THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No.: 2017-002433

Lallie Qualls ..... Appellant,

v.

Burlington Coat Factory of South Carolina, LLC and
Burlington Coat Factory Direct Corporation ..... Respondents,

APPELLANT'S RETURN TO RESPONDENTS' MOTION TO STRIKE IMPROPERLY DESIGNATED MATERIAL

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules ("SCACR"), Appellant/Plaintiff Lallie Qualls (hereinafter, "Appellant" or "Ms. Qualls"), by and through her undersigned counsel, hereby respectfully objects to Respondents/Defendants' Burlington Coat Factory of South Carolina, LLC and Burlington Coat Factory Direct Corporation (hereinafter, "Respondents," or "Burlington") Motion to Strike Improperly Designated Material Which Was Not Presented to the Lower Court, filed April 11, 2018 (hereinafter, "Motion to Strike").

Burlington argues it was improper for Ms. Qualls to include "Medical Illustrations" and the exhibits to the "30(b)(6) Deposition of Pamela Robin Arsenault taken March 15, 2017," in Ms. Qualls's designation of matter to this Court because these documents were not "included in

the trial court record."[1] (Motion to Strike, p. 1-2). Because Ms. Qualls properly presented these deposition exhibits to the trial court, Burlington's motion should be denied.[2]

STANDARD

Under the South Carolina Appellate Court Rules, the designation of matter "must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [*See* Rule 210(c)]." Rule 209(b) (alteration in original). Rule 210(c), SCACR, states, in relevant part, "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal." *Id.*

BACKGROUND

This case arises out injuries Ms. Qualls suffered after she slipped on a foreign substance on the floor of Burlington Coat Factory. The trial court granted Burlington's motion for summary judgment, and Ms. Qualls timely appealed.

Burlington filed its motion for summary judgment and a supporting memorandum on March 10, 2017. On March 15, 2017, Ms. Qualls took the 30(b)(6) deposition of Burlington, at which Pamela Robin Arsenault was named Burlington's corporate designee. (30(b)(6) Deposition of Pamela Robin Arsenault, hereinafter "Arsenault Deposition"). Documents presented during the deposition included 11 exhibits, specifically Burlington's store policies,

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[1] Burlington is only moving to strike the exhibits to the 30(b)(6) deposition, not the deposition itself.

[2] Burlington also objects to certain medical illustrations of Ms. Qualls's knee injury. Because Ms. Qualls cannot state with certainty that these documents were presented to the trial court, Ms. Qualls agrees to remove these illustrations from the designation of matter.

photographs of the location where Ms. Qualls fell, and the incident report completed by Ms. Arsenault. (Arsenault Depo., p. 3). On May 24, 2017, Burlington filed Ms. Qualls's deposition and the 30(b)(6) deposition of Ms. Arsenault. Burlington, however, failed to include the exhibits with the deposition. On May 31, 2017, Ms. Qualls served her Memorandum in Opposition to Defendants' Motion for Summary Judgment (hereinafter "Appellant's Memorandum"), citing to the previously-filed depositions. The parties appeared before Judge George M. McFaddin, Jr., on June 6, 2017, for the summary judgment hearing.

During the hearing, counsel for both parties presented Judge McFaddin with copies of their memoranda. (June 6, 2017 Transcript of Record of Defendant's Motion for Summary Judgment, hereinafter "Tr.," p. 3). Counsel for Ms. Qualls attached supporting documentation, which included the deposition transcripts with exhibits, to Appellant's Memorandum. (Robert F. Goings affidavit). Ms. Qualls did not file the depositions with the court because Burlington had filed these depositions, and she did not realize the filed copies were incomplete as these exhibits were all presented during these respective depositions. (Robert F. Goings Affidavit). Specifically, counsel for Ms. Qualls referenced the documentation provided to the court at the end of his argument, stating, "Judge, I meant to hand this up to you and this is just one more still shot. You can see on the video of Ms. Qualls actually falling. *This is actually an exhibit to the deposition that's in the file*[3] but instead of having to dig it out, you can at least see where the fall occurred." (emphasis added) (Tr. p. 14, line 25 – p. 15, line 5). In this statement, counsel for Ms. Qualls is referencing a photograph that was marked as an exhibit to the 30(b)(6) deposition and is relying on the photograph to support Ms. Qualls's position before the trial court. Burlington's counsel did not object to the photograph being presented. (*Id.*). In addition, Burlington's counsel

[3] There were no exhibits to Plaintiff's deposition.

affirms during his arguments that "both . . . deposition transcripts are in the file," (Tr. p. 7, lines 18-19) and goes on to point out that Ms. Qualls relies on the "depositions [Burlington's counsel] filed with the Court." (Tr. p. 9, lines 17-20).

Appellant's Memorandum refers to several of the exhibits to the 30(b)(6) deposition that Burlington filed. In support of her position, Ms. Qualls discusses the incident report (Ex. 6 to Arsenault Depo.), which indicates there was a "noticeable spill" in a "heavy traffic area." (App. Memo. p. 3). Additionally, Ms. Qualls refers to Burlington's policy requiring employees to promptly respond to any substance on the floor, which was marked Exhibit 4 to Arsenault's Deposition. (App. Memo. p. 6). Finally, she cites extensively to the discussion of the photographs marked Exhibit 11 to Arsenault's Deposition, which are still shots taken from the video filed with the trial court. (App. Memo. p. 2, 3, 5, 6 and 7; Arsenault Depo. p. 76 and 86-89). Ms. Qualls also cited numerous times to the discussion of the photos in her motion for reconsideration. (Motion to Reconsider p. 6, 7 and 8). Burlington did not object to any of these references.[4]

ARGUMENT

The exhibits to the 30(b)(6) deposition were properly included in Ms. Qualls's designation of matter, and, consequently, they may be properly included in the record on appeal, because (1) they were presented to the trial court; (2) Burlington should have filed the exhibits with the deposition transcripts; and (3) Burlington is not prejudiced by the inclusion of these exhibits.

[4] During the 30(b)(6) deposition, Burlington's counsel objected to the photographs marked as Exhibit 11 because the lack of a time stamp would render the still shot images "potentially inaccurate." (Arsenault Depo. p. 76, line 18 – p. 78, line 3).

Under Rule 210(c), SCACR, evidence may properly be included in the record on appeal if it was ***presented*** to the lower court; the rule does not require that it be filed. *Id.* Where evidence has been "presented as being relevant to the merits of [a] motion," it is "proper to include [the evidence] as a part of the record on appeal." *Page v. N. Carolina Mut. Life Ins. Co.*, 207 S.C. 277, 284, 35 S.E.2d 716, 718 (1945). In this case, the hearing transcript attests that Ms. Qualls presented the trial court with Appellant's Memorandum and, later, a photograph that was included as an exhibit to the 30(b)(6) deposition. (Tr. p. 3, lines 12-13; p. 14, line 25 – p. 15, line 5). The transcript also indicates the photograph is a copy of one of the pages included in the file presented to the trial court, and counsel for Ms. Qualls provided an additional copy so Judge McFaddin would not be required to "dig it out" of the materials. (Tr. p. 14, line 25 – p. 15, line 5). Thus, at the very least, the hearing transcript shows that one of the photographs that was an exhibit to Ms. Arsenault's deposition was presented to the trial court without objection. Additionally, counsel's comment to the trial court that the photograph was only a copy of what was already included in the file indicates that all the deposition exhibits were presented to the trial court. As the rules only require that evidence be *presented* to the trial court to be included in the record on appeal, the exhibits to the 30(b)(6) deposition are properly before this Court and should be included in the record on appeal. *See* Rule 210(c), SCACR.

In addition, exhibits to a deposition are part of the deposition transcript. *See* Rule 30(f)(1), SCRCP ("Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition."). Counsel for Burlington represented to the trial court that he filed the deposition transcripts. (Tr. p. 7, lines 18-19). Further, Burlington acknowledges that Ms. Qualls relied on these transcripts in support of her position. (Tr. p. 9, lines 17-20). Now, Burlington is arguing

that because it failed to file a copy of the complete transcript with the trial court, the exhibits on which Ms. Qualls relied at the trial court level cannot be properly considered by the Court of Appeals. This argument is nonsensical and meritless.

Finally, Burlington has not argued that it is prejudiced by including the exhibits in the record on appeal. As its counsel pointed out during the hearing, Burlington was aware that Ms. Qualls was relying on the exhibits in opposing Burlington's motion for summary judgment. Tr. (p. 9, lines 17-20). Thus, the Court of Appeals' consideration of these documents does not prejudice or disadvantage Burlington in any way.

CONCLUSION

The exhibits to the 30(b)(6) deposition of Pamela Robin Arsenault taken March 15, 2017—identified in Ms. Qualls's designation of matter—were presented to the trial court and may properly be included in the record on appeal under the rules. For the reasons stated herein, Burlington's Motion to Strike these exhibits from the record should be denied.

Respectfully submitted,

By: _____

Robert P. Goings (SC Bar # 74855)
Jessica L. Gooding (SC Bar # 101210)
Goings Law Firm, LLC
1510 Calhoun Street
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Phone: (803) 350-9230
Fax: (877) 789-6340
Email: rgoings@goingslawfirm.com
jgooding@goingslawfirm.com

Columbia, South Carolina
April 23, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
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Burlington Coat Factory Direct Corporation ..... Respondents,

PROOF OF SERVICE

I certify that I have served APPELLANT'S RETURN TO RESPONDENTS' MOTION TO STRIKE IMPROPERLY DESIGNATED MATERIAL by placing a copy of the same in the United States Mail, on April 23, 2018, to the following:

Nicholas D. Mermiges, Esquire
Law Office of Nick Mermiges LLC
1720 Main Street, #202
Columbia, SC 29201

Respectfully submitted,

By: _____

Robert F. Goings (SC Bar # 74855)
Jessica L. Gooding (SC Bar # 101210)
Goings Law Firm, LLC
1510 Calhoun Street
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Phone: (803) 350-9230
Fax: (877) 789-6340
Email: rgoings@goingslawfirm.com
jgooding@goingslawfirm.com

Columbia, South Carolina
April 23, 2018

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND LALLIE QUALLS, PLAINTIFF, VS. BURLINGTON COAT FACTORY OF SOUTH CAROLINA, LLC AND BURLINGTON COAT FACTORY DIRECT CORPORATION, DEFENDANTS.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO.: 2016-CP-40-1699 **30(B)(6) DEPOSITION** **OF** **PAMELA ROBIN ARSENAULT**

30(b)(6) DEPOSITION OF **PAMELA ROBIN ARSENAULT**, TAKEN BEFORE WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:14 A.M., WEDNESDAY, THE 15TH OF MARCH, 2017, AT GOINGS LAW FIRM, LLC LOCATED AT 914 RICHLAND STREET, SUITE A-101, COLUMBIA, SOUTH CAROLINA.

COPY

Verbatim, Inc.
Realtime Voice Writing & Training
info@verbatiminc.com
(803) 787-7242

APPEARANCES

FOR THE PLAINTIFF
ROBERT F. GOINGS, ESQUIRE
GOINGS LAW FIRM, LLC
914 RICHLAND STREET, SUITE A-101
POST OFFICE BOX 436
COLUMBIA, SOUTH CAROLINA 29201

FOR THE DEFENDANT
NICHOLAS D. MERMIGES, ESQUIRE
LAW OFFICE OF NICK MERMIGES, LLC
1720 MAIN STREET #202
COLUMBIA, SOUTH CAROLINA 29201

REPORTED BY
WENDY SHANNON SULLIVAN
VERBATIM, INC.
POST OFFICE BOX 7123
COLUMBIA, SOUTH CAROLINA 29202

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STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE QUESTIONS.

THIS 30(b)(6) DEPOSITION IS BEING TAKEN PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

- - - -

THE READING AND SIGNING OF THIS 30(b)(6) DEPOSITION IS **RESERVED** BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE PARTIES.

WHEREUPON, **PAMELA ROBIN ARSENAULT**, BEING DULY SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS FOLLOWS:

EXAMINATION

BY MR. GOINGS:

Q Can you state your full name for the record?

A Pamela Robin Arsenault.

Q Can you spell your last name for the court reporter?

A Sure. A-R-S-E-N-A-U-L-T.

Q All right. You're here today to give testimony in a case of Lallie Qualls verses Burlington Coat Factory of South Carolina, LLC and Burlington Coat Factory Direct

Corp. Are you aware that we're here today for a deposition?

A Yes.

Q Have you ever given a deposition before?

A No.

Q All right. So this will be your first time?

A Mm-hmm.

Q Well, I'm sure that Nick has kind of given you some preliminary ground rules and kind of what to expect. A couple things to help the process go a little more smoothly and help the court reporter, make sure your answers are audible. You can shake your head or nod your head, but make sure you say yes or no.

A Okay.

Q And try to let me finish my question before you answer your question. You may know exactly where I'm going with the question, but to help the court reporter so we're not talking over each other, let me finish before you answer. I'm gonna let you finish your answer before I go into the next question; is that fair?

A Yes.

Q If you answer my question, I'm gonna assume that you understand my question; is that fair?

A Yes.

Q If you need me to clarify my question or you don't

understand my question, under the rules, you have to ask me to clarify my question or rephrase it. Not Nick, who is also in the room; okay?

A Mm-hmm.

Q If you -- which normally I do in common talk, say mm-hmm or uh-uh, try to refrain from that to the extent that you can because it doesn't show up correctly on a transcript.

A Okay.

Q So, say yes or no and if you say, mm-hmm, I may say, is that a yes or is that a no, just so the record is clear; okay?

A Okay, I understand.

Q Do you have any questions for me before we begin?

A No.

Q I'm gonna start and ask you some kind of background questions about you and your work at Burlington, and then we're gonna kind of get into the specifics related to the fall that Ms. Qualls had at the store.

A Okay.

Q So, background, I hate to ask ladies this question, but how old are you?

A I'm 35.

Q Thirty-five, okay. Well, I am 36, so I've got you beat. Were you born in '81?

A I was.
Q All right. What's your birth date?
A August 27th.
Q And where did you grow up?
A Massachusetts.
Q And how long have you lived here in South Carolina?
A I think it's been six years now. Six years.
Q Can you describe for me your educational and work history, up until the present point?
A Sure. I graduated --
Q In a chronological order.
A I graduated from high school in 2000 and I went to college for a year. Actually, sorry, for about half a semester, and then started working with TJ Maxx, and ended up really liking the retail job, and got promoted quickly. And just never returned back to school.
Q Okay. So that was your education?
A Mm-hmm.
Q Work history, you started working with TJ Maxx --
A In 2001.
Q In 2001, and you now work for Burlington; is that correct?
A Yes.
Q Explain to me, if you will, you know, your work history with TJ Maxx, your positions, approximate dates of any

promotions, and then when you started to work at Burlington and what you've done for Burlington.

A Okay. So I started with TJ Maxx in 2001. I was actually a backroom associate. I used to hang the clothes and sort the trucks. I would probably say I did that for about a year and they promoted me to a full-time sales floor associate. So that would've been 2002. I did that for two or three years, and then got promoted to an assistant manager, and then I was assistant manager with them until I left the company in 2009. I apologize, 2010. I left there in 2010. I started with Burlington.

Q Now, let me tell you, there's one little rule and I don't care about it for purposes --

A Sorry.

Q -- of this question. You can't ask your lawyer to help you. That's just the rule. I don't really mind, but if you don't know the exact date, I'm not holding you to the exact dates.

A Okay.

Q Okay? Just give me kind of approximates.

A I think it was 2012 that I started with Burlington.

Q And why did you leave TJ Maxx?

A I moved down here to be closer to my family and they didn't have a position for me that we had agreed upon,

so --

Q Okay. Were you terminated from TJ Maxx or did you leave voluntarily?

A I was terminated.

Q Okay.

A Mm-hmm.

Q What grounds?

A I didn't like the job that they put me into, so I didn't show up.

Q Okay. What job did they put you into?

A It was an assistant store manager of merchandising, but I was originally transferred to come down as a store manager. They promised me my own store.

Q Okay.

A So, sorry, long story.

Q So, you originally had a job with TJ Maxx as a store manager here in South Carolina?

A I interviewed for a position and was offered a store manager position, yes.

Q Okay.

A When I got down here, they filled it.

Q I understand. So, you came to South Carolina thinking that you had a store manager position at TJ Maxx?

A Mm-hmm.

Q Is that a yes?

A Yes.
Q Okay.
A Sorry.
Q You're good. And in that process, you found out that they actually filled the store manager job with someone else and they --
A Mm-hmm.
Q -- offered you a position that you did not want; is that correct?
A Yes.
Q So you just stopped working for TJ Maxx?
A Yes.
Q All right. And did you apply to work somewhere else?
A I took some time off for a little while to be with my family since I had just moved down here, and I believe I was a bartender for a little bit so I could meet some -- meet people, and then I started working with Rue 21 for maybe six months. And then that's when Burlington recruited me, I guess you could say. They were looking for some people to run their stores. They found me.
Q Okay. You said your -- you have family that lives in South Carolina?
A Mm-hmm.
Q Who lives in South Carolina?
A My mother and my two brothers.

Q Okay. What is your current address?
A 495 Silver Lake Road in Duncan, South Carolina.
Q Okay. Have you lived at this address since moving to South Carolina?
A No.
Q Okay. How long have you lived at this address?
A For three years.
Q All right. So give me the timeframe that Burlington started to recruit you.
A It was June or July of 2012.
Q How did those events unfold with Burlington recruiting you? Did you -- I guess, did you apply to work for Burlington or did Burlington seek you out?
A I had to -- I believe in the process of me applying for some jobs, that Burlington was one of them and when they hadn't called and I accepted the Rue 21 position, and I kind of forget about them. And then I believe I had gotten a phone call and I told them that I already got a job, and they came into my store, actually, and just asked me some questions about my merchandising skills and my background history. And they offered me -- they asked me for an interview, and so we had more of a professional interview at their store, so --
Q Okay. Who came to meet you in, I take it, Rue 21?
A Mm-hmm.

Q Who came to meet you?
A I don't remember.
Q Okay. But they did meet you and then eventually, you had an interview --
A Mm-hmm.
Q -- to go to?
A Yeah.
Q And where was your interview in Burlington?
A It was at the Spartanburg location.
Q Okay, and did you accept the job at Burlington?
A I did.
Q Okay. Was this in June or July of 2012?
A Around that time; yes.
Q Okay, and what position did you accept?
A Assistant store manager.
Q Was it the assistant store manager of the Spartanburg location?
A Yes.
Q Is there only one location in Spartanburg?
A Yes.
Q Okay. And how long did you work as the assistant store manager in Spartanburg for Burlington?
A I believe, a year and a half.
Q Okay. Continue on.
A And then, I believe, for three months, I was interim

store manager when the store manager that had hired me left, and the store did well, so they promoted me to store manager. And I was there, in the Spartanburg location, for about another year, in which they promoted me again to the Columbia location on Bush River Road. There's two here, so --

Q What are the locations for the South Carolina Columbia Burlington stores? There's one on Bush River Road and --

A And then the other one is Two Notch Road.

Q Are you currently employed by Burlington?

A Yes.

Q And how long have you been at the Bush River store location?

A I was there for two and a half, three years, and then they transferred me to Greenville in August of 2016.

Q So, currently, you work at the Greenville location?

A Yes.

Q So tell me if I'm correctly --

A That's all.

Q -- summarizing this. You went to work as an assistant store manager at the Spartanburg location of Burlington at first?

A Yes.

Q And you worked there for a period time. Then, you

became the interim store manager for the Spartanburg location; correct?

A Yes.

Q And then you did so well that they promoted you to store manager at the Spartanburg location; correct?

A Yes.

Q And you did so well that they then gave you the store manager position for the Burlington location in Columbia, South Carolina on Two Notch Road; correct? No, Bush River Road.

A Yes, Bush River Road.

Q Okay, and you worked at that location until August of 2016?

A Yes.

Q And then in August of 2016, you went back to Greenville to work for the Greenville location of Burlington as its store manager?

