,  
 6 vs. CASE NO. 2014-CP-23-5266  
 7 ROBIN CULBERTSON AND  
 8 CHIP CULBERTSON d/b/a  
 9 ASHEVILLE COTTON COMPANY,  
 10 AND ASHEVILLE COTTON COMPANY,  
 11 Defendants.

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11 DEPOSITION OF WILLIAM H. CULBERTSON

---

13 DATE TAKEN: Thursday, April 9, 2015  
 14 TIME BEGAN: 12:45 p.m.  
 15 TIME ENDED: 12:58 p.m.  
 16 LOCATION: Jay Kerr Law  
 17 84 Peachtree Boulevard  
 18 Asheville, North Carolina 28803  
 19 REPORTED BY: Lori McCain Jones  
 Registered Professional Reporter  
 20 EVERYWORD, INC.  
 21 Post Office Box 1459  
 Columbia, South Carolina 29202  
 22 803-212-0012

1 APPEARANCES:

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4 BY: Gregory A. Morton, Esq.  
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5 864.675.6010  
6 864.675.6015  
6 gmorton@dmdslaw.com

7  
8 ATTORNEY FOR THE DEFENDANTS:

8 Clarkson, Walsh, Terrell & Coulter  
9 BY: James P. Walsh, Esq.  
10 1164A Woodruff Road  
10 Greenville, South Carolina 29607  
11 864.232.4400  
11 864.235.4399  
12 jwalsh@clarksonwalsh.com

13 I N D E X

14 PAGE

15 WILLIAM H. CULBERTSON

16 Examination by Mr. Morton

17 3

18  
19  
20 E X H I B I T S

21 (None marked.)  
22  
23  
24  
25

1           STIPULATIONS: It is stipulated by and  
2 between Counsel that this deposition is being  
3 taken in accordance with the South Carolina Rules  
4 of Civil Procedure; that all objections as to  
5 Notice of this deposition are hereby waived; that  
6 all objections except as to form are reserved  
7 until the time of trial; and that the deponent  
8 waives the right to read and sign the deposition  
9 transcript.

10  
11           WILLIAM H. CULBERTSON, after having been  
12 first duly sworn, was examined and testified as  
13 follows:

14  
15   EXAMINATION

16  
17 BY MR. MORTON:

18           Q. Mr. Culbertson, my name is Greg  
19 Morton. We met a minute ago off the record.

20                           I took your wife's deposition this  
21 morning. I'm going to try and stay away from her  
22 areas of expertise that she covered with me and  
23 stick with what she told me to ask you about that  
24 she was not familiar with.

25                           I did want to get, what's your full

1 name?

2 A. William, W-I-L-L-I-A-M, middle initial  
3 is H, Culbertson.

4 Q. And what's your age and date of birth?

5 A. My age is 50, and it's 1/2/65.

6 Q. And you currently live in Black  
7 Mountain; is that correct?

8 A. Yes, that's correct.

9 Q. Have you always lived in North  
10 Carolina or have you lived in any other states?

11 A. I grew up in Virginia until I was 18.  
12 The rest of the time I've been in North Carolina.

13 Q. Got you. And your wife told me about  
14 a lawsuit that involved a company dispute with a  
15 landlord. Have you been involved in any other  
16 lawsuits other than that one?

17 A. No.

18 Q. Okay. And she told me that you and  
19 her are owners of the Asheville Cotton Company; is  
20 that correct?

21 A. Yes, that's correct.

22 Q. Is that owned 50-50? She wasn't quite  
23 sure.

24 A. Yes, it is. Actually, it's a  
25 corporation. It's Culbertson Enterprises.

1 Q. And she's the vice-president, and  
2 you're the president; is that right?

3 A. Correct.

4 Q. And the business started approximately  
5 1997?

6 A. Correct.

7 Q. And she told me about employees. She  
8 said she handles all the company websites; is that  
9 correct?

10 A. That's correct.

11 Q. I won't ask you about that.

12 The email list and the emails going  
13 out, she handles all that?

14 A. That is correct.

15 Q. She told me that you were the one to  
16 ask about print advertising.

17 A. Okay.

18 Q. In other words, magazines, newspaper  
19 physical publications, tell me about those. What  
20 does the business do?

21 A. Currently we are -- we run a small ad  
22 in the IWANNA which is a shopper. It's just like  
23 a generic ad, sewing machines, fabric, blah, blah,  
24 blah.

25 Q. Okay. And what's the circulation

1 for -- I think it's IWANNA. It's I-W-A-N-N-A,  
2 correct?

3 A. I have no idea.

4 Q. Okay. That's fine.

5 What's the cost of that; do you  
6 recall?

7 A. It's about like 150 a week.

8 Q. And how long have you been advertising  
9 with them?

10 A. Forever because my best friend is the  
11 account rep.

12 Q. All right. What other?

13 A. I'm in Sophie magazine which is geared  
14 toward women in the Asheville area.

15 Q. How long has the company been in that?

16 A. For about five or six years.

17 Q. And do you know where -- if it's  
18 circulated outside of Asheville?

19 A. It's a free publication. I believe  
20 it's just Asheville only. I don't think it goes  
21 to any other markets.

22 Q. Any other print advertising that the  
23 company has ever done?

24 A. Capital At Play, I'm in there.

25 Q. What is that?

1           A.    It's a magazine about money and  
2 Asheville. That's about all I know. It's  
3 published by Asheville Tribune, which I also run  
4 an ad in Asheville Tribune.

5           Q.    The Asheville Tribune, is that the  
6 local newspaper?

7           A.    It is not. It is a secondary  
8 newspaper in Asheville.

9           Q.    Okay. And how long has the company  
10 advertised in it?

11          A.    Probably for about four or five years.

12          Q.    And the Capital At Play, how long?

13          A.    For about two, three years. It's a  
14 new publication.

15          Q.    Is it, to your knowledge, just  
16 distributed in Asheville?

17          A.    Yes, it is.

18          Q.    And is that the same on the Asheville  
19 Tribune?

20          A.    Yes, it is. Yes.

21          Q.    Any other print advertisements?

22          A.    That's about all I've got left.

23          Q.    Did you have some you don't use  
24 anymore?

25          A.    I used to advertise in the newspaper,

1 Asheville Citizen Times, for years, but I no  
2 longer do that.

3 Q. Then your wife also said you were the  
4 one that knows about the TV advertising, both  
5 currently and historically; is that correct?

6 A. That's correct.

7 Q. Tell me about, I saw the earliest was  
8 WLOS-TV.

9 A. Yeah. I used to run with them. I  
10 probably quit running with them in 2004. That's a  
11 local ABC Asheville channel.

12 Q. I mean WLOS reaches into upstate South  
13 Carolina, too, correct?

14 A. It can.

15 Q. I mean it's a channel in our area.

16 A. Yeah.

17 Q. How many years did you advertise with  
18 them?

19 A. Probably from '98 to about 2004.

20 Q. And how -- do you recall the frequency  
21 of their -- the advertising with them?

22 A. It was quarterly. And it's usually  
23 like, you know, I'd run around Christmas, and then  
24 I'd run around Mother's Day, and then I'd run  
25 maybe something around the Fourth of July, and

1 then I'd maybe run something in the fall.

2 Q. And were those ads, did you prepare  
3 those or did the TV station prepare them for you?

4 A. They prepared them for me under my  
5 advice. They took a picture of my store.

6 Q. Were you or any of your employees  
7 doing the voiceover or in them?

8 A. No. No.

9 Q. And then, I mean, the TV contracts  
10 I've seen before, like you pay -- is it accurate  
11 to state you pay a certain fee, and they would run  
12 it so many times in a certain time period?

13 A. Right.

14 Q. Something like that. Do you have  
15 copies or videos or anything of those ads  
16 available anymore to your knowledge?

17 A. No.

18 Q. I didn't know if maybe you still had  
19 them.

20 A. No.

21 Q. All right. So that was from '98 to  
22 2004 approximately. What other TV advertising?

23 A. We did local cable.

24 Q. What channel was that?

25 A. It's Charter Communications.

1 Q. Okay.

2 A. And I primarily would run -- I think I  
3 was on like HGTV because they had sewing programs  
4 on there. They used to. They no longer do, so I  
5 quit. You know, I could pick up on those.