A Yes.

Q Okay. We got that right?

A Mm-hmm.

Q All right. How long did you work at the Bush River location here in Columbia?

A I don't think it was quite three years, so it was -- I can't remember the exact date of when I started, but I know that I was there for at least three Christmases.

Q Okay.
A So --
Q Give me approximate years you think you worked.
A 2013 to 2016.
Q Why were you transferred from the Spartanburg location to the Columbia location?
A Promotion.
Q Okay.
A It's a higher volume store.
Q Okay. And why were you transferred from the Bush River Road location in Columbia to the Greenville store?
A I had moved to Duncan and it was a 90-mile drive back and forth, so I was asking my boss to get me closer to home. Plus, I was in the process of getting married and my husband didn't want me driving that far there and back.
Q Okay, so did you move back to Duncan due to getting married?
A Mm-hmm.
Q Is that a yes?
A Yes.
Q Now, you're --
A Sorry.
Q I'm not picking on you. You understand I'm just trying --

A No, I forget. You're fine.
Q No, you're good. You're good. We can help each other.
A Okay.
Q When you moved to the -- so you relocated to the Greenville location because you were getting married or you had gotten married?
A I was in the -- we were living together and we were in the process of getting married and --
Q Got you. Are you currently married today?
A Yes.
Q And your husband, what's his name?
A Craig Vahle.
Q Craig Vahle. And what does Craig Vahle do?
A He runs the IT department with Synnex Group Corporation.
Q Okay, let's go off the record real quick.

OFF THE RECORD

EXAMINATION CONTINUED

BY MR. GOINGS:

Q You said your husband works for?
A Synnex.
Q Synnex. What does he do for Synnex?
A He runs the IT department.
Q Okay. Do you and your husband have any children?
A No.

Q Do you have any children?
A No.
Q Have you ever been married previously?
A No.
Q Okay. You have been the store manager of the Greenville location since August 2016; correct?
A Yes.
Q Okay. Do you have a title other than store manager or is it just store manager?
A Just store manager.
Q Okay. Are you familiar with the policies and procedures of Burlington?
A Yes.
Q Okay. And are policies and procedures of the store given to store associates and people who work in the store for Burlington?
A Yes.
Q When you are paid each week or every two weeks or every month, however you're paid, are you paid by the company, Burlington Coat Factory of South Carolina, LLC or are you paid by Burlington Coat Factory Direct Corp, or is it another entity in which you're paid?

MR. MERMIGES: So, hold on. I'm gonna interject and say that that is beyond the scope of this notice. The witness is not prepared to give a correct answer to

that. I don't see that in this notice. However, if from her personally she can provide an answer, I've got no problem with her giving it to you, but it's got to be subject to that objection.

MR. GOINGS: I don't have a problem with that, Nick.

MR. MERMIGES: I'm not trying to -- you know, it's just I don't want her to -- you know? If you know what specific company pays your paycheck, then --

THE WITNESS: I believe it's Direct. I've never heard of Burlington of South Carolina.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q I'm gonna hand you some documents for you to identify. Let's kind of go over them. These are documents that have been produced in discovery in this case and I just want to just run through them with you, and you've probably recognized them. If you haven't recognized them, just let me know; okay?

A Okay.

Q First document I'm gonna hand you what looks to be a multi-page document titled "Burlington Winning Together, The Heart of Success Core Values."

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 1 WAS MARKED FOR IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "BURLINGTON THE

HEART OF SUCCESS CORE VALUES.")

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Are you familiar with this document marked as Exhibit .1?

A Yes.

MR. GOINGS: I can print off additional copies if you need them.

MR. MERMIGES: It's fine.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. What is this document?

A It discusses Burlington's core values and what every associate and manager, what they are supposed to, you know, hold our standards to every day while working.

Q Are these core values given to each employee of the store?

A Yes.

Q Okay. When is it given to them?

A In orientation.

Q Okay, and is it handed to them, you know, paper copy or is it shown to them in some type of multimedia presentation?

A It's now on computer.

Q Okay. So when someone has their orientation, they're

in front of a computer looking at items?
A Yes.
Q Okay, and this is something they would look at?
A Mm-hmm, yes.
Q How would you describe the core values of Burlington Coat Factory?
A They're made up of, you know, three steps. Builds teams and partnership, delivers results and develops trust and respect, so mainly things that most people try to live by as far as respecting each other and helping each other out, teamwork.
Q Things that you learn in kindergarten?
A We try.
Q Yeah.
A Yeah.
Q So, this would be given to all new employees?
A Yes.
Q And you expect the employees of Burlington Coat Factory to follow the core values; correct?
A Yes.
Q Okay. And you as a store manager, you help to promote the core values among you and the other associates; correct?
A Of course, yes.
Q Okay. I'm gonna hand you what has been marked as

Exhibit 2 and this says, "Loss Prevention Department Burlington Procedural Manual."

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 2 WAS MARKED FOR IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "LOSS PREVENTION DEPARTMENT PROCEDURAL MANUAL".)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q If you could just look through this and I'm gonna ask you if you've ever seen this document before.

A I can't be 100 percent sure this is exactly what I was given in my orientation, but a lot of the content in here is stuff that I have seen before; yes.

Q Okay. This says, "Loss Prevent Department Procedural Manual." Is this a manual that is kept at every store from a loss prevention standpoint?

A Yes.

Q Okay.

A Or in -- now, it must be in computer form for them, for an associate. A loss prevention associate.

Q Okay, so it may not be printed off in a -- printed off and put in a binder --

A Mm-hmm, right.

Q -- like it was a long time ago?

A Mm-hmm, right.

Q Now, it's possibly on the --

A Correct.
Q -- on the computer?
A Mm-hmm.
Q It's accessible to store employees; correct?
A Not -- no, not all store employees.
Q It's accessible to loss prevention employees?
A Correct.
Q Okay, and help me understand. How many loss prevention employees are in any given store --
A Depending on --
Q -- or is there loss prevention employees in a store?
A It depends. All stores should at least have one, depending on volume. There are some stores that don't have any just because of -- well, I'm not sure what the reason is, but there should be one in each store, yeah, depending on volume.
Q Is a loss prevention employee, are they dressed in a Burlington uniform or are they plain clothed?
A They're in plain clothes, but they're required to wear a vest that says "loss prevention" on the back, I believe, and it has Burlington's shield on the front.
Q Okay. How many loss prevention employees do you currently have in your store in Greenville?
A I currently do not have one.
Q Okay. And the Bush River Road location in Columbia,

how many loss prevention employees did you have?
A I had two at the time.
Q Okay. Does it help that they're in plain clothes for purposes of promoting or determining potential shoplifters?
A Right.
Q Okay.
A If they had seen something that they can't have access to on camera, they can look at it on the floor, but they would take the vest off.
Q I got you. Okay. Does this manual right here, loss prevent manual, have anything to do with safety in the store or safety regarding hazards, such as water or spills on the floor?
A I believe there is something in here.
Q Okay. Show me where that is. And I'm not challenging you. I'm just trying to figure it out.
A Okay.
Q I figure you know these documents better than I would.
A Right here.
Q Let the record reflect that you are showing me what is Page 50 to Exhibit 2; correct?
A Mm-hmm, right.
Q And this section is regarding safety. On top, it says, "It is a responsibility of all Burlington Coat Factory

employees to actively participate in efforts to improve the safety of our stores." Do you agree with that statement?

A Yes.

Q Okay. Then underneath it, it has 11 points. Actually, it says, a list of ten action points designed to ensure a safe environment for our customers and loss prevent associates, but then, actually, it's 11 items, not ten. Do you see that?

A Right.

Q Okay. Either way, do you see that there are 11 items under the section, critical standards for safety?

A Yes.

Q Okay. And do any of these items deal with debris or spills at or around flooring?

A Yes, Number 8.

Q Okay. What does it say?

A Debris/spills, all floors must be kept clean and clear at all times. They should be inspected often.

Q Do you agree with that statement?

A Yes.

Q Okay. And why is it important for floors to be kept clean and clear at all times?

A So that it doesn't cause a hazard to anyone.

Q Okay. And why is it important for floors to be

inspected often?

A In case there's something that is on the floor that someone didn't catch.

Q Okay. Is spills or debris on the floor, is that a safety concern for customers in the store?

A Of course; yes.

Q Okay. And would you agree with me that trips or slips due to hazards on the floor is a foreseeable hazard in a Burlington store?

MR. MERMIGES: I'm gonna object to the form because I believe that calls for a legal conclusion, but I'm gonna -- the witness can go ahead and answer.

THE WITNESS: Is it a hazard to a customer if there's something on the floor? Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q You can say it like that. Okay. You agree that a spill or debris on the floor can become a hazard for a customer?

A Yes.

Q Okay. Why?

A Because they could slip or something.

Q Okay. Is a spill on the floor -- does that constitute a foreseeable hazard that could cause harm to a customer?

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MR. MERMIGES: Same objection, but I'm gonna go ahead -- just go ahead and answer.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. Do any of these other items, these 11 items, have anything to do with preventing injury to patrons or customers in the store?

A Preventing injury?

Q Yes, ma'am.

A A lot of these are. Well, maybe rolling racks, the rolling racks.

Q Let's go through and just quickly --

A Okay.

Q Rolling racks. It says, all empty rolling racks must be removed from the floor without exception. Why is that a policy of the store?

A Because customers or maybe even associates who aren't paying attention could walk and trip over the rolling rack when it's left out.

Q Okay, so rolling racks can be a tripping hazard; correct? Is that a yes?

A Yes, sorry.

Q Wrap desks. The floors behind all wrap desks must be kept completely clear at all times. All electrical

cords should be secured. Why is that?
A I don't even know what wrap desks are.
Q Okay.
A So, I apologize.
Q I understand.
A I don't have one in my store, anyway.
Q Okay. It says the floors behind wrap desks.
A Oh. That might mean the old baby registry desks. They could sometimes have cords because of the wiring that's there, so just to be free of that, in case a customer walked behind the desk and --
Q Okay. That's another policy of the store, to deter trip or slip hazards; correct?
A Correct.
Q Okay. The next one is ladders. It says, a ladder and step stool must be in every stock room. Nothing else should be used for reaching. Neither ladders nor step stools should be left on the selling floor unattended. Why is that a policy?
A So that anyone that's not used to maybe going on a ladder or knows how to use one properly would, you know, fall off it or whatever the reason may be.
Q Okay.
A Just to prevent hazard.
Q And the policy is to make sure that ladders and step

stools are not left on the selling floor unattended, because that could create a hazard?

A Right.

Q Okay. And then the next one is caution cones. Caution cones and rain mats should be used during inclement weather and during floor maintenance. Why is that?

A There may be some wet spots as they're drying, so to let customers know that this is an area that could possibly be wet.

Q Okay, and it's important to warn customers of potential hazards in the event that a floor could be wet or slippery; correct?

A Yes.

Q Okay. Elevators, escalators, is that applicable in any of your stores?

A No.

Q Okay. And there was not an elevator or an escalator at the Burlington location on Bush River Road; correct?

A Correct.

Q Okay. Visual displays. It says, visual displays must be inspected daily to ensure that they are secure and free of defect. Why is that?

A In case something were to fall on a customer. We wouldn't want those displays to fall on anyone or anyone get hurt.

Q Okay. Have you ever been in a store when a display fell on a customer or an associate?
A Yes.
Q Okay. Displays can fall; right?
A Mm-hmm.
Q Is that a yes?
A Yes.
Q So it's important to make sure they're secured so they don't fall; correct?
A Correct.
Q All right. And that is to prevent a potential hazard from a visual display; correct?
A Yes.
Q Okay. Next one is fixtures and glass. Fixtures and glass must be inspected daily to ensure that they are stable and defect free. All fixtures with empty arms should be flagged. Explain this one to me.
A For instance, some of the fixtures that we have at the front of the store, they're called four ways and they have arms. And a lot of times, if it's not -- doesn't have any kind of merchandise at all on it, you could bump into it or, you know, something along the lines of that, so try to put merchandise on it or some sort of flag to let people know that it's there.
Q Next one is stock room, back areas. It says that the

areas must be clean and clear. Why is that?
A You don't want anyone to trip and fall. Also, there's usually emergency exit doors back there so that they are clean and free, so that if there was an emergency, that people would be able to get out.
Q Okay. Hanging artwork, mirrors and similar items must be checked daily to ensure that they are secure and merchandised correctly. Is that similar to the item of fixtures and glass that we just talked about?
A Correct, and also, sometimes when people are rearranging things as far as artwork and, you know, customer may not want something or whatever it may be, they put heavier items on the top by accident and sometimes if we rearrange that, then it's not the heavier stuff that's on the floor. Not on the top, so --
Q I understand. And then the last one, Number 11, not 10, read that one.
A Broken tiles, torn carpeting and floor obstructions should be secured to ensure that they do not cause a slip or a trip fall.
Q Why is this?
A Someone could fall over some torn carpeting or any floor obstructions.
Q Okay. And it says then at the end, all instances of

non-compliance to these points should be brought to the attention of the operations manager or store manager; you see that?

A Yes.

Q Do you agree with that?

A Yes.

Q Who is the operations manager verses the store manager?

A They run the building as far as all of the -- maybe the hiring and any of these instances to correct them.

Q Is the operations manager above you or below you?

A Below me.

Q Okay, so you're the supervisor for the operations manager?

A Yes.

Q Okay. Who was the operations manager at the Burlington location, Bush River Road, at or around the date of Ms. Qualls' fall?

A I believe it was Darrell Harmon.

Q Okay. Was Darrell Harmon working on the day of the incident?

MR. MERMIGES: Object to form.

THE WITNESS: I don't remember.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q So you're gonna give me some employee names throughout

the deposition. I'm just gonna write them down to make sure I've got everybody.

A Okay.

Q Darrell Harmon, H-A-R --

A M-O-N.

Q -- M-O-N, and he was the operations manager; correct?

A Yes.

Q You were the store manager?

A Yes.

Q Okay. Who was the loss prevention employee/employees at this time when Ms. Qualls fell?

A It was Jerry Williams and -- I can't remember his name. I'm sorry. Carey Johnson.

Q Was Jerry Williams and Carey Johnson working on the date of Ms. Qualls' fall?

A Just Jerry, I believe.

Q Okay. Was Darrell Harmon not working on the date of the fall?

A I don't remember.

Q Okay. You were working, though; correct?

A I was.

Q Okay.

A Mm-hmm.

Q How many employees of Burlington were working that day in the store, the day that Ms. Qualls fell?

MR. MERMIGES: Could we, just for a clear record, specify the day, month and year that you're talking about, so -- it's, obviously, July 31st, 2015, but I just want to make sure the record is clear on that.

MR. GOINGS: Yep.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q So, if I tell you that Ms. Qualls fell on July 31st, 2015 and based on the Burlington Coat Factory's incident report it shows that the fall occurred at or around 3:30, do you agree with that?

A Yes.

Q Okay. If I -- throughout the deposition, so the record is clear, if I say, on the day that Ms. Qualls fell, do you understand that I'm talking about July 31st, 2015?

A Yes.

Q Okay. So as to July 31st, 2015, you were working; correct?

A Yes.

Q Darrell Harmon, you don't know?

A I don't remember.

Q Okay. Jerry Williams, you think was working?

A Yes.

Q And then Carey Johnson, you don't think was working?

A I don't think so.

Q Okay. So my previous question as to how many employees were working on July 31st, 2015 at the Burlington Coat Factory store on Bush River Road?

A I don't remember. I'm not quite sure off the top of my head, but it's a Friday, so chances are, there probably would've been at least 10 to 15 associates, depending on the time.

Q Now, when you used the phrase "associates', are you considered a store associate?

A No, that would be my direct employees. So --

Q I got you.

A -- it would be sales floor associates and cashiers.

Q What about loss prevention? Would that be considered different form an associate?

A Yeah, I guess I would separate them, too, so --

Q Okay. So 15 to 16 sales employees?

MR. MERMIGES: She said 10 to 15. I just wanted to --

THE WITNESS: It's 10 -- yeah, 10 to 15 sales employees and then, you know, two to three loss prevention and management, I guess you could say if you wanted to put it that way.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Now, is a loss prevention employee a higher ranked

employee than a sales employee?
A Technically, no. They just do a different job.
Q Okay. They get paid more than a sales clerk or someone on the floor?
A Not necessarily.
Q Okay. When you're working as a store manager on a given day, do you work the floor sometimes?
A Yes, mm-hmm.
Q Okay. Do you work the cash register sometimes?
A I do, yes.
Q Okay. Do you do stocking sometimes?
A Yes.
Q Okay. So you -- your duties, in addition to being the store manager, you do it all; correct?
A Correct.
Q Okay. If there is a need at the store that day you're working, you do it; correct?
A Correct.
Q So if people are standing in line to pay and the line is getting long and you see the line getting long, you stop what you're doing and you go to a cash register, perhaps?
A That or I would get someone to go up there and take care of the line.
Q I got you. Okay. Is it fair to say your job is to

make it happen at the store?
A Pretty much, yeah.
Q Okay. So in addition to you, there would be 10 to 15 sales employees and two to three loss prevention?
A Slash managers, including him and -- or including loss prevention with management. There's probably one or two other managers with me at the time.
Q Okay. Who were the managers working that day?
A I'm not sure if they were there that day, but I had two other assistant managers besides Darrell Harmon. It was Tina Gullo and Marcia Eaves.
Q Could you spell that for the court reporter?
A Gullo?
Q Both names.
A Or both? T-I-N-A G-U-L-L-O and Marcia Eaves, M-A-R-C-I-A E-A-V-E-S, I believe.
Q Assistant manager on duty, Marcia Eaves and Tina Gullo?
A Correct.
Q You're sure they were working that day?
A I'm not positive.
Q Okay. You believe they were working that day?
A They could've been. I apologize. I don't remember.
Q Okay.
A It was a Friday. We tend to usually work on busier days, all of us.

Q Okay.
A So --
Q More likely than not, they were working, but obviously, you don't have the employee logs for that day in front of you; is that fair to say?
A Correct, yes.
Q Okay. Oftentimes I restate what you said, just to make sure I understand.
A Okay.
Q Okay? So on Exhibit 2, are there any other pages to this document that deal with safety, other than Section 9, and that includes Page 50, 51, 52 and 53?
A No.
Q Okay. Is it the responsibility of the loss prevention department to respond to accident scenes?
A Unless a manager responds first.
Q Okay.
A I wouldn't -- he wouldn't need to respond if I was there.
Q Okay. But between a loss prevention employee and a store clerk, the loss prevention employee would respond to the accident scene over the clerk; correct?
A Right, yes.
Q Look at Pages 52 and 53 regarding responding to an accident or injury, and my question is: Do you believe

that these steps and policies of Burlington regarding responding to an accident or an injury are reasonable and necessary?

A Yes.

Q And it says, the loss prevention associate, but would you agree that if you are the manager at the store and you respond, then these policies and procedures equally apply to you as the store manager?

A Of course; yes.

Q Okay. Other than this section, Section 9 regarding safety, is there any other provisions in the loss prevention document, which is Exhibit 2, that deal with injuries to customers?

A No.

Q Okay. It seems like the rest of this handbook deals with shoplifting and other instances related to loss of inventory; is that correct?

A Correct, yes.

Q I'm gonna hand you what has been marked as Exhibit 3. And this says, "Burlington Associate Handbook, Our Key to Success for Continental U.S. Stores."

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 3 WAS MARKED FOR IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "BURLINGTON ASSOCIATE HANDBOOK OUR KEY TO SUCCESS FOR CONTINENTAL U.S. STORES".)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Are you familiar with this document?

A Yes.

Q Is this a document that is given to all associates?

A It is part of their on-boarding packages when they do their paperwork online through the computer, so yes, it is available to them.

Q Okay. Are they expected to read and understand the associate handbook as a part of their job with Burlington?

A Yes, and they actually have to sign off that they received it.

Q Okay.

A I mean, not necessarily read it, but received it.

Q I understand. And that's a -- that is a requirement of employment; correct?

A Yes.

Q And is the associate handbook made available to the employees if ever they have questions regarding their job duties, descriptions and performance obligations?

A Yes, they can log on to the portal and get it at any time.

Q Got you. So, it's made available to an associate any time they need it?

A Correct.
Q Okay. Does this associate handbook have anything to do with safety of customers?
A Yes.
Q This is Section 7; correct?
A Yes.
Q So, for the record, that would be Pages 44, 45; is that correct?
A Yes, mm-hmm.
Q Okay. It says, "The company is concerned with the safety and health of its associates and the general public." Do you agree with that statement?
A Yes.
Q Okay. We seek to provide a safe work environment and to prevent accidents and casualties caused by associates under the influence of controlled substance or alcohol; do you agree with that?
A Yes.
Q Okay. And do you agree that a safe work environment in preventing accidents goes beyond just associates who are under the influence of drugs or alcohol; correct?
A Yes.
Q Okay. Another sentence on Page 44 says, "We are committed to occupational health and safety and will comply with all applicable safety and health laws,

regulations and industry standards." Do you agree with that statement?

A Yes.

Q Okay. It says, "All work areas should be kept clear of items that can cause slips or falls, including debris, spills, electrical cords, et cetera." Do you agree with that?

A Yes.

Q Okay. Do you agree that debris on the floor can cause a slip or fall?

A Yes.

Q Do you believe that a spill on the floor can cause a slip or fall?

A Yes.

Q Do you agree that electrical cords can result in a slip or a fall?

A Yes.

Q Okay. Then it says, "If an associate observes an unsafe or potentially hazardous condition, they should report it to their supervisor or contact a member of the risk management department" with the phone number. Do you -- are you aware of that?

A Yes.

Q Do you also agree, though, that if an associate observes a potentially unsafe or hazardous condition,

that they should take immediate action to try to warn any potential customers of that condition or take action to remedy it immediately?

A Yes.

Q Okay. So, if an associate observes an unsafe or potentially hazardous condition, they should take immediate action to warn or fix the problem in addition to reporting it to a supervisor; correct?

A Correct.

Q Okay. Because sometimes, there can be a hazard on the floor that requires immediate attention; correct?

A Right.

Q And waiting to tell a supervisor or the store manager could result in additional harm or accidents occurring; correct?

A Correct.

Q Okay. Because isn't it true that if you have a spill or something on the floor that can cause a slip and fall, that it's important to take immediate action and not wait?

A Yes.

Q Okay. And that is ingrained or should be ingrained in the values of store associates at Burlington; correct?

A Yes.

Q Okay. And then it says, "For more detailed guidelines

related specifically to workplace safety, all associates should review the Workplace Safety Rules for Burlington document, located in the Burlington Accident Prevent Program Manual. Ask your supervisor or manager for the manual or on the portal under safety." My question is: Are you familiar with this Workplace Safety Rules for Burlington document?

A Something along the lines of that, yes.

Q What does that document look like?

A As far as I remember, it's not in paper form anymore. It's on -- number one, it's part of their -- part of e-learning and on-boarding courses for new hires and associates.

Q Okay.

A But also, you can access it under the portal, so at any time, if somebody wanted to, you know, look it up, they can do that.

Q Okay. And I have a couple more documents that I want to show you and tell me if you think these documents are that Workplace Safety Rules for Burlington, because in reading Exhibit 3, which is the associate handbook, it seems like there is a document that it's actually called, Workplace Safety Rules for Burlington; do you see that?

A Yes.

Q Okay. I just have not seen a document that actually is titled that.

A I haven't ether.

Q Okay. Let me show you what is marked as Exhibit 4.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 4 WAS MARKED FOR IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "BELIEVE IN SAFETY".)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Is this the document referenced in the associate handbook?

A I believe so.

Q Okay. Are you positive?

A No.

Q Or is that something you probably would need to look into?

A I would probably need to look into. I'm not positively sure.

Q Okay. Let's go off the record real quick.

OFF THE RECORD

EXAMINATION CONTINUED

BY MR. GOINGS:

Q All right. So, we went off the record. I understand we're gonna take a break in about 15 minutes and you're gonna try to log into the portal to see if there is

documentation or a handbook referenced.
A Workplace safety.
Q As workplace safety in the associate handbook; okay? I did show you Exhibit 4. Are you familiar with this document?
A Yes.
Q Okay. And what does this document describe?
A Certain culture that our sales floor associates and all associates should have while working.
Q And is this the policy of Burlington Coat Factory?
A Yes.
Q Exhibit 4, what is the first item?
A Pick it up, don't pass it up. Pick up all the debris, merchandise or fixture parts that could cause a slip, trip or fall.
Q Do you agree with that statement?
A Yes.
Q Okay. Do you believe that it's important for a -- important and necessary for safety, for a store associate, if they see debris or see a spill on the floor, to not keep walking and stop them and take corrective action?
A Yes.
Q Okay. And that's what it -- that's kind of what it says. Pick it up, don't pass it up; correct?

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A Yes.
Q That means, don't walk past a hazardous condition. Take action. Is that --
A Yes.
Q -- what it says?
A Mm-hmm, yes.
Q Okay. Then next, it says -- Number 2, read that out loud.
A Clean up spills or any other slippery conditions. Call maintenance if necessary and block off the area until it's completely cleaned up. Always use wet floor signs.
Q Okay. Do you believe that once you clean up spills or any other slippery conditions, immediately?
A Yes.
Q Okay. And similar to the first item, don't walk past a slippery condition. Stop and fix the problem, is what should be done; correct?
A Yes.
Q Okay. Are these rules given to store associates upon orientation?
A Yes.
Q Okay. Are they provided this information?
A Yes.
Q Are they trained on a routine basis as to safety and

hazards at the store regarding slips and falls or trips and falls?

A Yes.

Q Okay.

A It's part of our culture.

Q Okay. Is it re-enforced with store employees throughout their employment tenure?

A Yes.

Q Okay. Does Burlington have monthly safety meetings?

A Yes.

Q Okay. Who performs or puts on monthly safety meetings?

A Store management.

Q Okay. Are you, you as a store manager, active in putting on safety training for employees?

A Yes.

Q Okay. I'm gonna hand you what is marked as Exhibit 5 and this appears to be various monthly safety topics and training.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 5 WAS MARKED FOR IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "TOPIC: ILLNESS AND INJURY PREVENTION PROGRAM.)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q And if you could just review Exhibit 5 and tell me if these, in fact, are monthly safety training topics that

are given to stores.
A Yes.
Q See towards the bottom, it's got a store manager signature on it?
A Yes.
Q And why does it have a store manager signature?
A To signify that we let or we talk to all the store associates about the training.
Q Okay. It appears that Burlington headquarters sends out monthly safety topics for each store; correct?
A Yep.
Q Okay.
A Yes.
Q These aren't safety topics you come up with it? These are given by the store; correct?
A By the company; yes.
Q Okay. And do you have to turn in monthly safety topic forms that are signed by you, the manager?
A No.
Q Okay. How does the company know that these safety topics are presented to all the store associates if nothing is sent back verifying that it was presented to the store?
A I don't know.
Q Okay. One of these in here, I think it was in June of

2015. Is it the beginning of the month, the end of the month, the middle of the month? When are these safety meetings performed?

A Either the beginning of the month or the end of the month, so that you can have time to let everyone know about it for the month.

Q Do you recall presenting to store employees this topic in June of 2015 entitled "Illness and Injury Prevention?"

A I'm almost positive, yes.

Q Okay. At the bottom, it says, "safety, talk about it." Why is it important for you, as a store manager, to talk about safety within your store?

A Because everyone plays a part in it. Every single associate, not only for safety for us, but for customers as well.

Q Are you familiar with this monthly safety topic back here for the topic slips, trips and falls?

A Yes.

Q Did you engage your store associates as to this topic?

A Yes.

Q Now, is an issue like slips, trips and falls, is that an issue that you just discuss one time and then you don't talk about it for the rest of the year, or is it something that is reinforced on a monthly or daily

basis?
A We always talk about how to prevent things like that, so it's --
Q Why?
A You know, we talk about don't pass it up, pick it up, all the time. It's just a mantra almost; you know?
Q Okay.
A Because we don't want to get hurt. No one wants to get hurt.
Q Okay. And you -- as a store manager, you want all of your customers to have a good experience in your store; correct?
A Of course; yes.
Q And the last thing you want is a customer to be injured based on something that is preventable; correct?
A Yes.
Q Okay. And the top item listed in the bullet point is react properly, and that's in bold; correct?
A Yes.
Q Why do you need to react properly?
A So that an accident doesn't happen.
Q And it says, don't ignore a spill; correct?
A Yes.
Q So, would it improper for a store associate to observe a spill or a substance on the floor and then to keep

walking past it?
A Yeah.
Q Why would that be improper?
A Because someone could fall.
Q Okay. Does the store policy require employees, if they see a substance on the floor, that could be a slip or trip hazard, to stop immediately and take action promptly?
A Yes.
Q Okay. Do y'all have spill kits?
A We do now.
Q It says, coming soon, April 2016. Help me understand this. This says March 2013. How, in March 2013, at the monthly safety topic, they would know that three years later in April, they would have a spill kit?
A I think that's a typo, as we had another typo in the loss prevention one.
Q Okay.
A I think it's supposed to be 2015.
Q All right. And that would make more sense because the rest of these are 2015; correct?
A Mm-hmm.
Q Okay. So can we agree that -- and I'll let you look. February 2015, all of these '15 dates, up until June 2015, the only outlier is March. It says March 2013,

and we agree that that should be March 2015, not March 2013?

A Yes.

Q Okay. Do you recall, in March of 2015, receiving this document regarding slips, trips and falls?

A Yeah. I'm pretty sure I got it; yeah.

Q In the Columbia store; correct?

A Yes, mm-hmm.

Q March 2013, you were not in the Columbia store; were you?

A I don't think so; no.

Q Were you even working for the company in March 2013?

A Yes, I was in Spartanburg, I believe.

Q Okay, but would this be a document that you would recall seeing in March 2015, not March 2013?

A I think I would recall more 2015 than 2013.

Q Okay. Are the same topics used year in and year out?

A For this month, March, it's that same topic. A little -- few updates, but same topic.

Q Okay, so you shook your head yes. Is that a yes?

A Yes, sorry.

Q I know. I'm just trying to help you out. That would make sense while this says March of 2013 because it was probably also given in March of 2013 as well; correct?

A Yes.

Q Okay. It's the same monthly safety topics generally year to year since you've been working there; correct?
A Yes.
Q Okay. And you would agree with me that the safety concerns that a store may have in 2013 are still really generally the same safety concerns that a store may have in 2015 or 2016; right?
A Yes, it's pretty much the same.
Q Right. I mean, a slip and fall can be bad in 2013 just like it can be bad in 2015?
A Yes.
Q What do you do as a store manager when you know that a store employee fails to stop and pick it up or fails to stop and clean it up?
A Well, I would delegate them to pick it up and then maybe pull them aside or even in a private area, maybe the office or something, and asked them why they passed it and didn't pick it up, so --
Q And that's because it's the company mantra or policy to pick it up, don't pass it up; correct?
A Correct.
Q Clean it up, not pass it up or won't pass it; correct?
A Yes.
Q Have you ever had to discipline an employee because they did not clean it up or pick it up?

A Not to my knowledge, no.
Q Okay. Have you ever had to just talk to an employee about their failure to pick it up or clean it up?
A No.
Q I want to show you an incident report. Here's some copies. I'm gonna mark this as Exhibit 6.
(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 6 WAS MARKED FOR IDENTIFICATION PURPOSES, INCIDENT REPORT.)

EXAMINATION CONTINUED

BY MR. GOINGS:
Q Is this the incident report regarding the fall of Ms. Lallie Qualls on July 31st, 2015?
A Yes.
Q Did you complete this document?
A I did.
Q How did you complete this document?
A There is a report in the computer that we fill out and we submit it after we fill out all the required information.
Q Do you know when this document was completed and submitted? What day and what time?
A As soon as Ms. Qualls left in the ambulance. I did it right after that.
Q Did you have the opportunity to review the video before putting this document together?

A No.
Q Okay. So, this accident report was created prior to you ever reviewing the video footage?
A Yes.
Q Okay. This was based on information that you were told by the store employees?
A No, this is from Ms. Qualls herself.
Q Okay, I understand. Did you ever review the surveillance video of the store that shows the fall?
A Before I sent it to the insurance company; yes.
Q Okay. When did you first review the surveillance video?
A A couple days after, maybe.
Q A couple days after the fall?
A Yes.
Q Okay. When is the last time you actually did review the video?
A A week ago.
Q Okay. Did you review it with anyone?
A Yes.

MR. MERMIGES: You can tell them that I was present.

THE WITNESS: Oh.

MR. MERMIGES: You can't talk about any -- you know, our discussions.

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THE WITNESS: Yes.

MR. MERMIGES: But that's fine.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Was your lawyer present?

A Yes.

Q Okay. Was anybody else present?

A No.

Q Okay. Did you take photographs after the fall?

A Yes.

Q Did you take the photographs or did someone else take the photographs?

A Under my direction, I believe my loss prevention associate took the photographs.

Q What loss prevention associate took the photographs?

A Jerry Williams.

Q How many photographs were taken?

A I think five or six.

Q Okay. It says on here, were photos taken, it says, no.

A I hadn't done it at that time of the report.

Q I got you. So, no photographs were taken before you did the report; correct?

A Correct.

Q Okay. And then after you did the report, you then took photographs?

A Yes.
Q Okay. I understand. I'm going to mark this as Exhibit 7.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 7 WAS MARKED FOR IDENTIFICATION PURPOSES, PACKET OF FIVE PHOTOGRAPHS.)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Are these the photographs that your loss prevention associate took?
A Yes.
Q Are there any additional pictures that were taken, other than the ones that are marked as Exhibit 7?
A Not that I know of.
Q Do you know how these pictures were taken?
A With a digital camera.
Q Okay. Would it be a phone camera or an actual digital camera?
A I believe it was an actual digital camera.
Q Okay. It's amazing how the days of the digital camera, it's now getting replaced with the smartphone.
A I know.
Q Okay, so you don't think it was an iPhone or an Android device or a smartphone?
A No, because -- yeah, no, it wasn't. We had a digital camera at the store.

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Q Okay. And did he print out the pictures after he took them and gave them to you or did you get the digital camera images from the camera and then send them to somebody?

A They had to be e-mailed so -- I can't remember exactly what I did, but I downloaded them onto the computer and then e-mailed them this way.

Q Who'd you e-mail them to?

A Vivian Frasier, I think, at our insurance company.

Q Okay. Do you recall getting a letter from my office to preserve the video footage or any materials related to this fall?

A No, sir.

Q Okay. This would be around the time that you would've corresponded with the insurance adjuster.

A Not to my recollection, no.

Q Who was the first person to respond to the accident scene?

A Me.

Q Okay. Do you recall what you were wearing?

A Yeah. A pink dress.

Q Okay. So you're the girl in the pink dress in the video?

A Yes.

Q Okay. Pink and white dress maybe?

A Mm-hmm.
Q Were you the first one to respond?
A Yes.
Q Okay. And what did you do when you got to the scene -- to the location where Ms. Qualls was laying on the floor?
A I spoke with her daughter who was right there.
Q Okay.
A And she told me to call 911.
Q Okay.
A In which I did.
Q Did it appear that Ms. Qualls was in pain or distress?
A Yes.
Q Okay. Did it look like, that she had an injury to her leg or knee?
A Her daughter said she did, but yeah --
Q Okay.
A -- she had pain in her knee.
Q Okay. Did she tell you that her knee was hurting?
A Yes.
Q Okay. Did you see her knee look out of socket or any visual observations of her knee that would leave you to believe that she had an internal injury to her knee?
A No.
Q Okay. Was she holding her knee or complaining of knee

pain?
A I was holding her hand.
Q Okay.
A I was just trying to comfort her.
Q Got you. So, she said that there was a very nice lady that was trying to comfort her. Would that have been you?
A Yeah.
Q Okay. Was Ms. Qualls very nice to you?
A Of course. Yeah, mm-hmm.
Q Okay. Were you very nice to her?
A Of course, yes.
Q What did she say to you as to what happened?
A She slipped.
Q Okay.
A And fell.
Q Did she tell you why she slipped?
A I don't recall.
Q Okay. Did the daughter tell you why she slipped?
A There was a little bit of -- a spill on the floor.
Q Okay. Did you see the spill on the floor?
A When I bent down next to her, I did. Yes.
Q Okay. What color was the spill?
A Dark, like Coke.
Q Okay. How big was the spill?

A Maybe, like, the size of this coaster.
Q Okay. Would you say --
A Bigger than a hockey puck.
Q Bigger than a hockey puck, but smaller than an 8 x 10 piece of paper?
A Yes.
Q Okay. If I gave you a sheet of paper, could you just draw what you believe the size of the spill was? Just based on your best recollection; okay?
A Okay.

MR. MERMIGES: I'm gonna instruct the witness not to draw anything. If you're asking her to mark something, I'm just concerned how it might be used.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 8 WAS MARKED FOR IDENTIFICATION PURPOSES, BLANK SHEET OF PAPER.)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Are you unable to draw the size of the spill?
A I can't be accurate that that would be exactly the size of it.
Q Okay. Would you describe it as a large spill, medium sized spill or small spill?
A I thought it was small.
Q Okay. And you -- Ms. Qualls was actually on the floor at this time; correct?

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A Yes.
Q So, you would agree that if she had already fallen in the -- from the spill, that the size of the spill or the shape of the spill or the amount of the spill would've changed due to her fall?
A Yeah, possibly.
Q Okay. Did you notice any wetness or moistness on her clothing or legs as she laid on the ground?
A No.
Q Okay. Would you believe that she would've had some dampness or wetness or moistness on her body from the fall?
A If there was a large enough spill.
Q Would you think this was a large enough spill or not?
A No.
Q Okay. You don't know what the spill looked like before she slipped in it; is that fair to say?
A Yes.
Q Okay. So you can't say the size of the spill before you got there?
A Right; yes.
Q Okay. This incident report, Exhibit 6, it says, the cashier on reg 6 -- that's register 6; correct?
A Yes.
Q Immediately notified the MOD. Who is that? Manager on

duty?
A Yes.
Q Manager on duty, store manager, Pam. That's you; correct?
A Yes.
Q How were you notified?
A I was already at the front registers. The cashier that was at register 6 called over and said that someone had fallen.
Q How many people were at the front registers?
A Four to five.
Q Okay. And you?
A And me.
Q So five to six.
A Okay. Yes.
Q Is that fair?
A Yes.
Q Were you actually running a register or just observing?
A I was helping a customer.
Q Okay.
A I was not ringing a register. I was answering a question.
Q Okay. Did you see Ms. Qualls fall?
A No.
Q Did you hear Ms. Qualls fall?

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A No.
Q Did you -- what was the first thing you heard after she fell?
A Him yelling at me to go see if she's okay.
Q Okay. Were you standing in visible range to where Ms. Qualls fell?
A I don't think so. I was, I believe, answering a layaway question, which is register 9, which is some more lanes over.
Q Do customers in the store regularly carry clothes and merchandise in their arms and hands?
A Yes.
Q Okay. Is it foreseeable that a customer would be walking with clothes or other merchandise and carrying clothes and other merchandise while walking towards the registers?
A Yeah.
Q Okay. Could merchandise, you know, when you're holding and carrying merchandise, could that obstruct or prevent you from seeing what may or may not be on the floor immediately in front of you?
A Yes.
Q Okay. Is that one reason why the policies and procedures at Burlington is to remove any obstructions or hazards that could be on the floor?