6 Sometimes I would do -- because we  
7 also did vacuum cleaners. So I also ran vacuum  
8 cleaner ads that were just branded vacuums, Miele.  
9 And I would run those on ESPN, pretty much  
10 targeting men because men bought vacuums. But we  
11 no longer -- we gave up the Miele dealership, I  
12 believe in 2010, but I did a lot of Miele stuff  
13 with cable.

14 Q. And sort of tell me the time frame  
15 that we're talking about you used local cable.  
16 When did that start?

17 A. Probably started in '98, and I  
18 probably finished out in 2010, 2011.

19 Q. So have you done any TV advertising  
20 since that ended in the 2010 or 2011 time frame?

21 A. Nope.

22 Q. Okay. And so the local -- when you  
23 did it through Charter Communications --

24 A. It was all the Asheville market. I  
25 could not advertise anywhere else outside the

1 Asheville market.

2 Q. And why was that?

3 A. My dealer agreements with my sewing  
4 machine companies. There are established dealers  
5 in the Greenville market, and I cannot advertise.

6 Q. Was that the case back when you  
7 were -- was it the same when you were on WLOS?

8 A. Correct. That was a local affiliate.  
9 I could not go to Channel 4 and place my ads on  
10 there. The Greenville store would probably come  
11 after me, and Bernina would give me a cease and  
12 desist.

13 Q. What about Channel 13 being available  
14 in Greenville, did that violate it, or WLOS?

15 A. No, because it's a local affiliate.  
16 It's an Asheville local affiliate.

17 Q. So were the ads only shown in  
18 Asheville; is that what you're telling me?

19 A. Well, no. I don't know where the ads  
20 were shown. I'm just saying that the only reason  
21 I could advertise on there was because it was a  
22 local affiliate. I could say I could not go to  
23 Channel 4 and ask them to run ads. Even though I  
24 know it broadcasts into Asheville, it's not my  
25 local affiliate. That's technically a Greenville

1 station. I guess the other one is a Spartanburg  
2 station.

3 Q. So it would let you go into -- it was  
4 fine that that channel is available in Greenville?  
5 As long as it was a local affiliate up here, you  
6 were okay?

7 A. Yes. Yes.

8 Q. And just so I'm --

9 A. And also Yellow Pages, we used to  
10 advertise in the Yellow Pages. And we were  
11 restricted to the Asheville area. I could not run  
12 an ad in the Greenville, South Carolina,  
13 phonebook. They would not allow that. I think  
14 that's in my dealer agreement somewhere where I  
15 sent Mr. Walsh.

16 Q. Right. And you've got three dealer  
17 agreements, correct?

18 A. Correct.

19 Q. And is it also accurate to state you  
20 don't have any of the scripts for any of the TV  
21 ads, whether it was WLOS or the Asheville cable?

22 A. I do not.

23 Q. Okay. And your wife said to ask you  
24 about whether you all buy from any suppliers or  
25 businesses located in South Carolina. She said

1 you would know about that.

2 A. I do not know of any.

3 Q. Where do you buy, where are most of  
4 the fabric places?

5 A. New York. That's where they're  
6 headquartered, so to speak, or California. I've  
7 got a few in Seattle. That's a big area out  
8 there. Los Angeles because of imports.

9 Q. But none in South Carolina to your  
10 knowledge?

11 A. Not to my knowledge, no.

12 Q. Okay. And the sewing machine  
13 distributorship agreements that restrict areas  
14 where you can sell and that sort of thing, there  
15 is nothing like that with regard to fabric or the  
16 other things that the store sells; is that  
17 correct?

18 A. Right. I don't have agreements with  
19 exclusivity on fabric, no.

20 Q. How do your annual sales sort of break  
21 down between machines and everything else?

22 A. Machines are our top dollar.

23 Q. Right. I know pricewise, but is it a  
24 50-50 revenue split?

25 A. No. It would be 80 percent machine

1 sales and the rest of it falls into place. Fabric  
2 is -- I'd say fabric is about -- let me go back.  
3 Let's say it's 70 percent, and I'd say fabric is  
4 about 20.

5 Q. And everything else, patterns --

6 A. Patterns, they're so minuscule  
7 because, you know, you buy that stuff at Amazon,  
8 we just kind of stopped stocking stuff like that.

9 Q. Let me just kind of look back through  
10 this. I think your wife was the primary witness.

11 She said she is the one that handles  
12 entering point-of-sale customer information in the  
13 computer. Do you have anything to do with that?

14 A. I do not. I'm in the repair and  
15 business in the back.

16 Q. Got you. And have you all ever been  
17 to any trade shows or anything like that in South  
18 Carolina that you're aware of?

19 A. No.

20 MR. MORTON: And I don't know that  
21 there are any, I was just asking.

22 Okay. I think that's all I have.

23 MR. WALSH: I have no questions.

24 (The deposition was concluded at

25 12:58 p.m.)

CERTIFICATE OF REPORTER

I, Lori McCain Jones, Registered Professional Reporter, and Notary Public for the State of North Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal April 20, 2015, at Forsyth County, North Carolina.

*Lori McCain Jones, RPR*

Lori McCain Jones, RPR  
Registered Professional  
Reporter and Notary Public  
No: 201412800042 in and  
for Forsyth County, North  
Carolina, and the State at  
Large.  
My Commission expires  
May 6, 2019

STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
)  
COUNTY OF GREENVILLE ) Case No(s) : 2014CP2305266  
)  
Blanche G. Creswell, )  
)  
Plaintiff, )  
)  
-VS- ) TRANSCRIPT OF RECORD  
)  
)  
Robin Culbertson and Chip )  
Culbertson d/b/a Asheville )  
Cotton Company and Asheville )  
Cotton Company, )  
)  
Defendant. )

May 26, 2015  
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:

GREGORY ALAN MORTON, Esquire  
Attorney for the Plaintiff

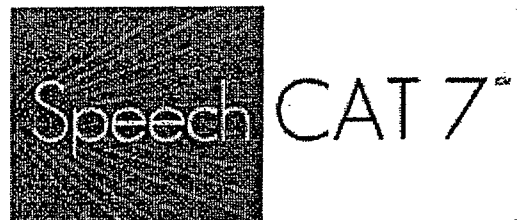
JAMES P. WALSH, Esquire  
Attorney for the Defendant

RECEIVED  
OCT 23 2015

Donnan & Morton, P.A.

**Teresa B. Johnson, CVR-M**  
Certified Court Reporter  
P.O. Box 2812  
Greenville, S.C. 29602

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Motions

4

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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

**PLAINTIFF EXHIBITS**

(No exhibits offered.)

**DEFENSE EXHIBITS**

(No exhibits offered.)

**COURT EXHIBITS**

(No exhibits offered.)

P R O C E E D I N G S

1  
2 (WHEREUPON, the proceedings begin on the 26th  
3 day of May, 2015 at approximately 10:08 a.m.)

4 THE COURT: All right. This is Creswell  
5 versus Culbertson and it looks like the  
6 defendant's motion to dismiss?

7 MR. WALSH: Yes, Your Honor.

8 THE COURT: All right. Yes, sir.

9 MR. WALSH: May it please the court?

10 THE COURT: Yes, sir.

11 MR. WALSH: Your Honor, this is Jim Walsh  
12 here for the defendants. We have moved to  
13 dismiss the defendants in this case based on  
14 lack of personal jurisdiction. Your Honor, we  
15 were before the court a couple of months ago.  
16 We made the motion. There was some  
17 insufficient discovery. We have taken some  
18 depositions and come back to the court now on  
19 this basis.

20 What we have, Your Honor, is a trip and  
21 fall accident in North Carolina up near it  
22 Asheville. Culbertson Enterprises is the  
23 Asheville Cotton Company. It does business as  
24 Asheville Cotton Company. It is a fabric and  
25 quilting store. It sells sewing machines. It

1 sells fabric.

2 The plaintiff alleges that she was at the  
3 store. She is a South Carolina resident. She  
4 was at the store in Asheville. She tripped,  
5 she fell, and she hurt herself. She bought  
6 this personal injury action here. The basis of  
7 our motion, Your Honor, is we believe the  
8 matter should have been bought up in Asheville,  
9 not Greenville.

10 We don't believe there is sufficient  
11 personal jurisdiction for these defendants.  
12 There's really two sets. There are the  
13 Culbertsons who are the owners of the company.  
14 We think there is a separate argument for  
15 whether they should be liable. They are not a  
16 business. They are just owners of a business.  
17 Then there is also the Asheville Cotton  
18 Company, Culbertson Enterprises. That is  
19 actually the owner of the business.