A Yes.
Q Okay. And going back to the rack that we talked about earlier. Individuals can see a rack; correct?
A Right.
Q But if they're shopping or distracted or carrying items, they may not appreciate that the rack is there; correct?
A Right.
Q And that's why you want to remove the rack from the store; correct?
A Yes.
Q Or from the floor?
A Yes.
Q Okay. Did Ms. Qualls tell you that she saw the spill on the floor and fell anyway or that she did not see or appreciate the spill on the floor?
A I don't -- she didn't say, but I don't think she saw it.
Q Okay. When you walked up to the scene of the fall while Ms. Qualls was on the floor, did you immediately see the brown substance on the floor?
A I did.
Q Okay. So, when you got to see her, before you even said anything to her, you had put it together that she slipped on a substance on the floor; correct?

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A Yes.
Q Okay. So, without even asking her why she slipped, you saw why she slipped; correct?
A Yes.
Q Okay. What did the daughter tell you? Ms. Qualls' daughter.

MR. MERMIGES: That's been asked and answered. I'm not gonna instruct my client to not answer, but I'm gonna put that on the record. Go ahead and answer.

THE WITNESS: I believe she -- well, she told me immediately to call 911, that her mom broke her leg, and then we -- as we were comforting her and I was getting all of the information, that's when her daughter had said, it looks like she slipped on this. And I said, oh, my gosh, I can't believe, you know? I'm so sorry, that kind of stuff. And we got it cleaned up right away.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. Who cleaned it up?
A I had one of my associates clean it up. I believe her name was Ladawn.
Q Okay. Were any pictures taken of the substance before it was cleaned up?
A No.

Q Okay. And so, all the pictures that were taken, were taken after the incident then; correct?
A Yes.
Q So, if I can't visualize a substance on the floor in these photographs, it's because it was cleaned up by the time the photographs were taken; correct?
A Yes.
Q Okay. And I see, caution, wet floor signs were put out. Why were they put out?
A As part of policy, any time we clean up a spill, even if it's dry, we put signs up just in case, you know, there's maybe some mop residue or something like that. Just so customers know.
Q Okay. So I'm clear, was there any caution wet floor signs at or around the location where Ms. Qualls fell prior to her fall?
A No.
Q Okay. Would Ms. Qualls had known that there was a substance on the floor before she slipped?

MR. MERMIGES: I object. You're asking my client to speculate about the state of mind, so --

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Was the condition of the floor such that Ms. Qualls would have known that there was a substance on the

floor prior to her fall?

MR. MERMIGES: My client has already -- we've already confirmed that she was not aware of the condition on the floor. So, I'm gonna object to that, that that's been asked and answered and I believe that it calls for speculation.

MR. GOINGS: All right. I assume your objection is to the form of the question?

MR. MERMIGES: My objection is to the form of the question and I'm instructing my client to answer the question.

MR. GOINGS: All right. You can answer the question.

THE WITNESS: Can you ask again?

MR. GOINGS: Yes. Was the condition of the floor prior to her falling, such that Ms. Qualls would not have known that a spill had occurred and that she could slip on that substance?

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q And you've seen the video; correct?

A Yes.

Q And Ms. Qualls is walking towards the cash register with merchandise in her arms and hands; correct?

A No, that's not correct. She had already checked out and they were walking out. I don't think she had anything in her hand.

Q Okay. Let's take a five- to ten-minute break and see if you can go online to the portal.

A Okay.

MR. MERMIGES: So then as we discussed off the record, because we're looking to produce potentially additional documents, I'm gonna have the right to talk to my client about what's going on and what you see is on the portal and that would stand in the normal rules that would attach to a deposition. We agree on that; is that right?

MR. GOINGS: Absolutely fine.

MR. MERMIGES: Just me being very cautious. That's all.

OFF THE RECORD

MR. MERMIGES: My client was able to retrieve a PDF file from the gateway portal that we believe corresponds to what Mr. Goings raised earlier, which there was a document in the employee handbook. However, the document that we retrieved is dated May 26th, 2016, which is obviously after the incident happened, and we believe that -- we've got concerns that this is not actually what we'd call a responsive

document in this case because it wasn't effective at the time of the fall.

Obviously, I'm gonna have to go back and seek out a prior version through my own channels, and I will, of course, do that. But I just want to be clear that we are -- while this designated confidential, under our confidentiality order, we're stating very clearly on the record that this may not even be a responsive document because it may not have been in effect at the time that the incident happened. We don't want to prejudice y'all and we want to at least give you the chance to ask questions about the principles in the document.

MR. GOINGS: And I understand this has a date of 5/26/16. And this may be -- this may have some updates. If there is one that was in effect at the time of the accident and it's substantially different, please let me know. I will note that the date is on the injury and illness prevention program annual recertification, but there's no date that I'm aware of on the actual injury and illness prevention program document. So, but please let me know if there's one that's substantially different if there just may be a version with no substantial changes.

EXAMINATION CONTINUED

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BY MR. GOINGS:

Q I'm gonna hand you what has been marked as Exhibit 9, which is the document that we just discussed.

A All right.

COURT REPORTER: Is that Exhibit 8 or Exhibit 9?

MR. MERMIGES: Exhibit 8 is the blank piece of paper.

MR. GOINGS: Exhibit 8 is her drawing of the --

COURT REPORTER: Oh, okay.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 9 WAS MARKED FOR IDENTIFICATION PURPOSES, PDF FILE OF A GATEWAY PORTAL.)

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Is Exhibit 9 the document you retrieved off the portal prior discussions?

A Yes.

Q Okay. Are you familiar with this document?

A I am.

Q Okay. The first page appears to be an injury and illness prevention program annual recertification; correct?

A Mm-hmm.

Q Is that a yes?

A Yes.

Q And then behind that document is the injury and illness

prevention program, and it's a multipage document consisting of probably 20-plus pages; correct?

A Yes.

Q Okay. Do you know if the injury and illness prevention program manual, which is the second page to the end, was in effect in July of 2015?

A No.

Q This was not in effect in July --

A No.

Q -- of 2015?

A It was --

Q Why not?

A Well, there was a program, as far as safety. I just don't know what we call it or named that.

Q Okay. Was there an injury and illness prevention program in effect in the year 2015?

MR. MERMIGES: Are you referring to that specific -- and I object just to the extent that I want you to clarify if you're referring to that specific title or if you're saying, was there a program that addressed those issues; does that make sense?

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Well, first, was there an injury and illness program in effect at Burlington in 2015?

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A There was a program; yes.
Q Okay. Do you know what exact documents were given to you in 2015?
A The monthly topics that we presented in --
Q Who is Thomas Culotta, C-U-L-O-T-T-A? Culotta?
A Culotta?
Q Yeah. Who is that?
A President.
Q He's the president of the company?
A Mm-hmm.
Q Is that a yes?
A Yes.
Q Okay. On this document, it shows that Thomas Kingsbury is the CEO.
A Yes.
Q Is that correct?
A Yes.
Q But you said the president of the company is Thomas B. Culotta?

MR. MERMIGES: Can you show her the document you're referring to?

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Page 4.
A You're right; okay. So, I apologize. Thomas Kingsbury

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is the president. Fred Hand is the director of stores, is the next one, and he -- Thomas Culotta is the director of this program, the management program.

Q Have you ever spoken to Mr. Culotta?

A No.

Q Okay. Well, it says that the Director of Risk Management and Safety, Thomas -- it's spelled C-U-L-O-T-T-A for the record.

A Culotta?

Q But we may disagree on the pronunciation.

MR. MERMIGES: Culotta.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Culotta, is responsible for overseeing and implementing the provisions of this program; is that correct?

A Yes.

Q Would you -- do I need to defer any questions to this gentleman, Tom Culotta, as to whether or not there was a program in place and the documentation in place for Burlington at the time of Ms. Lallie Qualls fall?

MR. MERMIGES: I'm gonna object to the -- Burlington has got the right to choose its corporate designee and again, I'm just breezing this document to avoid prejudice. That's -- and you've already clarified that it may not have been this specific fact

back in 2015, so --

MR. GOINGS: Well, we'll have to agree to disagree on that. I may notice this guy's deposition to get the accurate information, but I'll move on.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q I'm gonna show you another document, which is Exhibit 10.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 10 WAS MARKED FOR IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "SAFETY TIPS IT ALL BEGINS WITH YOU.")

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Are you familiar with this document?

A No, actually I'm not. This looks different than the other material that you've given.

Q Just take your time looking over it.

A Yes, all the information is the same.

Q Have you ever seen this document before today?

A No, I don't think so. Bits and pieces, yes, but not all in this form.

Q Do you know where this information can be accessed?

A I'm assuming on the portal.

Q Okay. Have you ever seen this information on the portal? Showing you this Plaintiff's Exhibit 10.

A Yes, with the exception of this one.
Q Which is that one?
A The body mechanics and back to school. I just don't recall ever seeing that part.
Q Back to school?
A Back to school; yeah.
Q Okay. The sections, though, were --
A Yeah, the stuff I've seen.
Q Okay. So I'm clear on the record what this stuff is --
A Oh, I'm sorry. Rolling racks, H racks, tears in carpet, uneven floor surfaces, wet floor, grid racks, sharp objects, shelving bags and boxes.
Q You've seen before?
A I have seen before.
Q Okay. You've not seen the topic on any documentation on body mechanics and back to school?
A No.
Q I want to show you a set of photographs that are still images or print screens from the video of the date that shows and depicts Ms. Qualls fall. This is going to be marked as Exhibit 11.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 11 WAS MARKED FOR IDENTIFICATION PURPOSES, PACKET OF EIGHT PHOTOGRAPHS.)

EXAMINATION CONTINUED

BY MR. GOINGS:

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Q If you could just look through these photographs to familiarize yourself with them, I just have some questions.

A Okay.

Q And these are a total of eight photographs in Exhibit 11.

MR. MERMIGES: I'm gonna just object to the reference of these photos because of omitting the time reference, which I believe renders them misleading. You ask all the questions you want about that, but I'm gonna raise that objection.

MR. GOINGS: Well, let me say this. We didn't omit any time reference. The file that you sent us of the video allows you to take screen captures inside that program, and this is the screen capture within inside that program.

MR. MERMIGES: So, the one thing that I will advise is that there is a specific time stamped file that was contained in the video that I produced to you that will show the time of day with each frame that you could've done screen capture on, and then separately, a video player would show second, five seconds, in real time. It would've been present on the photos. However, I believe that would render them potentially inaccurate, but feel free to question the witness on

those issues.

MR. GOINGS: All right. Just object to the form of the question because it can be misconstrued and --

MR. MERMIGES: Can I have a standing objection on that issue? Is that okay?

MR. GOINGS: Absolutely, absolutely.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q All right. What do these photographs depict? What store?

A What store? The Columbia location Burlington.

Q Okay. And you've seen the video; correct?

A Yes.

Q Okay. Does this appear to be the Bush River store location for Burlington Coat Factory?

A Yes.

Q Okay. And where is this camera positioned within the store?

A Above one of the registers. I think register 3 or 4. I can't remember.

Q Are there any other security cameras other than the security camera that is being shown in this -- in these still shots, behind the register, other than this one?

A There may be two more down on the other end.

Q How many security cameras are there in the store?

A Oh, I have no idea.
Q More than ten or less than ten?
A Probably more than ten.
Q Okay. Are you aware of any other footage that was preserved other than the footage for this camera?
A No.
Q Okay. Help me understand. What direction do individuals enter the cash register area and what direction do they leave the cash register area?
A So, we can see here that there's this wall and they enter through -- it's almost sort of like a maze, and they enter through over here on this left-hand side and they come through here and walk all the way down, and then that's where they wait for the next cashier. And when you see this space here, this aisle is where they walk out.
Q Okay. Just so the record is clear --
A Oh, sorry.
Q A store customer would -- in order to get to a cashier register, they would have to walk from the left side of the page to the right side of the page; is that correct?
A Yes.
Q Okay. Do you mind drawing an arrow of the direction, so we're clear on the record?

MR. MERMIGES: Again, the witness is here to testify --

MR. GOINGS: Right. I'll draw it.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Does this arrow right here show the direction of movement of store customers into the cash register area?

A Yes.

Q Okay. When a customer is trying to leave the cash register area, does the arrow at the bottom of the page show the direction flow of customers to exit the cash register area?

A Yes.

Q All right. Who is the store employee with the long dark hair, a white shirt, and khaki pants shown on Picture 1 of Plaintiff's Exhibit 11?

A Taylor Simon.

Q Do you know Taylor Simon?

A Yes.

Q How do you know Taylor Simon?

A I hired her.

Q When did Taylor Simon start working at the Burlington Coat Factory store?

A I don't recall the exact date. It was when the school

let out, so probably in May or June. She was just -- she's a college student, so she was just there for the summer.

Q You know what college she attended?

A I think Charleston. College of Charleston.

Q Now, the store employee shown in Photograph 1, the store employee has a black top, light colored pants, it looks to be, white color sole to his or her shoe. And then shown on the bottom right hand corner of the picture. Who is this person?

A I can't make who that is out.

Q Look at Photographs Number 2 and 3, and do you know who the store employee that's working the cash register on the left hand of the page is?

A I believe that's Brandon.

Q Brandon who?

A Effridge.

Q And how long did he work there?

A He was there for at least three or four years. He was there before I got there.

Q The first photograph, it shows three registers?

A Mm-hmm.

Q Is that a yes?

A Yes, uh-huh.

Q The register to the far left, what register number is

that?
A I think it's four.
Q The register in the middle, what register is that?
A Five.
Q The register on the left, what register is that?
A Six.
Q Register one, what side of the page would register one be located?
A Left.
Q Is it shown on this picture?
A No.
Q Okay. So register one would be then closest to the exit doors?
A Yes.
Q Okay. How many registers are there?
A Nine.
Q Nine. Where would register nine be?
A To the right of the page.
Q Not shown on this, though; right?
A Not shown on this.
Q It would be closer to where a customer would enter the register area; correct?
A No, it's where -- yes. It would be waiting in line to be called for the next cashier; yes.
Q Okay, all right. If you look at Exhibit 11, Pages 1

and 2, you can see where the customer in the pink or orange colored top with a buggy and it looks like a toddler in the buggy is moving from right to left; do you see that?

A Mm-hmm.

Q Is that a yes?

A Yes.

Q Okay. On Photograph 3 of Exhibit 11, do you know who this person is on the right-hand page with a white shirt, dark, long hair and khaki pants is?

A Taylor Simon.

Q Okay. On Photograph 3, 4 and 5, do you know what Taylor is looking at in these photographs?

MR. MERMIGES: Form.

MR. GOINGS: You can answer.

MR. MERMIGES: Objecting to the form of the question. You can answer.

THE WITNESS: It appears to be a cell phone.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q She looks like she's on her cell phone?

A Yeah.

Q Okay. Are store employees allowed to be on their cell phone at work?

A She was technically on a break, but yes. They are

allowed to carry them.
Q How is she technically on break at this point?
A She left her work station.
Q Does that mean you're on break if you leave your work station?
A You go get your stuff and you're on break.
Q What --
A She was sent on break.
Q By who?
A Either a manager or CSS.
Q Why was she sent on break?
A They're scheduled.
Q Where can I find Taylor's schedule for that day?
A I'm not sure.
Q Are the schedules kept electronically?
A Yes.
Q Does the schedule have their break times in it?
A No.
Q Okay. Why not?
A Because it's the needs of the business as to when we schedule a break.
Q How do you know she had a cell phone in her hand?
A I've seen the camera. I mean, I've seen the video.
Q Does it show that she actually does have a cell phone in her hand?

A Well, it appeared to be a cell phone.
Q All right. Have you asked her what she had in her hand?
A I don't recall asking her that; no.
Q It's not store policy for an employee to walk around the store playing with their cell phone; is it?
A No, not while working; no.
Q Okay. And she's technically on the job while she's shown in these photographs that are marked as Exhibit 11; correct?
A Yes.
Q I mean, she's technically on the job and on the clock at the point that she's walking in front of the cash registers; isn't she?
A I guess.

MR. MERMIGES: Object to the form, but go ahead and answer.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. Have you talked to her to ask her what she had in her hand?
A No.
Q When you say she was on her phone, are you speculating or are you positive that she was actually on her phone?

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A It looks like a phone on the tape.
Q Now --
A You can't really tell in the picture.
Q -- does it look, on the tape, that she is looking over her right shoulder as she passes by the location here the fall would ultimately occur?
A No.
Q Okay. Is it your testimony that Pages 3, 4 and 5 show her looking straight ahead as she walks?
A I can't really tell.
Q Okay. She's not facing the camera, though; is she?
A No.
Q In fact, you cannot even see her face in the photographs; can you?
A Not really; no.
Q Okay. Instead, you see the side of her head; correct?
A Yes.
Q Okay. Do you agree that this employee, and her name is Taylor Effridge; is that right?
A Simon.
Q Taylor Simon?
A Mm-hmm.
Q Would you agree that Taylor Simon did, in fact, walk past the location where the spill had previously occurred?

A Yes.
Q Okay. And you agree, in fact, that Ms. Taylor Simon had the opportunity to observe the spill when she walked past it?
MR. MERMIGES: Form.
THE WITNESS: Not if she wasn't looking.
EXAMINATION CONTINUED
BY MR. GOINGS:
Q But she had the opportunity to observe it; didn't she?
MR. MERMIGES: Form.
THE WITNESS: Yeah.
EXAMINATION CONTINUED
BY MR. GOINGS:
Q Okay. And you agree, though, that a store employee literally walked within inches of the spill that was on the floor; correct?
MR. MERMIGES: Form.
THE WITNESS: Yeah.
EXAMINATION CONTINUED
BY MR. GOINGS:
Q But instead of stopping, she kept on going; correct?
A Because she didn't see it.
Q Okay. How do you know she didn't see it?
A She said she didn't see it.
Q Did you ask her?

A Yeah, I did.
Q When did you ask her?
A When I taped -- got together this footage and saw her walk by.
Q Okay. Did you tell her that she should've seen the spill?
A No.
Q Okay. But you asked her, did you not, if she saw the spill on the floor; correct?
A Yes.
Q Why would you have asked her that question?
A Just to make sure --
Q Okay.
A -- that she didn't see it.
Q But in reviewing the video and what you saw in the video, would lead a reasonable person such as yourself to conclude that she, in fact, could have seen the spill; correct?

MR. MERMIGES: Form.

THE WITNESS: No.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Why were you concerned as to whether or not she saw the spill, though?
A Because there were other customers that had walked by

the same thing and didn't say anything to me or didn't notify anyone.

Q Now, it's not the job of the customer to inform the store employee of a condition or a spill on the floor; is it?

A No, but it's, I mean, common courtesy so that someone else doesn't fall.

Q It is. It is common courtesy; isn't it?

A Mm-hmm.

Q But they don't have a duty; do they?

A No.

Q Okay. But a store employee does have a duty to notify and to stop and to correct the problem; correct?

A If they see it.

Q Okay.

MR. MERMIGES: Objection to the extent that that calls for a legal conclusion.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q When was the last time that you talked to Taylor Simon?

A I believe this was the only summer she worked for me, so I hadn't spoken to her in a while.

Q Do you think the fact that she was on the phone prevented her from seeing the spill on the floor?

A Possibly.

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Q Now, the last two photographs, which would be 7 and 8 in this packet, show Ms. Qualls at the point prior to her fall and -- actually, 6, 7 and 8 show Ms. Qualls at a point prior to slipping and then while she's slipping, and then Photograph 8 shows her actually on the floor; do you see that?

A Yes.

Q Do you see her carrying things in her hand?

A Yes.

Q Would she be coming from the direction where she would be approaching the cash registers to pay or would she be coming from a direction where she had already paid and was exiting the store?

A Either one. There's registers on the other end on the right-hand side that she could have purchased her items at.

Q Have you reviewed the video carefully to see if she had actually paid or not?

A I haven't, but I could have sworn, I thought I saw a shopping bag with her, a Burlington shopping bag.

Q In these photographs, which are Plaintiff's Exhibit 11, do you see a Burlington shopping bag in or about her person?

A I can't tell.

Q Are the Burlington shopping bags blue?

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A No.
Q Okay. What color is the Burlington shopping bag?
A White, but that's what this item here is, white.
Q If she had already checked out, you could have easily reviewed the customer receipts that day to see if she actually checked out or not; correct?
A No, it doesn't work like that.
Q Did you try to look to determine if she had already checked out?
A No.
Q Is there anything you think that Burlington and its employees on July 31st, 2015 could have done differently to prevent this fall?
A No.
Q Do you believe this fall was preventable by Burlington?
A No.
Q Why not?
A Because we did not know it was there.
Q How long was the spill on the floor before Ms. Qualls fell?
A I believe it was four minutes. Four and a half minutes.
Q Is four or five minutes too long for a substance to be on the floor before it is observed and corrected?
MR. MERMIGES: Form. You can answer.

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THE WITNESS: No.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q How long does a substance have to be on the floor before a store employee is obligated to clean it up?

MR. MERMIGES: Form. Calls for legal conclusion. You can answer.

THE WITNESS: Well, there's not always gonna be somebody in every single area to notice a spill, so I couldn't tell a time.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Do you agree with me that the cash register location is a heavy traffic area?

A Yes.

Q Do you agree with me that the cash register location is an area of the store that has employees present almost all day long?

A Yes.

Q Okay. And you agree with me that the location where the spill had occurred was in eye sight range of the cash registers?

MR. MERMIGES: Form.

THE WITNESS: No.

EXAMINATION CONTINUED

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BY MR. GOINGS:

Q Okay. How far from cash register -- was this cash register four in the middle?

A Five.

Q How far from cash register five to where the spill was?

A I believe the spill was almost all the way against that wall, like, totally across the aisle. I don't know how -- underneath that red bag area.

Q Well, it looks like Ms. Qualls fell in the location here. You have the four black square tiles with a center white square tile; do you see that?

A Mm-hmm.

Q Is that correct?

A Mm-hmm.

Q How far is that distance-wise from the closest register?

A Maybe ten feet.

Q You agree with me that ten feet is close enough for an employee at the register to notice a spill or substance on the floor?

MR. MERMIGES: Form.

THE WITNESS: No.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Is the configuration of this store today like it was in

2015?
A I believe it is.
Q When you worked there, were there any renovations made to the store?
A No.
Q Okay.
A Actually, I apologize. There's none to the front. They did remodel the store since I've left.
Q Any remodeling done to the cash register location?
A No.
Q Okay. Are you aware of any other trips and falls or slips and falls while you were a manager at the Bush River Road Burlington Coat Factory store?
A Yes.
Q Okay. In chronological order, tell me the first one.
A Do you want, like, specific incidences or --
Q Yes, ma'am.
A I couldn't tell you specific incidences. I'm not always the one that puts all of the reports in.
Q Okay.
A But I know that there were probably three to four the first year I think I got there and then the year that she slipped and fell, I think there were two others besides her.
Q Okay. Any falls in 2014?

A Two or three.
Q Okay. So, two or three in 2014, two or three in 2013 and two or three prior to when Ms. Qualls fell?
A Mm-hmm.
Q Is that a yes?
A Yes.
Q Okay. Do you know if incident reports were generated for each one of those falls?
A Yes.
Q Was any of the falls as a result of a wet substance on the floor?
A Yes.
Q Which ones?
A I believe almost all.
Q Okay. Were any of the falls occurring in the cash register area?
A No.
Q Okay. Where did these falls occur?
A I believe one was in the bathroom, a couple were at the doors and maybe another one or two would've been somewhere on the sales floor.
Q Do you agree with me that the tile on front of the cash registers becomes slippery when wet?
A Well, it's the same tile everywhere in the store.
Q Okay. Well, can tile inside the Burlington Coat

Factory store become slippery when wet?
A Yes.
Q Do you agree with me that the soda or substance that was spilled on the floor was in the walkway in front of the registers?
A Yes.
Q Do you agree with me that the spill was a noticeable spill on the floor?

MR. MERMIGES: Form.

THE WITNESS: It wasn't noticeable until I bent down and saw it.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q The incident report that you prepared says, must have been spilled right before customer fell. Noticeable spill, heavy traffic area. Do you agree with that statement?
A Yes.
Q Okay. Why did you say that it must've been spilled right before customer fell?
A Because there's no way that a spill would have stayed. We react to spills and we pick them up.
Q Why would they --
A It had to have happened right before she fell because we would've taken care of it if we had known about it.

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Q But if it wasn't noticeable by you until you actually got down on the floor, then how would it have ever been noticed?

A I mean, anybody walking by it -- they said it was small. I remember that it was dark in color. I want to say in color tile, so black on black. I noticed it when I bent down and then I saw it.

Q Okay. But if -- are you saying that anybody that would've walked by would have noticed it?

MR. MERMIGES: Form. Answer the question, please.

THE WITNESS: That was paying attention; yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. What is the policy at Burlington Coat Factory for employees having their phone with them while employed?

A There isn't one.

Q There's nothing about a phone in -- or use of your personal phone in the associate handbook?

A No.

Q There's no policy or procedure at all about the use of a phone?

A Just so that -- just not using it towards, you know, having company information on it.

Q Isn't it the policy of Burlington that employees should

not be using or looking at their phone while they're on the clock?

A There is not a policy.

Q Would you be surprised to know that there was a policy that prevented that type of behavior at work?

A Would I be surprised if there was?

Q Yes, ma'am.

A Yes, but there isn't.

Q Tell me about the company's time and attendance system. What is that?

A It's a policy requiring associates a point system for if they come to work late or call out. So, for instance, if they punch in seven minutes more past their scheduled shift, it's considered a tardy and they get half a point accumulated to their total. Calling out Monday through Friday is one point, calling out on a Saturday or Sunday is two. Once they accumulate 12 points, they're terminated.

Q What is compensable time?

A I am sorry. I do not know that.

Q Is there any locked storage areas or locked office spaces for employees to put their belongings while at work?

A Yes.

Q And do you encourage your store employees and

associates to keep their phones and their cell phones in this locked storage area while they're working?

A I encourage it; yes.

Q Why?

A So that it doesn't get lost or stolen.

Q Is it also because you expect your employees to spend time working for Burlington when they're on the clock instead of playing with their phones or other electronic devices?

MR. MERMIGES: Form.

THE WITNESS: I do expect that; yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q In fact, isn't it true that associates are discouraged from using phones or personal devices?

MR. MERMIGES: Can you show me where in the notice this -- you've been in this line of inquiry for a while and I'm looking at this 30(b)(6) notice and I'm trying to see what category of the notice you contend.

MR. GOINGS: Well, quite frankly, until today, no one in your written discovery or any documentation that you provided says that she was on the phone, so, you know, if you would've told me that beforehand, it would've been in the discovery notice for today's deposition, but I believe that it is certainly

contemplated within the scope of Item 1 in the discovery deposition.

MR. MERMIGES: The facts, allegations, causes of action and defenses of this litigation.

MR. GOINGS: That's right. If y'all are claiming that she was on the phone at the time, then I need to ask questions about it.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q So, back to my question. Isn't it true that Burlington discourages employees from using their phone while on company time?

MR. MERMIGES: I'm gonna have a standing objection based on the scope of the notice, but you can go ahead and answer from your personal knowledge.

THE WITNESS: Discourages or are you saying that there's a policy?

MR. MERMIGES: Discourage.

THE WITNESS: No.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. So, it's acceptable then for you as a store manager to have your employees walking around, playing on the phones, talking on the phones, their personal phones, while at work?

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A No, it's not. It doesn't really work like that. I mean, they're allowed to have it on silent in their pocket and if they are caught with it, using it personally while on work time, then that's something that's a conversation that we could have, but they're usually very good with it.

Q Have you ever written up an employee for being on their phone?

A Never.

Q Okay. Have you ever had to talk to an employee about not really being on their phone as much as they are?

A No.

Q Okay. Did this lady, Taylor --

A Simon.

Q -- Simon -- did Taylor Simon tell you that she was on her phone?

A No, I didn't ask.

Q You didn't ask if she was on the phone?

A Huh-uh.

Q Yes or no?

A No, sorry.

Q Okay. Did she tell you that she was on the phone?

A No.

Q Okay. Are you sure that she was going on a break at this time?

A Yes.
Q Okay. And wouldn't it have been more appropriate for her to pull out her phone if she was on a phone when she got to the break room and not while she was walking through the sale floor at Burlington?
A Yes.
Q Okay. Have you ever heard stories of drivers being distracted on their phone and get in a car accident?
A Yeah, it's the age of media. Everyone is always glued to their phones.
Q Okay. Do you believe that she was distracted because she was on her phone or playing with her phone when she walked past the spill on the floor?

MR. MERMIGES: Form.

THE WITNESS: Yes.

MR. MERMIGES: That's fine.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Have you answered my questions truthfully and accurately here today?
A Yes.
Q Okay. Is there anything about this case that you know about that we have not discussed?

MR. MERMIGES: Form.

THE WITNESS: No.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. Have you ever testified in court before?

A Yes.

Q For what reasons?

A One of my girlfriends got a DUI and I had to testify that I was driving.

Q Okay. Have you ever testified for Burlington or TJ Maxx or any of your other employers in any type of criminal or civil case?

A No.

Q Okay. Have you understood my questions here today?

A Yeah.

Q All right. Well, listen, it was very nice meeting you and sorry under the circumstances of under a deposition.

A Mm-hmm.

Q But I appreciate your time here today.

A Nice meeting you, too. Thank you.

Q And feel free to answer any questions your lawyer may have, if he has any.

EXAMINATION

BY MR. MERMIGES:

Q Did you ever -- the spill in this case, did you ever see the spill before the plaintiff had slipped in it?

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A No.
Q Did any -- was any employee, to your knowledge, aware of the liquid on the ground before the plaintiff had slipped in it?
A No.
Q Did any Burlington employee, to your knowledge, create this spill that the plaintiff slipped in?
A No.
Q In terms of what the spill looked like, the size of the spill, I just want to be clear, you did not get a sense of that -- strike that. In terms of the size and the shape of the spill, you would agree that that would have been impacted by the plaintiff slipping through it; is that right?
A Yes.
Q So in your response, in your investigation of whatever spill you saw was not -- would not have been the same as the spill that occurred that she initially slipped on?
A Right.
Q Okay. And when it comes to safety training, the monthly safety materials that we discussed, are those posted anywhere in the store when it's a given month?
A Yes. They're posted on the bulletin board in the associate break room.

Q Okay. On the photos in Exhibit 11, can you see any liquid on the ground in those actual photos?
A No, sir.
Q When you prepare an incident report, who is that transmitted to?
A I believe Gallagher Bassett, the insurance company.
Q I don't think I have anything else. What's the policy -- the stated policy when it comes to employees encountering a hazardous condition?
A To notify a member of management or get someone to help pick it up.
Q Ask them to pick it up; is that right?
A Right, yes.
Q Is every employee in the store trained on that issue?
A Yes.
Q Do employees walk the store throughout the day?
A Yes.
Q If an employee encounters a hazardous condition during their walking through the store, what are they trained to do?
A Take care of it immediately.
Q I don't have anymore questions for you. Thank you.
A Thank you.

MR. MERMIGES: Do you have any more, Robert?

MR. GOINGS: I don't. Thank you very much for

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your time.

THE WITNESS: Yes.

MR. GOINGS: Safe travels back to Greenville.

THE WITNESS: Thank you.

(WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE 30(b)(6) DEPOSITION WAS CONCLUDED AT 1:09 P.M.)

(DEPONENT HAS RESERVED READING AND SIGNING.)

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(803) 787-7242

ROBERT F. GOINGS, ESQUIRE
GOINGS LAW FIRM, LLC
914 RICHLAND STREET, SUITE A-101
COLUMBIA, SOUTH CAROLINA 29201

RE: LALLIE QUALLS V. BURLINGTON COAT FACTORY OF SOUTH CAROLINA, LLC AND BURLINGTON COAT FACTORY DIRECT CORPORATION

Dear Mr. Goings,

Enclosed you will find both the original and copy of the 30(b)(6) deposition of PAMELA ROBIN ARSENAULT taken WEDNESDAY THE 15TH DAY OF MARCH, 2017 in the above referenced action.

As you may recall, the deponent requested to read and sign his deposition. Therefore, by copy of this letter, I am forwarding a copy of the transcript to the deponent, along with the original signature page, errata sheet and instructions for reading and signing.

Upon completion of the signature page and errata sheet, the original of these pages will be sealed under separate cover and forwarded to you with a copy to all counsel. If the said pages are not completed within the thirty-day period or when required in court, the original 30(b)(6) deposition shall be considered complete with this letter in lieu of the signature page.

It was a pleasure working with you. If we can be of assistance to you in the future, please give us a call.

Very truly yours,

Wendy Shannon Sullivan
VERBATIM, INC.

SIGNATURE PAGE

I do hereby certify that I have read the foregoing 30(b)(6) deposition given by me before Wendy Shannon Sullivan, Notary Public for South Carolina, Lexington County, South Carolina.

PLEASE CIRCLE EITHER "A" OR "B".

(A) Said 30(b)(6) deposition is correct as is and requires no changes.

(B) I desire that the changes attached hereto, described on the "Errata Sheet" be incorporated into said 30(b)(6) deposition.

_____

PAMELA ROBIN ARSENAULT

ERRATA SHEET
FOR THE 30(b)(6) DEPOSITION
OF PAMELA ROBIN ARSENAULT

PAGE	LINE	CHANGE AND REASON FOR CHANGE:
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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING 30(b)(6) DEPOSITION OF **PAMELA ROBIN ARSENAULT**;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THAT BY VIRTUE THEREOF I WAS DULY AUTHORIZED TO ADMINISTER AN OATH;

THAT THE WITNESS WAS BY ME FIRST DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, CONCERNING THE MATTER IN CONTROVERSY AFORESAID;

THE FOREGOING TRANSCRIPT OF 109 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 27TH DAY OF MARCH, 2017.

_____
WENDY SHANNON SULLIVAN

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES FEBRUARY 4, 2018

Burlington

Working Together

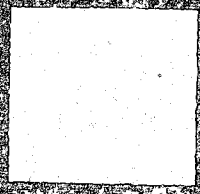
The Heart of Success

CORE VALUES

PLAINTIFF'S EXHIBIT
3-15-17

BCF Core Values

Core values define how we get things done here. They help define BCF and guide us in the day to day operation of our business. Every relationship we build, every customer we help, everything we do is built on the foundation of our core values.



Tom Kingsbury
President and CEO

Process Used to Develop Core Values

- Representative input
  - Manager and non-manager focus groups (Corp, Stores, and DCs)
  - Discussion with performance management design team (representation from all areas of the Company)
  - Discussion with executive team
  - Survey of both teams to set priorities

Burlington

Our Core Values

Develops Trust and Respect

Builds Teams and Partnerships

Drives Results

Develops Trust and Respect

Gains the confidence of others, being open and treating them with courtesy and professional regard

Characteristics

Desired	Undesired
Shows appreciation for other points of view	Interrupts people
Listens when someone is expressing an opinion	Ignores opposing views
Is consistent, reliable and delivers on commitments	Agrees to something but doesn't do it

Behaviors

Burlington

Builds Teams and Partnerships

Works collaboratively and cooperatively with others and strives to meet internal customers' needs

Characteristics

Desired	Undesired
◦ Builds productive and mutually beneficial partnerships within and across functions	◦ Does not reach out to build relationships across functions
◦ Actively participates towards accomplishing group goals	◦ Makes unilateral decisions
◦ Actively participates in the development of the team	◦ Does not develop team members

Burlington

Builds Teams and Partnerships

Works collaboratively and cooperatively with others and strives to meet internal customers' needs.

Characteristics

Desired	Undesired
◦ Builds productive and mutually beneficial partnerships within and across functions	◦ Does not reach out to build relationships across functions
◦ Actively participates towards accomplishing group goals	◦ Makes unilateral decisions
◦ Actively participates in the development of the team	◦ Does not develop team members

Burlington

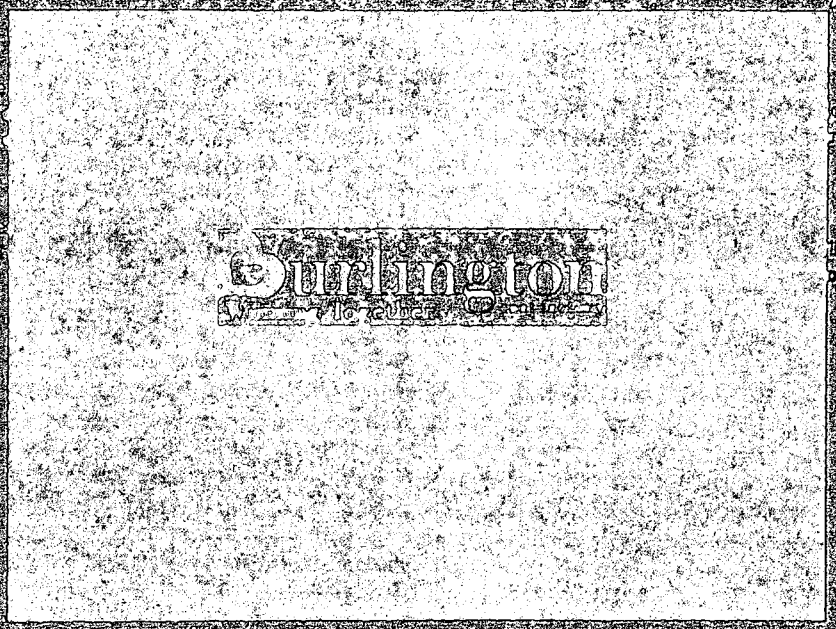
Drives Results

Takes personal ownership and pride in the company, drives work to conclusion and gets things done

Characteristics

Desired	Undesired
◦ Accepts accountability for mistakes, doesn't "point fingers"	◦ Makes excuses
◦ Persists until goals are met	◦ Focuses more on what others did wrong
◦ Is flexible, finding alternative solutions to overcome obstacles	◦ Does things the same way instead of trying other ways that might be better

Our Core Values Life Cycle



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CORE VALUES

Frequently Asked Questions

Why do we have core values?

– Core values help guide us in our day to day business operations. They remind us of how we do things here. They keep us on track in making sure we stay focused on the business and building better relations with our employees and our customer.

What help will we receive in demonstrating core values?

– You and your staff will receive ongoing training throughout the year to help you understand and demonstrate our core values.

What will be expected of me as the manager/supervisor?

– You will be expected to demonstrate the core values at all times. Your behavior will reinforce the importance of our core values in all that we do.

Frequently Asked Questions

- *How will core values be evaluated?*
  - Demonstration of core values will become part of the annual review process for all associates.

- *How do I communicate the core values to my employees?*
  - You will use department meetings, store huddles and team meetings to discuss the core values on a regular basis. Example topics are provided in this kit.

- *How will my employees learn about the core values and what they mean?*
  - You will help your employees learn about the core values and how to demonstrate them by providing coaching and feedback on a regular basis.

Loss Prevention Department

Burlington
Winning Together coat factory

Procedural Manual

PLAINTIFF'S EXHIBIT 2
3-15-17

Loss Prevention Department

Procedural Manual

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Section One - Introduction

Burlington Coat Factory and You

Burlington Coat Factory extends a warm welcome to you as you join our growing family; you're a very important person to us. You were carefully selected for your job, and we want you to be successful.

Burlington Coat Factory is a store with a long tradition of sales growth, excellent customer service and quality merchandise. This tradition is achieved by Burlington Coat Factory Loss Prevention Associates who want to sell and who are interested in helping customers meet their needs in a friendly and professional manner. Our customers judge us by how well each of us perform our job every hour of every day.

In every one of the hundreds of jobs within our company there are unlimited opportunities to make friends for the store and to help increase our record of successful selling and customer satisfaction.

Working at Burlington Coat Factory is a challenging, rewarding and fun experience!

Congratulations on joining the BURLINGTON COAT FACTORY Team!

Objective of the Loss Prevention Department

The principal objective of the Loss Prevention Department is the protection of Burlington Coat Factory assets (i.e., cash, merchandise, equipment, employees and our Brand). Loss Prevention works in conjunction with all departments to reduce losses (shortage) due to theft, fraud, and other causes.