20 It is our position, Your Honor, that the  
21 court requires, South Carolina law requires, US  
22 Supreme Court has discussed personal  
23 jurisdiction and fairness and whether  
24 defendants can be bought into court in another  
25 forum that you don't do business in. It is our

1 position that this is not a products liability  
2 case where some defective product was bought in  
3 the stream of commerce and sent in South  
4 Carolina. This is a premises liability case.  
5 The premise is in Asheville.

6 The defendants, the Corporation is a North  
7 Carolina corporation. They own no property in  
8 South Carolina. There are no agents in South  
9 Carolina. The burden of proof under the law is  
10 that the plaintiff has the burden of  
11 establishing jurisdiction.

12 I anticipate that Mr. Morton will go  
13 through a number of things that he will talk  
14 about. I will just kind of lay the framework  
15 out. He will have to argue that it is not my  
16 burden really in this case. It is his.  
17 Basically, there is specific and general  
18 jurisdiction and specific jurisdiction  
19 typically involves some sort of event that  
20 happened in South Carolina. One act in South  
21 Carolina could create specific jurisdiction.  
22 That is not what we really have here.

23 In my view, we have general jurisdiction.  
24 It basically goes back to those cases we all  
25 studied in law school about minimum contact and

1           purposeful availment and whether the defendants  
2           availed themselves of the South Carolina  
3           jurisdiction, what kind of contacts do they  
4           have with the state to be bought into court.  
5           The court recognizes, the law recognizes that  
6           there are due process constraints for out-of-  
7           state businesses to be bought into a foreign  
8           jurisdiction. The court looks at the fairness  
9           and the constitutionality.

10           What I think will be the focus is there is  
11           a website. This website does not allow at the  
12           time, certainly did not allow active  
13           transactions to be purchased online. It is not  
14           an Amazon. The courts distinguish between  
15           active and passive websites. I think this  
16           would be characterized as passive website that  
17           you can get information but you actually have  
18           to call or go to the store to purchase things.

19           We've cited in our brief cases that talk  
20           about the fact that the website in and of  
21           itself is not evidence of personal  
22           jurisdiction. That would mean that anybody who  
23           is online could be bought into any state that  
24           that web could be accessed. That is not the  
25           way the law is. There has to be some

1 interaction with the state. We don't believe  
2 that website in and of itself means anything.

3 The other issue I think is the defendant,  
4 the Asheville Cotton Company does do business  
5 with South Carolina residents. They do come to  
6 Asheville. They may purchase things there. If  
7 they are put on -- that is a very small  
8 percentage of the total amount of customers.  
9 They are from all over. The testimony was from  
10 virtually every state somebody had been there.  
11 The vast majority are from North Carolina.

12 When you are at the store, if you were to  
13 come into the store and purchase something,  
14 they will ask you if you want to be on their  
15 mailing list. If you wanted to be on the  
16 mailing list, they would sign you up for the  
17 mailing list. You would then get mailings  
18 every several weeks or a month or so. There  
19 are mailings, mainly email now, that would be  
20 sent to South Carolina residents who have been  
21 a customer in the store who had agreed to be  
22 put on the mailing list.

23 We don't believe, Your Honor, that's  
24 sufficient that customers who have asked to be  
25 put on mailing list and then are put on mailing

1 list that somehow that would create general  
2 jurisdiction in South Carolina on a business  
3 when they are there in Asheville doing business  
4 with the company in Asheville and they were  
5 asked to be put on the mailing list. This is  
6 not a mass mailing where they send you a class  
7 of emails, spam, all over the world. It is  
8 specifically focused on people who had done  
9 business.

10 That is sort of, we believe, the facts that  
11 have played out. We have done some  
12 advertising, mainly print locally. They did do  
13 some advertising on the Asheville Channel 13  
14 station years ago but not during this event.  
15 The company also sells sewing machines. For a  
16 time, they sold vacuums as well. They have  
17 exclusive distribution agreements where they  
18 cannot market in South Carolina. They're only  
19 supposed to sell within their region. Their  
20 region is the Western North Carolina region.