Additionally, the Loss Prevention Department is charged with ensuring the maintenance of an orderly selling floor, crisis management, procedural audits designed to reduce our exposure to losses and working with the store's organization to ensure the safety of the workplace. Safety has become a principal concern of the Loss Prevention department, and a major focus of its store line Loss Prevention Associates.

These objectives must be performed within the confines of Burlington Coat Factory business objectives. Loss Prevention Associates must realize that customer service and sales is the principal mission of all Burlington Coat Factory Associates, regardless of their department.

Role of the Loss Prevention Associate

"We expect you, the Burlington Coat Factory Loss Prevention Associate, to conduct yourself in a highly professional manner, and to demonstrate good business ethics at all times. It is your responsibility as a Burlington Coat Factory Loss Prevention Associate to understand all of our policies and procedures. It is your responsibility to seek clarification of those you do not understand, and to always conduct yourself in such a way that the standards of service, and efficient operations of our company will be upheld."

James Connolly, Senior Vice President, Asset Protection

Loss Prevention Associate are required to support the department's goal of reducing losses while maintaining a commitment to providing our customers with a safe and pleasant shopping experience.

The responsibilities of a Loss Prevention Associate include, but are not limited to:

- Deterring and apprehending shoplifters
- Deterring and apprehending dishonest employees
- Ensuring compliance with loss prevention and company procedures
- Helping to maintain a safe and orderly selling and work environment
- Use and maintenance of the physical protection systems within the store
- Giving testimony, as required, in a court of law or other legal proceeding
- Submitting timely, accurate, detailed and complete reports of any and all incidents and situations

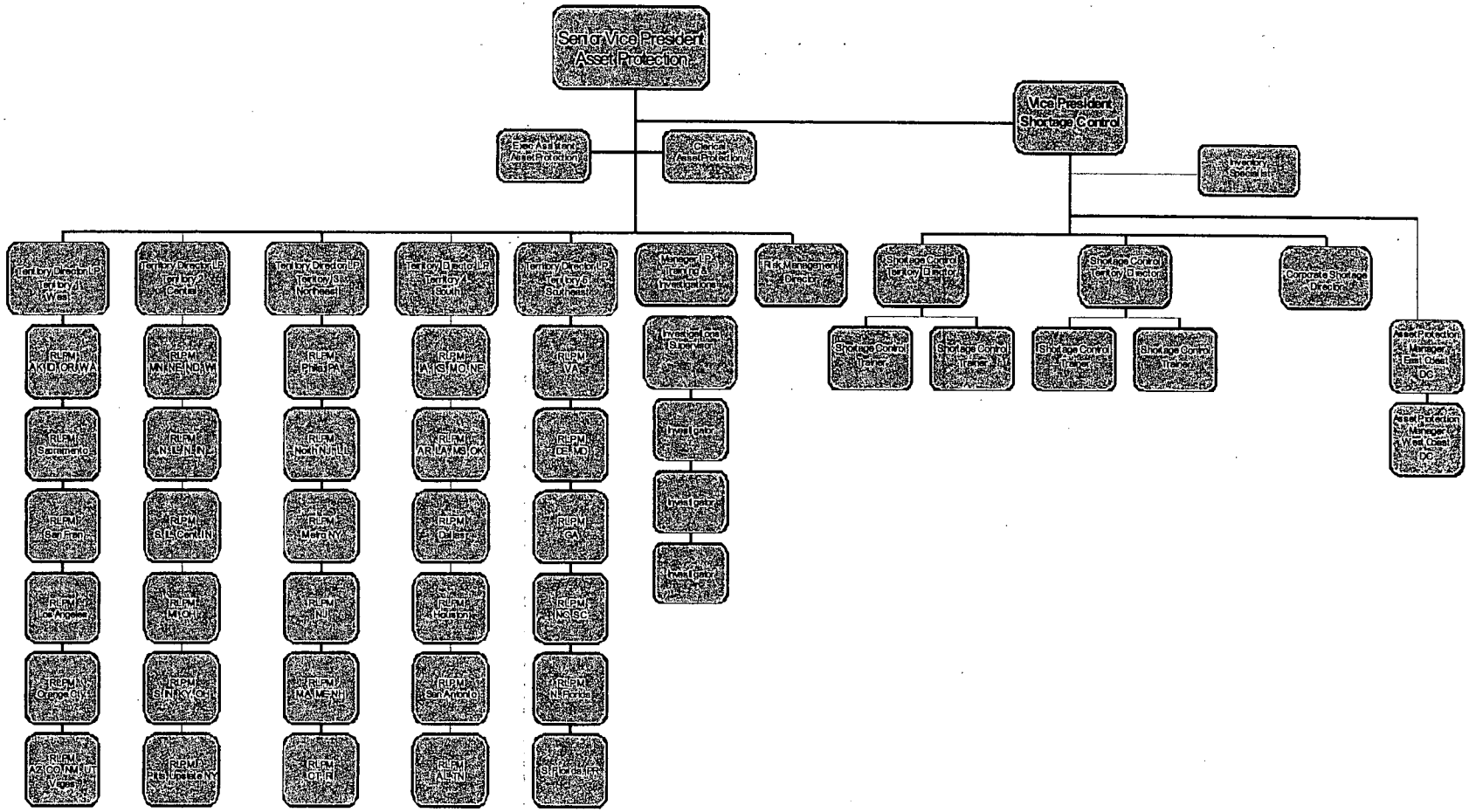
Burlington Coat Factory Loss Prevention Associates must always be:

- Honest
- Productive
- Responsible
- Dependable
- Helpful
- Friendly
- Professional

Section Two: Organization

Burlington Coat Factory

Burlington Coat Factory is a large, modern retail organization with diverse system of departments, each with their specialty and all cooperating to achieve our common goals. The Loss Prevention Department is part of the Asset Protection Department. Below is the current Asset Protection Organization Chart.


Senior Vice President
Asset Protection
Vice President
Shortage Control
Inventory
Specialist
Risk Management
Director
Corporate Shortage
Director

Asset Protection Structure & Responsibilities

Asset Protection is that portion of the company that is charged with the protection of our assets. It is divided in to the **Shortage Control** Department, the **Loss Prevention** Department and the **Risk Management** Department.

Shortage Control is responsible for establishing and implementing systems that will reduce merchandise and cash losses. In addition Shortage Control is responsible for the executing the physical inventory for the company.

The positions in the Shortage Control Department are:

- VP Shortage Control
- Director of Shortage Control
- Distribution Center Asset Protection Manager
- Shortage Control Trainer
- Inventory Specialist

Loss Prevention is responsible for executing the company's physical security program including, providing a visible deterrence to our customers and Associates who might engage in dishonest activity, apprehension and investigations programs as well as maintaining the physical protection standards for our buildings. In addition to other Loss Prevention provides support for other company functions including aspects of Shortage Control and Safety.

The positions in the Loss Prevention Department are:

- Territory Director of Loss Prevention
- Regional Loss Prevention Manager
- Manager of Central Investigations
- Store Loss Prevention Supervisor
- Internal Investigator
- Store Loss Prevention Associate

Risk Management is responsible for guiding the company's Safety program, focused on providing a safe workplace for our Associates and a safe shopping environment for

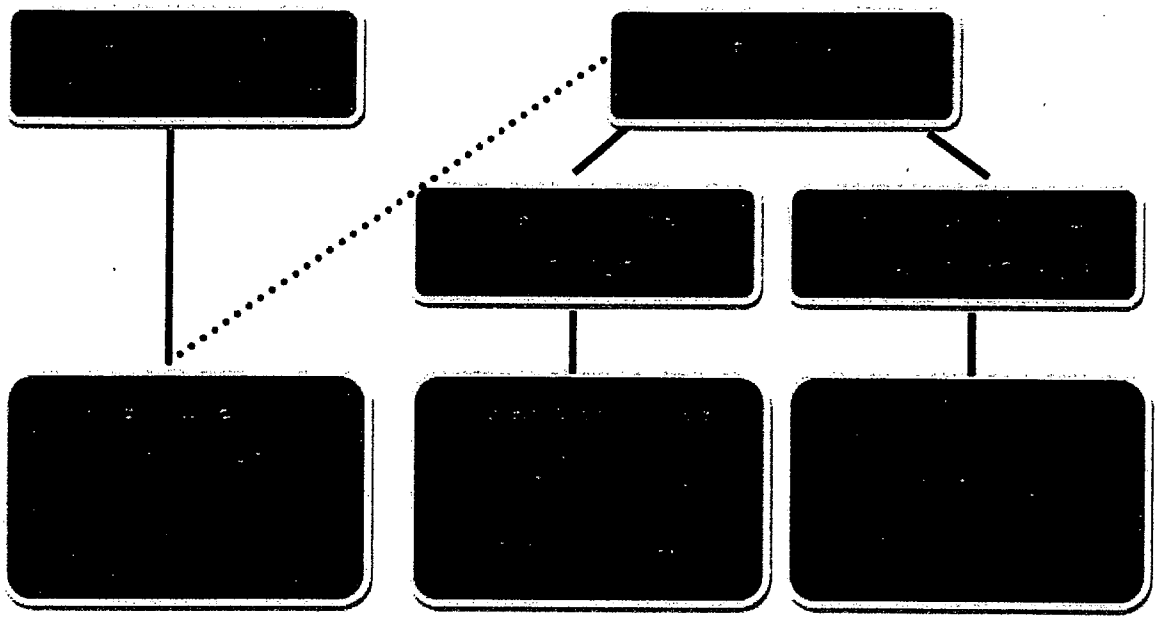
our Customers. Risk Management also works to manage claims, Workers Compensation and General Liability that arise from an incident in our stores or facilities.

The positions in the Risk Management Department are:

- Risk Management Director
- Safety/Claims Specialist

Store Organization

Each Store has an organizational structure as well. Store Loss Prevention Loss Prevention Associates report directly to the Regional Loss Prevention Manager assigned to that store. They also indirectly report to the Store Manager



Section Three: Shortage

Definition

Shortage is a term used in the retail industry to characterize a certain type of financial loss. At Burlington Coat Factory, we determine shortage by taking what our financial records say we have in stock ("book stock") and subtracting the amount of merchandise we find during the inventory. The difference between these two is **shortage.**

Example

Burlington Coat Factory purchases 100,000 red sweaters. 72,000 are sold at the marked price, 25,000 are found in stock during inventory and 3,000 sweaters cannot be accounted for. The retail value of the missing sweaters is **shortage.**

Example

Burlington Coat Factory purchases 50,000 men's suits. 25,000 are sold at the marked price, 5,000 are incorrectly sold at a lower than marked price and 20,000 are found in stock during the inventory. The money that was not received in each of the 5,000 incorrect sales is **shortage.**

In order to provide a meaningful comparison of one store's shortage results to another's, shortage as a percentage of the store's sales is calculated and this is used to identify the comparative effectiveness of a store's shortage reduction program.

Causes

Shortage is caused by a number of factors, some are intentional and some are due to careless mistakes. Some of the more common shortage causing factors are:

Customer Dishonesty

- Shoplifting
- Refund fraud

Employee Dishonesty

- Employee theft of merchandise
- Fraudulent register transactions

Employee Mistakes

- Missed markdowns
- Merchandise lost in transit
- Merchandise transfer and processing losses
- Incorrect counts
- Register errors
- Accounting errors

Vendor Mistakes

- Misdirected shipments
- Concealed shortages
- Billing errors

Additionally, there are other activities that produce financial losses, but are not figured into the company's shortage. These include:

- Credit card fraud
- Return fraud
- Employee theft of cash
- Employee theft of company non-merchandise assets
- Employee theft of confidential information

It is the goal of the Loss Prevention Department to reduce shortage and other losses through:

- An effective program of deterring and apprehending shoplifters
- An effective program of uncovering and identifying employee dishonesty
- A thorough investigations program
- A planned "shortage awareness" effort

- A series of regular and comprehensive audits that gauge our compliance with Burlington Coat Factory procedures.
- Monitoring merchandise protection standards
- Maintaining physical protection systems, e.g. fire alarm & burglar alarms

Inventory

Once a year, currently in January, the entire company takes inventory of its stock on hand. This is an actual counting of each item in every location. This inventory is accomplished with the support of a third party Inventory Service.

The process to capture the information used to determine what is in the store is accomplished when the Inventory Service or a BCF Loss Prevention Associate scans the item's price ticket, which has all of the pertinent information regarding each item.

In both methods, a percentage of the items counted (the percentage varies by area) is checked for accuracy by another individual involved in the inventory process.

The Loss Prevention department must participate in efforts to maintain the integrity of the process. This is accomplished by executing the program of checking merchandise counts in stockrooms and on the selling floor, physically searching the entire building and any off-site storage areas for merchandise requiring inventory, monitoring the selling floor during the taking of the physical inventory, and working to support the various steps of the process in each store.

Additionally, merchandise that has been placed in evidence, either at a court or police station, or within the Loss Prevention office, must also be inventoried

Section Four: External Theft Deterrence and Apprehensions

General Guidelines

The primary strategy to prevent losses due to external dishonesty is for the Loss Prevention Associates to present a highly visible presence to our Customers and Associates to deter any external dishonest activity. If efforts to deter an individual(s) from engaging in dishonest activity fail, an authorized Loss Prevention Associate can make an apprehension of the perpetrator per company policies and procedures.

For our purposes, an apprehension is the arrest, detainment or holding of any person. A strong physical deterrence program and a productive apprehension program are essential to effective shortage reduction. Therefore, all Loss Prevention Associates are trained to apprehend shoplifters they have observed in order to recover stolen merchandise and to discourage other persons from stealing from Burlington Coat Factory.

Deterrence

Burlington Coat Factory Loss Prevention Jacket Program

The purpose of the Loss Prevention Jacket program is to send a brand appropriate message to Customers and Associates that Burlington Coat Factory has a professional, well trained Loss Prevention team. **It is designed to focus Loss Prevention and Store team on a "Deterrence" based approach versus "Apprehension" to control shortage loss** caused by external activity.

In addition the program will support Customer Service initiatives with visible presence through a focus on "meet and greet" approach with all customers while on duty. Loss Prevention Associates must maintain a consistent approach for all customer interactions to minimize customer service issues and liability and adhere to all department policy and procedures focused on executing an apprehension when necessary.

Dress Code

All Loss Prevention Associates must adhere to the following standards while on duty.

The attire of a BCF Loss Prevention Associate must present a professional image to customers, Associates, Management and local Law Enforcement officials.

Acceptable attire:

- Solid color slacks, pants or skirts (women)

- Solid color shirts, polo or dress style, and tops or blouse (women)
- Clean, non –worn casual shoes

Standards for Wearing Loss Prevention Uniform Jacket

A Burlington Coat Factory issued Loss Prevention Jacket (or vest) must be worn at all times when a Loss Prevention Associate is on duty in the store.

- Jacket must be worn when positioned at the front entrance to the store
- Jacket must be worn during routine patrols throughout store

The BCF Loss Prevention Jacket can only be worn by Loss Prevention department Associates and Executives.

The BCF Loss Prevention Jacket is the property of Burlington Coat Factory and is not assigned to any specific Associate. Jacket cannot be worn by a Loss Prevention Associates not on a scheduled shift. Jackets cannot be taken from the assigned store and are not to be worn outside the building premises unless during an assigned shift. Additional or replacement jackets can be obtained through the store's Regional Loss Prevention Director

Customer Service and Approach

Loss Prevention Associates should meet and greet customers as they enter and exit the store or while on patrol in the store.

If possible Loss Prevention Associates should assist customers as needed, e.g., hold open a door, assist in retrieving or getting a shopping cart, retrieving an item, etc. While it is not the primary responsibility of a Loss Prevention Associate to provide services to a customer it is appropriate to provide assistance when necessary, but he/she must always maintain a focus on being a visible deterrent to individual(s) who might be inclined to engage in dishonest activity in our stores.

If while wearing the Burlington Coat Factory Loss Prevention Jacket a Loss Prevention Associate observes a customer acting in a suspicious manner the Loss Prevention Associate should approach the customer and say, ***"Allow me to get someone to assist you"*** and then contact a Sales Associate or Executive who can provide customer service. Remain in the area until the individual(s) leave the store or it is determined that they do not pose a reasonable threat to engage in dishonest activity. Remain professional and courteous at all times.

Focus on Deterrence

Do not detain or execute an apprehension unless all required Apprehension Steps have been made.

If the stores, Electronic Article Surveillance, system is activated by a customer exiting the store the Loss Prevention Associate must direct , or escort the customer, to the nearest Associate who will remove the tag for the customer. **Executing an apprehension based solely on the activation of the stores Electronic Article Surveillance system will result in disciplinary action up to and including termination.**

DO NOT REQUEST A RECEIPT. DO NOT DETAIN OR EXECUTE AN APPREHENSION UNLESS ALL REQUIRED APPREHENSION STEPS HAVE BEEN MADE.

Apprehensions

The Five Steps for an Apprehension

Loss Prevention Associates are required to insure the integrity of our apprehension program by following established policies. Principal among these rules are the "Five Steps" which guide Loss Prevention Associates through the apprehension process from the point of identification to the actual apprehension.

The Five Steps are:

1. Observe the subject enter the STORE or department;
2. Observe the subject select the merchandise;
3. Observe the subject conceal the merchandise; and/or take other actions that demonstrate HIS/HER intent to steal;
4. Maintain constant and unbroken observation of the subject up to the point of apprehension; and
5. The subject must clearly demonstrate their intent to exit the store by physically exiting the store or being the act of exiting the store.

Additional Guidelines:

Fitting Room Piece Count

Shoplifting that occurs in the confines of fitting rooms account for a substantial portion of our shortage. As such, Loss Prevention Associates and Executives must investigate all incidents of theft from fitting rooms and make apprehensions when appropriate. In the event that an individual is engaging in the theft of merchandise in a fitting room, Loss Prevention Associates may intervene in accordance with all Burlington Coat Factory Loss Prevention policies and procedures.

THE PRIMARY APPROACH IN DEALING WITH A POTENTIAL THEFT ACT IN A FITTING ROOM IS TO WORK WITH STORE ASSOCIATES TO PROVIDE CUSTOMER SERVICE IN AN EFFORT TO DETER THE INDVIDUAL.

MALE LOSS PREVENTION ASSOCIATES ARE STRICTLY PROHIBITED FROM ENTERING A DESIGNATED FEMALE FITTING ROOM COMPLEX THAT IS OCCUPPIED OR OTHER FITTING ROOMS OCCUIPED BY A FEMALE CUSTOMER.

In order for an apprehension to be made from a piece count observation in a fitting room, an authorized Loss Prevention Associate must:

1. **OBSERVE THE SUBJECT ENTER THE DEPARTMENT OR MERCHANDISE DISPLAY AREA.** (If the subject is not seen entering the department or display area, then we cannot be sure that he/she did not bring the merchandise in question into the store with him/her.)

2. **OBSERVE THE SUBJECT SELECT THE MERCHANDISE, KEEPING AN ACCURATE COUNT OF THE INDIVIDUAL PIECES OF MERCHANDISE. TRACK THE MERCHANDISE BY TYPE, COLOR, SIZE, ETC.** (We must have an accurate count and identification of all merchandise that has been selected by the subject before they enter the fitting room complex.)

3. **VERIFY THAT THE FITTING ROOM THAT WILL BE USED BY THE SUBJECT IS COMPLETELY CLEAN AND CLEAR OF ALL MERCHANDISE BEFORE EACH OBSERVATION.** (A Loss Prevention representative participating in the observation must make a physical inspection of the entire fitting room complex. If the entire complex is empty of customers, this can be verified by a Store Associate or by Loss Prevention personnel of different gender from the designation of the fitting room. If any merchandise is present in the fitting room used by the subject under surveillance, **NO APPREHENSION CAN BE MADE.)**

4. **OBSERVE THE SUBJECT ENTER THE FITTING ROOM WITH THE MERCHANDISE AND MAINTAIN CONSTANT OBSERVATION OF THE FITTING ROOM COMPLEX WHILE THE SUBJECT IS IN THE FITTING ROOM.** (If possible the Loss Prevention Associate/Executive should monitor the fitting room stall that the subject occupies, but if unable to do so we must maintain constant observation of the fitting room complex to ensure that the subject does not leave or that an Associate does not remove merchandise from the subject's fitting room or possession.)

5. **ONCE THE SUBJECT EXITS THE FITTING ROOM, THE LOSS PREVENTION ASSOCIATE MUST MAINTAIN CONSTANT UNBROKEN OBSERVATION OF THE SUBJECT WHILE ANOTHER LOSS PREVENTION ASSOCIATE, OR DESIGNATED STORE ASSOCIATE INSPECTS THE ENTIRE FITTING ROOM AND THE FITTING ROOM COMPLEX TO ENSURE THAT THE SUBJECT DID NOT LEAVE MERCHANDISE.** (A complete inspection of the fitting room stall occupied by the subject, and an inspection of the remaining unoccupied stalls must be completed immediately after the subject leaves the fitting room.)

6. **VERIFY THE QUANTITY AND SPECIFIC TYPE OF MERCHANDISE THAT THE SUBJECT HAS IN THEIR POSSESSION AS THEY EXIT THE FITTING ROOM, AND IF NECESSARY, DETERMINE WHERE IT IS LEFT ON THE SALES FLOOR.** (Without an exact count of what is returned to the sales floor, it cannot be determined if the subject has taken any merchandise. Determining the locations where the subject places any merchandise on the sales floor will allow you to verify what is missing.)

7. **MAINTAIN CONSTANT OBSERVATION OF THE SUBJECT UP TO THE POINT OF APPREHENSION.** (If we fail to maintain continuous observation, the subject could "dump" the merchandise, or even pay for it while they are out of sight.)

8. **THE SUBJECT MUST CLEARLY DEMONSTRATE THEIR INTENT TO EXIT THE STORE BY PHYSICALLY EXITING THE STORE OR BE IN THE ACT OF EXITING THE STORE.**

If there is a discrepancy in the number pieces of merchandise from what the subject initially entered the fitting room with, and the merchandise was not found in the fitting room used by the subject, AN APPREHENSION CAN BE MADE AS THE SUBJECT EXITS THE STORE (OR PROCEEDS TO THE EXIT IF THE INTENT TO STEAL IS CLEARLY ESTABLISHED).

The following prohibitions apply to fitting room piece count apprehensions:

- No apprehension of non ready-to-wear merchandise, e.g., Accessories, Handbags, Jewelry, etc.
- No single piece discrepancy apprehensions
- No Swimsuit or Intimate Apparel Department merchandise apprehensions

NOTE: All Steps must be followed. If you are in doubt about any part of the incident, for any reason, do not make an apprehension.

If possible every effort should be made to initially deter the individual(s) from attempting a theft while in the fitting room complex. Instructing Store Associates to provide quality customer service to the customer while in the fitting room is an effective method of deterrence.

Loss Prevention Associates should position themselves outside the fitting room complex if it is suspected that an individual is attempting a theft while in the fitting room. Being highly visible and presenting a credible presence as a Loss Prevention Associate is an effective deterrent.

Following these steps will ensure a high quality apprehension program and reduce our exposure to shortage.

Establishing Intent

There are various points Loss Prevention Associates should keep in mind while trying to identify potential shoplifters. However, an individual's race, creed, color, sex, and age (or even the appearance of any of these) has no bearing on whether the individual is likely to steal. Loss Prevention Associates must suppress any inclination that they have to single out individuals based on these factors.

Loss Prevention Associates should concentrate on the behavior that individuals display in the selling areas. It is by their behavior that potential shoplifters will be identified. Some of the warning signs that Loss Prevention Associates should look for include:

- Looking at merchandise without regard to price, size or style - most customers are very particular about all of these things and any individual who displays a lack of regard for them should be identified for further observation.

- Failure to wear outerwear in cold or otherwise in-clement weather – shoplifters will commonly enter the store without a jacket, pick out one of ours, remove the tags and wear it out of the store as if it were their own.

- Paying an uncommon amount of attention to the sales Associate's activity without wanting their assistance - shoplifters will be very aware of the activities and location of our sales Associates - they will likely attempt to move to parts of the selling area in which they are least likely to be observed by both our Associates and other customers.

- Entering the store with empty bags or nap- sacks - many shoplifters will carry these as an alternative to concealing merchandise on their person.

- Paying attention to the placement of Closed Circuit Television Cameras (CCTV) or Domes - shoplifters will try and determine where these cameras are and position themselves so that they are out of the camera's range.

- Planned or contrived distractions - Loss Prevention Associates should be aware of incidents that are "staged" to distract attention away from individual's intent on stealing (e.g., fights, loud arguments, etc.).

- Pairs who separate either prior to or as they enter a selling area - Loss Prevention Associates should pay attention to these persons especially if one of the pair engages the Store Associates or otherwise distracts them.

- A conscious or obvious attempt to avoid observation.

- Unusual attention to EAS tags, cables or other Loss Prevention devices.

- Anyone at the back or sides of a department looking at customers and Store Associates rather than Merchandise.

Loss Prevention Associates must understand that none of these actions, performed separately or together, constitute evidence of a crime. However, these may be used as clues to identify individuals who might commit a crime.

Other Situations

Ticket Switching

In the event an individual is observed switching price tickets the sale should be denied. Communicate directly with the Associate processing the sale and the Manger on duty

that the customer was observed removing and replacing price tickets and that the sale should not be completed until proper pricing information is obtained. The observation should be documented for future reference.

NO APPREHENSION CAN BE EXECUTED FOR TICKET SWITCHING

Credit Card Fraud

If a customer presents a credit card that is suspected of being used to perpetrate a fraud the transaction should be halted until the validity of the credit card and proper ownership can be verified by Store Management. Report all situations that involve the suspected use of a stolen, lost or tampered credit card to the Manager on duty. They will contact the issuing Bank or credit card Company to validate authenticity. The incident should be documented for future reference.

NO EXTERNAL APPREHENSION CAN BE EXECUTED FOR SUSPECTED CREDIT CARD FRAUD.

Refund Fraud

If a customer is suspected of presenting stolen or non Burlington Coat Factory merchandise for a refund the transaction should be halted and reported to the Manager on duty to investigate the authenticity of the return. It is at the sole discretion of the Manger on duty as to how the transaction should be processed. The incident should be documented referred to the Corporate Investigations department for further investigation.

NO EXTERNAL APPREHENSION CAN BE EXECUTED FOR SUSPECTED REFUND FRAUD UNLESS ALL "FIVE STEPS FOR AN APPREHENSION" HAVE BEEN MADE PRIOR TO THE INDIVDUAL PRESENTING THE MERCHANDISE TO THE ASSOCIATE.

Gift Card Fraud

If a customer is suspected of presenting a Burlington Coat Factory Gift Card for the purposes of perpetrating a fraud the transaction should be halted and reported to the Manager on duty to investigate the authenticity of the card. It is at the sole discretion of the Manger on duty as to how the transaction should be processed. The incident should be documented referred to the Corporate Investigations department for further investigation.

NO EXTERNAL APPREHENSION CAN BE EXECUTED FOR SUSPECTED GIFT CARD FRAUD.

Apprehensions Never to Be Made

Regardless of local variations in statute, Burlington Coat Factory Loss Prevention Associates are never to make any of the following apprehensions:

- Apprehensions based on EAS Activation -- any apprehension resulting from an inquiry based on the activation of the Sensormatic alarm.
- Look Outs or Accomplices who DO NOT ACTIVELY PARTICIPATE IN THE COMMISSION OF THE THEFT.
- Apprehensions for presenting a blank check for "Non Sufficient Funds" or suspected "Closed Account" for the purchase of merchandise.
- Apprehensions for ticket switching.
- Apprehensions for suspected gift card and credit card fraud.
- Apprehensions based on the observations of an individual not employed in Loss Prevention -- all five steps must be observed by Loss Prevention personnel who have been granted their apprehension powers, no observations made by other individuals can be used to satisfy any of the requirements of the five steps.
- Apprehensions based on the observations of a Loss Prevention Associate who does not have apprehension powers. Loss Prevention personnel who have been granted their apprehension powers must observe all five steps. No observations made by other individuals can be used to satisfy any of the requirements of the five steps.
- Apprehensions initiated outside the proximity of company property

Approach and Escort

Once you have fulfilled the requirements of the Five Steps and you have decided to make an apprehension, you may approach the subject. The manner in which you do this will have tremendous impact in the way the apprehension proceeds

Demeanor

While you are on the selling floor, you must maintain a professional appearance and demeanor. This is especially true when you are performing an apprehension. Subjects are to be treated firmly but courteously. All Loss Prevention Associates must maintain

control over the situation and perform the apprehension while maintaining the highest standard of professionalism. Recognize that the apprehension of a shoplifter can be unpredictable. **SAFETY IS THE PRIMARY CONCERN DURING ALL APPREHENSIONS.**

The overwhelming majority of our apprehensions will be accomplished without the use of force and without disrupting the selling floor. The best apprehensions take place without any of our customers or Store Associates being aware of the event.

To be abrupt, rude or antagonistic is contrary to Burlington Coat Factory policy and will only complicate the apprehension

Mechanics

The apprehension and escort are broken down into clearly identifiable steps. These are:

- Whenever possible, **Loss Prevention Associates should communicate their intention to make an apprehension to other Loss Prevention Associates or Store Associates** who are on duty and it might be helpful to have them with you while the approach is made - having other Store Associates in the area can also help you to maintain a complete observation of the subject's movements.

- Having fulfilled the five steps, the Loss Prevention Associate may **Approach the subject.**

- The **Loss Prevention Associate must identify himself** by presenting his Burlington Coat Factory Loss Prevention Identification - Loss Prevention Associates may only use Identification that has been provided by Burlington Coat Factory; no other badge or identification may be presented or used.

- The Loss Prevention Associate will **explain to the subject** that the theft of merchandise (be specific) was observed. At this point, the Loss Prevention Associate should **attempt to recover the merchandise** that the subject removed - this early confirmation that the subject is still in possession of the merchandise can help eliminate problems. If the subject does not have the merchandise in question in the location it is believed to have been concealed by the apprehending Loss Prevention Associate, or if the subject offers a legitimate receipt or explanation, the Loss Prevention Associate must apologize and allow the customer to leave immediately. Every effort must be made to ascertain whether the apprehension is a "Problem Apprehension" at the point of the apprehension.

- The Loss Prevention Associate must **inform the subject that he/she is requested to accompany him to the stores "office"** to straighten the matter out.
- Loss Prevention Associates must avoid involving Store Associates in the actual apprehension and should never request assistance of customers or passers-by.
- The Loss Prevention Associate must **escort the subject to the store's Office.**
- During the escort to the Office, Loss Prevention Associates must **keep the subject and the stolen merchandise within sight** at all times.

NOTE: Loss Prevention Associates should take careful notice of the subject's statements at the point of apprehension and during the escort to the Office. All of the subject's reactions and statements should be noted in the case report, particularly those that confirm their intent to commit a crime.

If it is recognized at the point of apprehension that the subject does not have the merchandise in question or proves legitimate ownership of the merchandise, the subject MUST NOT be brought to the office. It is necessary at that point to offer an apology and allow the subject to leave.

Prohibitions on Pursuit

Safety being the principal concern, Loss Prevention Associates are prohibited from pursuing subjects to affect an apprehension.

1. Beyond the immediate vicinity of the of the store's exit.
2. After the subject has gotten to/or inside a motor vehicle.
3. At point where a subject produces a weapon or implies that he/she possesses a weapon.
4. Executing the apprehension presents a risk of injury to the individual, store Associates or customers.

Failure to discontinue a pursuit will result in disciplinary action up to and including termination.

Accomplices

Definition

An accomplice is an individual who unites with the principal offender, with common intent, in the commission of a crime.

Policy

As a general rule, Loss Prevention Loss Prevention Associates should not attempt to apprehend and prosecute individuals for being an accomplice to a theft unless they are **active participants** in the crime. Otherwise, **it will usually be sufficient to apprehend the principal offender** and recover the stolen merchandise.

Burlington Coat Factory does not permit Loss Prevention Associates to make apprehensions of subjects for "shielding" or acting as a "look-out".

Loss Prevention Associates may apprehend accomplices under certain circumstances, including, but not limited to, the following:

- The accomplice's actions are so blatant and clear so as to make it impossible to describe the theft without describing the accomplice's actions. This is necessary to prove intent.
- The accomplice has taken the merchandise - the individual with the stolen merchandise **must always** be stopped first; no other apprehensions may be made until the merchandise is recovered
    - **NOTE:** The person in possession of the stolen merchandise should **not necessarily** be apprehended as an accomplice. It is possible that an individual could be carrying a bag or other container without knowledge of the fact that it contains stolen merchandise (or you may be unable to prove that the subject had knowledge that the merchandise was stolen).Loss Prevention Associates must be able to identify actions on the part of the accomplice, which demonstrate a clear intent to steal

Mechanics

Accomplices will be approached and escorted to the Loss Prevention Office in the same manner as a shoplifter would. The only difference is, when there is more than one person involved in a theft, the Loss Prevention Associate **must** stop the individual with the merchandise **first.** The stolen merchandise is evidence of the crime; the Loss Prevention Associate must have that before pursuing other subjects.

Use of Force

It is possible that a situation will arise that will require the Loss Prevention Associate to apply reasonable physical force. Burlington Coat Factory Loss Prevention Associates are only permitted to use **reasonable force** to:

- Defend themselves against the use of force
- Defend someone else against the use of force
- Defend the premises and property of Burlington Coat Factory - (**NOTE:** Loss Prevention Associates would only use force in these situations when the action being taken by the offender would present an immediate danger to customers or Associates)
- Overcome forceful resistance when making an apprehension.

Loss Prevention Associates may not use force to physically restrain a suspect to affect an apprehension unless the suspect's actions constitute a safety threat to other customers or Associates. **If a suspected shoplifter attempt to flee at the point of apprehension every reasonable effort should be made to recover the store's merchandise, but the suspected shoplifter should not be physically restrained.**

If a suspected shoplifter does flee the store when an apprehension is attempted the incident should be reviewed with a Regional Loss Prevention Manger or Territory Director for authorization to contact local Law Enforcement. Authorization is required before contacting Law Enforcement for a suspected shoplifting incident.

Remember, the safety and well being of our customers, our Store Associates, our Loss Prevention Associates and the subjects is more important than making an apprehension and/or recovering stolen merchandise.

Use of Handcuffs

The use of Handcuffs by Burlington Coat Factory Loss Prevention Associates and Management is strictly prohibited. Use of or possession of handcuffs by a Burlington Coat Factory Loss Prevention Associate will result in disciplinary action up to and including termination.

Confronting Subjects with Weapons

It is Burlington Coat Factory policy that Loss Prevention Associates should always avoid any confrontation with an armed subject. If at any time a subject brandishes a weapon of any sort, or implies that he/she possesses a weapon, the Loss Prevention Associates should attempt to extricate themselves from the apprehension process and allow the subject to leave the store. The Police should be called, and the matter of apprehending that subject should be left in their hands.

Problem Management

Most apprehensions are accomplished without complications. The Loss Prevention Associate has seen the entire event and has followed the requirements of the Five Steps. However, from time to time, problems or complications will arise that are unusual and therefore require special attention. A major focus on the Burlington Coat Factory Loss Prevention Department training program is focused on what to do to prevent a problem apprehension. Equally important is training focused on what to do if you become involved in a problem apprehension. Please take the time to review the following related to reacting to a problem apprehension.

- **Recognize your mistake early**. Ask for the merchandise at the point of apprehension. Investigate claims of ownership immediately.
- **Apologize**. If we make a mistake we need to offer our apology to the customer in a professional and sincere manner.
- It is not necessary to get the name of the customer, but **if asked the Loss Prevention Associate should give the customer their name.**
- Notify the store's Manager on duty immediately. Refer the customer to Manager on Duty. The Loss Prevention Associate should not engage in any follow up with the customer or their representative.
- Immediately notify your Regional Loss Prevention Manager or Territory Director of the incident. Serious issues need to be referred to the SVP Asset Management immediately. The liability of Burlington Coat Factory can be greatly diminished if we handle all incidents in a professional, courteous and timely fashion.

Possible Problems

The types of complications that could possibly arise during the course of an apprehension are as numerous as they are unusual. Some of the more common ones include:

- The subject claims to have legitimately purchased the item

  NOTE: the subject's claim to legitimate ownership of the merchandise in question should **always** be listened to care- fully - Loss Prevention Associates should pay strict attention to the explanations and statements of the apprehended subjects. Never dismiss the claims of an apprehended person without examining all the facts closely.

- And injury takes place incidental to an apprehension
- There is a problem with law enforcement personnel
- A serious disruption of the selling floor occurs
- A subject is carrying a gun or other dangerous weapon
- Complications arise regarding the apprehension of a subject with a dependent child
- The subject experiences health problems while in custody (example: seizures)
- The press and or other mass media becomes involved
- The subject does not have stolen merchandise on him/her when apprehended
- The subject is a person of notoriety and/or diplomat

Notifying Management

All of the above situations require the immediate notification of, and consultation with, Loss Prevention management - when possible, prior to the point of apprehension. It is the responsibility of the Loss Prevention Associate who made the apprehension to notify management of possible complications.

Notifications should be made according to the seriousness of the situation. The following is a list of executives who are available in the case of a problem. They should be notified in order of their appearance on the list. If a Loss Prevention Associate cannot contact the first, then an attempt must be made to contact another Regional Manager or Territory Director.

- Store's Manager on duty
- Regional Loss Prevention Manager
- Territory Director of Loss Prevention
- Senior Vice President of Asset Management

All Loss Prevention Associates should know how to reach any and all of the individuals on the above list. Each office should have a copy of the Loss Prevention phone listing which the Central Office publishes periodically. With such a large management group available, a Loss Prevention executive should be available in case of a problem or complication.

Reports Concerning Problems

Written reports are essential to document all apprehensions and incidents, but they are especially important for those described above. Problem Apprehensions must be documented as an SI (Shoplifting Incident) utilizing the Burlington Coat Factory Loss Prevention Case Reporting system. In addition the Regional Loss Prevention Manager must complete an investigative report. All evidence related to the incident must be secured, e.g., tickets, tags, video record, pictures, etc. Copies of the Loss Prevention Incident Report and all other reports and pictures/video record related to the incident must be mailed to the Corporate Loss Prevention offices in Burlington NJ within 24 hours of the incident. A copy of whatever is sent to the Corporate Offices, (including video record), must be retained in the Store Managers office n a designated cabinet. The reports must be neat, detailed and complete in every manner. The incident must be referenced as a "Problem Apprehension" in all documentation, do not use any other descriptions for this type of incident. **In addition no racial descriptions should be used in this or any other Loss Prevention department report.**

> **NOTE**: Problem Apprehensions, that is, those apprehensions that involve the detainment (for any period of time) of an individual who is not found to have stolen merchandise on his/her person, must be reported immediately to a Senior Loss Prevention executive. **Once it is discovered that an apprehended person is not in possession of stolen merchandise, they must be immediately released and given an apology.**

CCTV Monitoring

One of the tools available to Loss Prevention Associates is the CCTV (Closed Circuit Television) monitoring systems that have been installed in most stores. These systems allow Loss Prevention Associates to monitor portions of the selling floor and selected

sales support areas from a remote location. This system is not meant to replace floor observation but to augment it.

Loss Prevention Associates monitoring CCTV cameras should conduct their observations as they would on the selling floor. Although our Loss Prevention Associates will likely be aware of the placement of cameras, shoplifters may not be. Loss Prevention Associates should be watchful for behavior that is out of place and therefore suspicious.

If a Loss Prevention Associate observes an individual who is behaving suspiciously, he should record the subject's actions on videotape. If the individual does not attempt to steal anything, then the recording system can record over the incident If a theft is recorded, then it should be copied to a separate disc, labeled and placed with the case evidence.