21 There is a South Carolina distributor who  
22 has exclusive rights to the Upstate. That is  
23 not for the fabric. That is just for the  
24 sewing machines. My point is they really  
25 consider themselves to be a North Carolina

1           company. They are not trying to open an office  
2           in South Carolina. They are not sending a  
3           bunch of ads to South Carolina. They're just  
4           focusing on customers they have.

5           For all of those reasons, Your Honor, we  
6           believe it would be inappropriate for them to  
7           be bought -- really unfair, I think is the  
8           standard, for them to be bought in Greenville  
9           when their forum could easily be in Asheville  
10          where they clearly would be subject to suit.  
11          We would ask the court to grant our motion.

12          Your Honor, I would just mention even if  
13          the court is inclined to keep the business in  
14          that defendants -- I don't know if it is even  
15          an issue at this point. They are owners of a  
16          corporation. They would not have jurisdiction.  
17          If the corporation does, I don't know if they  
18          do. We would ask if the court is inclined for  
19          factual questions, we don't think there would  
20          be for the individual defendant. That's all I  
21          have, Your Honor.

22                **THE COURT:**       All right. Thank you.

23                **MR. MORTON:**    May it please the court, Your  
24                Honor?

25                **THE COURT:**       Yes, sir.

1           **MR. MORTON:**     Greg Morton for the  
2            plaintiff.  If I could hang up to the court,  
3            for filing, two depositions that I am arguing  
4            that are broader.

5           **THE COURT:**     Can we just start with the  
6            initial question about the individual  
7            defendants?

8           **MR. MORTON:**     As I understood it, Your  
9            Honor, at the time we started the suit, we  
10           thought it was DBA the Cotton Company.  If we  
11           substitute a corporate defendant, I don't  
12           object.

13           **THE COURT:**     All right.  Very well.  
14            Yes, sir, go ahead.

15           **MR. MORTON:**     With regard to the business  
16            inquiries, Mr. Walsh and I do agree on the law.  
17            South Carolina law goes to the limits of due  
18            process as set forth by the United States  
19            Supreme Court.  It is traditional notions of  
20            fair play and substantial justice.  What the  
21            record shows in this case is we have a business  
22            that is located less than 90 minutes from  
23            Greenville, South Carolina.  We are not talking  
24            about unfairly making somebody travel from  
25            California to be involved in a lawsuit in

1 Greenville, South Carolina.

2 The discovery that we have taken and  
3 limited to issues of contact in South Carolina  
4 for corporation business practice, Number 1, we  
5 explored what goods were shipped to South  
6 Carolina. There should be records, which is  
7 Number 1 on the list of contacts that I  
8 submitted, showing 47 shipments of goods into  
9 the state of South Carolina. It is not an  
10 isolated situation.

11 The website, the deposition testimony is  
12 not real clear. One time it allowed online  
13 ordering. Maybe another time it didn't but the  
14 bottom line is regardless of how the orders got  
15 there, the business ships into South Carolina.  
16 The only state receiving more shipments than  
17 South Carolina were North Carolina that had 146  
18 shipments.

19 The shipments are all listed on the  
20 exhibits to the deposition. That means of  
21 everything they shipped, approximately 14 to 15  
22 percent were in the state of South Carolina.  
23 That is just over a four-year period. They  
24 don't have records going back before 2011.  
25 So invariably there were additional contacts

1 for a limited period.

2 Second, the customer, I mean the business,  
3 does maintain a customer database. The list  
4 shows they had 273 customers in South Carolina  
5 that they track records on. That is shown on  
6 Exhibit 2 to Robin Culbertson's deposition. In  
7 her deposition, she testified the majority of  
8 customers are included in the email system.  
9 They sent out emails every three weeks or so.  
10 This wasn't advertised business. I do disagree  
11 with Mr. Walsh a little bit on the sewing  
12 machines.

13 While they can't ship or sell into South  
14 Carolina, it is my understanding the testimony  
15 was they can solicit customers who come into  
16 the store and as long as they purchase in the  
17 store, that does not violate their statewide  
18 territory. I read the deposition different  
19 than he read that. In any event, they are  
20 sending out these emails to a majority, 273 in  
21 South Carolina every 3 to 4 weeks trying to get  
22 them to come back to their store.

23 Also, in 2012, Robin Culbertson, one of the  
24 owners of the business attended and spoke in an  
25 event in Landrum, South Carolina. She was

1 speaking regarding the jacket she made. 30 or  
2 40 people attended that. It took about an hour  
3 and a half to get to that event.

4 Regard to the television advertising, they  
5 were in the Greenville, South Carolina, market  
6 through WLOS Channel 13 from at least 1998 to  
7 2004. They may have limited some of that to  
8 local cable area as far as contacts in South  
9 Carolina. That was covered in Mr. Culbertson's  
10 deposition. When we reviewed all those  
11 contacts, Your Honor, we believe there are  
12 significant contacts from the state of South  
13 Carolina. And we're talking about businesses  
14 less than an hour and a half or so from  
15 Greenville South Carolina. We do not believe  
16 notions of fair play or substantial justice are  
17 violated by the court exercising jurisdiction  
18 in this case.

19 **THE COURT:** Yes, sir.

20 **MR. WALSH:** Your Honor, just briefly if I  
21 may.

22 **THE COURT:** Certainly.

23 **MR. WALSH:** Just a couple of points on  
24 Mr. Moore's list here. The shipment of goods,  
25 we don't believe that the law would say that if

1 an out-of-state business ships some goods to  
2 another state that that all of a sudden creates  
3 jurisdiction, that in and of itself. The law  
4 talks about, and it is cited in our brief,  
5 Associates of Charlotte case, 376 S.C. 12,  
6 talks about that the court may exercise  
7 personal jurisdiction when the entity is doing  
8 business in that jurisdiction. Shipping some  
9 mail, we don't believe, creates that we are  
10 really doing business in South Carolina.

11 It also talks about enduring relationships  
12 with the foreign state that is so substantial  
13 in such a nature to justify suit in that form.  
14 These customers would have come to the store  
15 and asked to have shipped. We didn't have the  
16 online capacity. They're coming to the store  
17 and asking to be shipped. Again, I think there  
18 is a distinction between -- it is a little bit  
19 muddled in the law.

20 But when you have an event that occurs in  
21 the outside state, the foreign state, I just  
22 think the analysis is different because this is  
23 not, the product that we are talking about here  
24 wasn't shipped to the plaintiff. She fell in a  
25 store. The shipping, just because we sent

1 something in the mail, we did not send what  
2 caused her to fall in the mail. I think there  
3 is a distinction there. Okay.

4 Then there is a database of South Carolina  
5 customers. We are in Asheville. It isn't that  
6 far away. The problem is I don't see what the  
7 case law says it could be about or 1000 miles.  
8 It doesn't really say, the cases I've seen. I  
9 think it is actually 50 miles away according to  
10 the case law. The fact that she, Ms.  
11 Culbertson, spoke at an event in Landrum in  
12 2012, the store has been open more than 10  
13 years. I think it has been almost 20 years. I  
14 don't see that the case law would say that that  
15 is a continuous and systematic and substantial  
16 act that would justify suit being bought in  
17 South Carolina.

18 The advertisements -- I want to say this  
19 accident occurred in 2011. The advertisement  
20 of WLOS ended in 2004. There is no evidence  
21 that the plaintiff relied upon an advertisement  
22 from seven years prior that they might have  
23 seen on WLOS come to the store. Your Honor, I  
24 guess the other thing I would say is there is  
25 no reason that the suit couldn't have been

1           bought in North Carolina. I mean, if it is 50  
2           miles away for us, it is 50 miles away from  
3           them. That is where she fell. That is where  
4           all the witnesses are. It seems that is where  
5           the suit should have been bought.

6           Your Honor, we just think it would be  
7           unfair. It would violate due process language  
8           of the courts to allow it to be bought in South  
9           Carolina. We would ask for you to grant our  
10          motion. Thank you.

11          **THE COURT:**       All right. I want to take a  
12          look at depositions in this case a little bit  
13          more. I'm going to take this matter under  
14          advisement. I will issue a decision very  
15          shortly.

16          **MR. WALSH:**       Thank you, Your Honor.

17          **THE COURT:**       Thank you.

18  
19          **(WHEREUPON, the proceedings conclude at**  
20          **approximately 10:26 a.m.)**

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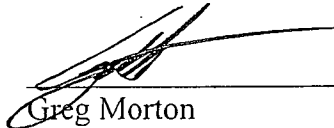
CERTIFICATE OF COUNSEL

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

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