As with all Burlington Coat Factory equipment, misuse or inappropriate use of these systems will lead to disciplinary action up to and including termination. All video records recorded by Burlington Coat Factory equipment is the sole possession of Burlington Coat Factory and cannot be disseminated or distributed without the express approval of the SVP Asset Protection

Section Five: Search and Seizure

General Search Guidelines

Burlington Coat Factory Loss Prevention Associates have the authority and obligation to affect a search of the subject subsequent to a valid apprehension. This authority varies depending on the circumstances of the apprehension.

> **NOTE:** Some state statutes allow a search of the subject to recover merchandise. Regional Loss Prevention Managers are responsible for determining the requirements of local code.

Usually, Loss Prevention Associates will have no cause or authority to conduct any search beyond that of the subject's person and the area immediately surrounding the point of apprehension. Searches beyond the person and the immediate area of the arrest must be approved by a Regional Loss Prevention Manager

Search of Apprehended Persons

Subjects who have been apprehended by a Loss Prevention Associate may undergo a pat-down search. The pat-down/frisk is defined as a procedure whereby the outer clothing of the person is checked by running hands along (or patting) the clothing of the person. It does not require the removal of the clothing. It may involve the checking of the contents of pockets. It is the least intrusive kind of search. The purpose of this search is to determine whether or not the apprehended subjects have items in their possession, which may be used as a weapon. This search should be conducted in the Loss Prevention Office prior to requesting that any concealed merchandise be surrendered and **must** be conducted by a Loss Prevention Associate of the same sex. During this search, there are always to be two people present.

Safety Considerations

- Pat-downs for weapons are necessary for safety reasons. Do not minimize the safety aspects of any detention. It is for your protection, the protection of other personnel in the office, and the protection of the shoplifter.
- Purses, containers, and other personal items accompanying the shoplifter should not be within reach of the suspect. They could contain weapons or objects that could injure you or the shoplifter.

There must be a witness of **the same sex** as the apprehended person in the office with the subject at all times. If the Loss Prevention Associate making the apprehension is of a different sex than the subject, then any search conducted must be made by the witness. The store's Manager on duty should make the determination in concert with the Loss Prevention Associate who will act as witnesses when there are no Loss Prevention Associates of the same sex as the apprehended subject. Sales or Sales Support witnesses are not responsible for conducting searches. It is advisable that a small number of Associates be identified in advance and trained to perform this function. If an individual being detained becomes combative and violently resist a search, the search should be discontinued. Loss Prevention Associates must advise responding police officers, if the matter was referred for prosecution that a thorough search was not possible.

Regardless of the circumstances, male Loss Prevention Associates **may not** perform a search of a female subject's person. Conversely, female Loss Prevention Associates **may not** perform a search of a male subject's person.

Recovery of Merchandise

Strip searches, body searches, or any other searches beyond a pat-down search are not permitted for any purpose. If a subject is wearing or carrying concealed merchandise, advise him/her that you are aware of it and request that he/she return it to you. A Loss Prevention Loss Prevention Associate or manager of the same sex as the subject and with a witness of the same sex as the subject should do this in a private room or office. No opposite sex witnesses can be present during this recovery process. Most subjects will willingly give you the merchandise, but some may not. Accurately document what was done and the names of all persons present.

If the subject refuses to produce the concealed merchandise, contact your Regional Loss Prevention Manager, or Territory Director of Loss Prevention. They will review the case and make the decision to notify the police. Do not remove or handle clothing in an attempt to recover any merchandise concealed on the subject's person. Notify the arresting officer of the concealed merchandise

Only merchandise or property that has been stolen can be recovered. Document all merchandise recovered in the case report. Other merchandise from another retailer can be recovered. The subject must admit to shoplifting the other merchandise. Notify the responding officer of the recovered merchandise.

Never handle a subject's money, regardless of the amount. Leave it with them. An estimate of the amount should be included in the details of the apprehension report.

Other Searches

Automobile searches, and other unusual searches outside of the store, must be approved in advance by a Loss Prevention Manager **and can only be conducted with a member of local Law Enforcement or if authorized by a Regional Loss Prevention Manager.**

NOTE: A complete and detailed description of all searches **must** be part of the Loss Prevention Associate's case report.

General Seizure Guidelines

It is Burlington Coat Factory policy that Loss Prevention Associates must seize the fruits of the crime(s) that are committed against Burlington Coat Factory which are found upon apprehended persons or in their immediate vicinity at the point of apprehension.

Additionally, weapons should be photographed and turned over to the Police and tools and devices used to commit crimes against Burlington Coat Factory must also be seized, photographed, and retained as evidence

Seizure of Evidence

The merchandise, which the Loss Prevention Associate observed the subject steal is important evidence, and the Loss Prevention Associate, has the responsibility to recover that merchandise. **If the merchandise is located on the person of the subject and can only be recovered by having the subject remove (all or in part) articles of clothing, no member of the opposite sex may be present when this is done. This does not release us from the requirement that two persons must be present**.

It is best if the Loss Prevention Associate can gain control of this evidence at the point of apprehension. There will be times when this is not possible due to the method of concealment (e.g., the subject is wearing the evidence underneath clothing) or because of the subject's lack of cooperation. However, when possible, it is desirable that the stolen merchandise be recovered prior to the subject being escorted to the store's Office.

In those cases where a decision has been made to prosecute, the evidence of the crime is not to be turned over to the Police Department (unless required by local code) when they come to pick up the subject(s). This evidence is to be kept, labeled, and locked up in a location specifically designated for the storage of evidence.

NOTE: Some jurisdictions permit photographs of merchandise to be presented as evidence. Regional Loss Prevention Managers must determine what the rules of evidence are for their area. If photographs will suffice, then Loss Prevention Associates need only take a picture of the recovered merchandise and then return it to stock. All photographs must be labeled to include the case name, date and time, and name of the person taking the photograph.

If the Police insist on taking the evidence with them, Loss Prevention Associates must photograph each item and get an itemized receipt from the Police Officer taking custody.

If there is any doubt as to whether photographs are acceptable as evidence in court, or if the case is an unusual one, **do not** return the evidence to stock. Mark and retain the evidence per normal evidence retention procedures.

Seizure of Stolen Property

Frequently, stolen property will be found on the subject other than the merchandise that the apprehending Loss Prevention Associate observed the subject steal. This property is commonly found during the subject's initial surrender of the merchandise or during the pat-down search for dangerous items.

Burlington Coat Factory merchandise found on the apprehended subject, which the subject has not paid for, will be seized by the Loss Prevention Associate. This merchandise will be listed in the case report along with details concerning its condition (with or without price/brand name tags, SENSORMATIC tags, etc.) and an explanation as to where it was found. The only merchandise that the subject may be criminally charged with is that which the Loss Prevention Associate saw the subject steal.

NOTE: Occasionally, Loss Prevention Associates will find merchandise belonging to other retail stores in the possession of an apprehended subject. Should this happen, the Loss Prevention Associate should notify the other retail store and allow them to recover their merchandise if the Subject admits to stealing the merchandise from the other retail establishment. Subjects should not be detained in the Store's Office for this purpose alone.

If the decision has been made not to prosecute the case, then the subject must be released after our case paperwork requirements are fulfilled.

The property stolen from Burlington Coat Factory and found on the subject is not to be turned over to the Police Department when they come to pick up those subjects which Burlington Coat Factory has chosen to prosecute. This evidence

is to be kept locked up in a location specifically designated for the storage of evidence. (Exception: See "Notes" earlier in this section)

Seizure of Weapons

Weapons or items that could be used as a weapon, that are found on the apprehended subject must be seized. If it is decided that Burlington Coat Factory will press criminal charges against the subject, then the items that were seized will be turned over to the Police Department when they pick up the subject. (These items should be photographed and the photographs should be included in your case report.)

Certain jurisdictions require that individuals, who carry a firearm, also have (usually on their person) a permit allowing them to do so. Should a firearm be found in the possession of an apprehended subject, the Loss Prevention Associate should verify that the subject has a permit to carry the weapon. Should the law require such a permit and the subject is not in possession of one, the Police Department should be called independent of Burlington Coat Factory decision to press criminal charges for theft.

Frequently, subjects will use tools to cut cables, remove SENSORMATIC tags, or accomplish other tasks that support the commission of the crime. These tools should be photographed and then turned over to the Police with the subject, or held in evidence with the stolen merchandise.

Contraband

It is not Burlington Coat Factory policy to initiate prosecutions for possession of controlled substances or other contraband. However, Loss Prevention Associates may pass on their suspicions to the Police regarding substances found on apprehended persons. Beyond this, Loss Prevention Associates will not pursue the matter, nor may they confiscate the substances in question.

Section Six – Special Situations

Dishonest Employees

Employee dishonesty accounts for a substantial portion of our shortage. As such, Loss Prevention Associates must be watchful for situations in which employees cause losses to Burlington Coat Factory through their dishonest acts.

Should a Loss Prevention Associate witness an act of dishonesty on the part of an employee, the store's Regional Loss Prevention Manager or Territory Director should be notified prior to making an apprehension. In some cases, this will not be possible (i.e., the employee is leaving the building with merchandise that has not been paid for). However, when this is possible, consultation with an executive gives Loss Prevention Management the flexibility to address an employee dishonesty situation with maximum impact.

A Regional Loss Prevention Manager could decide to delay apprehension in order to gauge the scope of the problem and whether or not other Associates are involved.

The conditions for the apprehension of an Associate suspected of engaging in dishonest activity are the same as for the apprehension of a shoplifter. **These Five Steps are:**

1. Observe the subject enter the department;
2. Observe the subject select the cash or merchandise;
3. Observe the subject conceal the cash or merchandise; and/or take other actions that demonstrate their intent to steal
4. Maintain constant observation of the subject up to the point of apprehension
5. The subject must clearly demonstrate their intent to exit the store by physically exiting the store or be in the act of exiting the store.

In the event that the apprehension must be made without consultation, then immediately after the apprehension, the Manager on duty and the store's Regional Loss Prevention Manager must be notified.

Internal Investigation Interviews

It is often necessary for Loss Prevention personnel to conduct an interview with an Associate or Executive regarding possible involvement in, or responsibility for a loss to the company. The following guidelines must be followed for all Loss Prevention department interviews

Most Loss Prevention interviews should be conducted by a Regional Loss Prevention Manager. In the event a theft or other loss is observed as it occurs an interview may be conduct by a Loss Prevention Associate. Every attempt must be made to contact a Loss Prevention Executive before, during or immediately after all Loss Prevention interviews.

All Loss Prevention interviews must be conducted in a Store Manager's office. The Loss Prevention Associate who made the observation must make every attempt to conduct the interview with the Associate an appropriate office.

All interviews must be conducted in the presence of a witness. Witnesses must be gender appropriate, e.g., female Associate requires that either the Interviewer or the witness be a female. The witness can be either a member of the Loss Prevention department or a member of Store Management. The witness should not be the Associate's direct supervisor. Witness must document the interview on Burlington Coat Factory Loss forms.

A "Consent to Interview" form must be presented to all Associates prior to the beginning of the interview. It is not required that the Associate sign the document for the interview to continue, but the Associate must be informed that the interview is voluntary and that they are free to leave the interview if they so desire.

Interviews should not exceed 60 minutes in length, unless an admission to a loss or policy infraction has been obtained and additional time is required to expand the admission or obtain a statement.

Whenever possible the store's Manager on duty or the store's Manager must be informed of the reasons for the interview prior to the interview and informed that an Associate has been removed from the sales floor for the purpose of an interview. The Manager on duty should be the person who removes the Associate from their assigned duties.

All Loss Prevention interviews must be documented on Burlington Coat Factory Loss Prevention Internal Investigation forms, regardless of the final determination on the Loss Prevention Associates employment status. If completed, a copy of the Loss Prevention

Associate's Statement and their Promissory Note must be given to the Associate after the interview is complete.

At the conclusion of all interviews the Store's Manager on Duty, must review the outcome of the interview and in turn review the interview documentation with the Loss Prevention Associate, in the presence of the witness and the interviewer. The Manager on Duty must sign all documents used during the interview in the designated location.

The decision to suspend or terminate an Associate is made by a Regional Loss Prevention and/or Human Resource Manger or Territory Loss Prevention Director or Human Resources.

All prosecution decisions involving current Store Associates can only be made by a Regional Loss Prevention Manager, Territory Director, Manager of Investigations or SVP Asset Protection.

Package Inspections

Loss Prevention Associates are assigned to check the parcels, packages and possessions of Store Associates who are leaving the store on a daily basis. Each Store Associate should be asked politely to open their bags, briefcases, and/or other containers and display their contents to a Loss Prevention representative.

Store Associates who refuse to submit to this inspection should be politely reminded that company policy requires that the inspection take place. Should they continue to refuse, the Loss Prevention Associate should report their name and the incident to the Store's Manager and Regional Loss Prevention Manager and/or Regional Human Resource Manager. Under no circumstances should physical force be used, nor should the Store Associate be given the impression that they were not free to leave the store.

Theft from Customers

Dishonest activity directed at our Customers present a serious customer service problem, and Loss Prevention Associates should be constantly aware of signs that individuals targeting customers with intentions of committing a criminal act. As it is our goal to ensure that all of our customers have a good shopping experience with us, we should be very sensitive when a customer is the victim of theft of personal property or other criminal acts.

It is permissible for a Loss Prevention Associate to apprehend an individual(s) who are directly observed committing a theft of a customer's personal property or other serious criminal acts directed at a customer. Loss Prevention Associates **may not** make an apprehension based solely on another person's testimony, even the victim's.

As with shoplifters and dishonest employees, these apprehensions must be made in accordance with the **Five Steps**. These are:

1. Observe the subject approach the victim
2. Observe the subject take control of the customer's personal property
3. Observe the subject conceal the property and/or take other actions that demonstrate their intent to steal;
4. Maintain constant observation of the subject up to the point of apprehension
5. Allow the subject to move away from the victim

NOTE: The victim must sign a complaint against the subject for a prosecution to be initiated. If the victim does not sign a criminal complaint against the customer the subject must be released.)

If a customer accuses another customer of stealing their personal property, Loss Prevention Associates may invite the two customers to come to the store's office to straighten the situation out. They may offer to call the Police, but Loss Prevention Associates **may not** compel either party to do so.

In the event that a customer reports that they had personal property stolen while shopping in our store, Loss Prevention Associates should assist the customer in notifying the police and in canceling their credit cards (this should include providing use of a telephone for this purpose). The Loss Prevention Associate should consult with their Regional Loss Prevention Manager to see if any further action would be warranted. In all cases involving an apprehension, a Loss Prevention Incident Report must be written for these incidents.

Vandalism

Vandalism is a costly problem both because of the moneys needed to repair the damage and the customer dissatisfaction that results from a marred shopping experience.

Individuals caught vandalizing Burlington Coat Factory property should be apprehended and prosecuted if appropriate. As always, a member of Loss Prevention Management must approve all prosecutions

Criminal Destruction of Private property

Burlington Coat Factory allows its Loss Prevention Associates to apprehend those individuals who purposely damage merchandise. The Loss Prevention Associate

observing the actions will make the differentiation between purposeful and accidental. For us to consider the damage purposeful, it must be repeated at least once during the same visit to the store. For example, if a customer breaks a single ink tag, we would consider that an "accident". But if after breaking one ink tag, the customer proceeds to break another, we would consider that action purposeful and we would apprehend them at that time. Establishing the intent to damage property will diminish any doubt that the act was accidental

Disorderly Persons/Trespass

Loss Prevention Associates should be reluctant to apprehend individuals solely for being "disorderly" or for "trespassing without license". Many states and jurisdictions will not permit our Loss Prevention Associates to effect an apprehension for these offenses. Further, in those jurisdictions where it is permitted, prosecution for such offenses may not be looked on with favor by the court system. However it may be necessary to resort to Trespass in certain circumstances, such as professional shoplifters or dangerous individuals.

Loss Prevention Associates will be informed by their Regional Loss Prevention Managers whether or not their area permits these apprehensions.

> **NOTE:** Statutes covering these offenses vary substantially from to state to state. Regional Loss Prevention Managers must determine the applicable law in their area and comply accordingly.

It is desirable that Loss Prevention Associates discourage disorderly conduct and trespassing without license, rather than habitually effecting apprehensions for these offenses. The Loss Prevention Associate should make every effort to escort the disorderly person or trespasser out of the store before detaining the individual and/or or calling the Police

Restroom Situations

Occasionally, Loss Prevention Loss Prevention Associates will be alerted to lewd conduct and other undesirable acts taking place within the store's rest rooms. Although this presents a serious customer service and employee concern, it is not Burlington Coat Factory policy to aggressively seek apprehensions for these offenses. These situations are best handled by an active deterrent effort.

It will usually be sufficient to increase the frequency of patrols through the rest rooms in question, thereby discouraging their use for anything other than the intended purpose.

Should serious problems continue to occur within the rest rooms, the store's Regional Loss Prevention Manager must be consulted in order to plan a more effective response.

Section Seven: Office Procedures

General Guidelines

The designated store office used to process individuals apprehended by Loss Prevention must be maintained in such a manner so as to facilitate the safe and professional processing of apprehended subjects. The office should not have decorations, posters, and reports, charts or objects that will detract from a professional working environment

Safety Issues

Apprehended subjects should not be given access to objects that could be used to harm themselves or others. The area in which they are processed, and detained pending the arrival of the Police, must be free of objects that can be used as weapons or projectiles (i.e., staplers, staple removers, letter openers, etc.) - or where possible weapons or evidence could be concealed (e.g., seat cushions).

Processing Steps

Once a subject has been brought to the designated Office, there is a routine that should be followed:

- A witness of the same sex as the subject must be present to act as a witness **NOTE:** The subject should never be left alone.
- The Loss Prevention Associate should ensure that the subject has no weapons, or anything that could be used as a weapon
- The subject's personal information should be obtained immediately
- A determination on prosecution should be made following the company's Prosecution Guidelines.
- If the decision has been made to initiate prosecution, then the Police should be called
- The evidence and the subject should be photographed (within the limits of the law of the local jurisdiction)
- The case paperwork should be completed

- The subject should be turned over to the Police or released if it has been decided not to prosecute the case. In the case of a juvenile offender, if the subject is not prosecuted; he/she must be turned over to a parent, guardian or responsible adult

NOTE: Subjects may be detained for a Reasonable amount of time. Usually, the amount of time allowable is that which is necessary to complete the steps itemized above. However, should one or more of these steps take an unusually long period of time to accomplish, then a Loss Prevention Executive must be consulted for further direction. As a rule of thumb, Loss Prevention Associates should not detain subjects for more than 1 hour without consulting their Regional Loss Prevention Manager.

Case Disposition

Burlington coat factory

LOSS PREVENTION DEPARTMENT

PROSECUTION GUIDELINES

The following are guidelines for the prosecution of individuals apprehended by Burlington Coat Factory Loss Prevention for shoplifting or Associate dishonesty or other criminal conduct involving, e.g., vandalism, etc.

GENERAL GUIDELINES

- **The minimum age for prosecution is 13 years of age. The maximum age for prosecution is 65 years of age. If releasing a minor the subjet's parents, or legal guradians must be contacted. If unable to contact responsible parites the minor subject must be referred to local Law Enforcement agegncy.**
- **The minimum dollar amount, w/o "additional factors", for a prosecution, is $25. This applies to Internal and External apprehensions.**
- **Additional factors that can require prosecution outside of age restrictions and minimum dollar amounts are:**
  - **Prior Shoplifting Apprehension(s)/Arrest(s).**
  - **No valid identification.**
  - **Possession of a weapon or controlled substance.**
  - **Physical assault of a Burlington Coat Factory Associate during the apprehension.**
- All decisions to prosecute or release an individual(s) apprehended for shoplifting, or other criminal conduct must be made by either a Loss Prevention Executive or for shoplifting if no "special circumstances" by Store LP Associate.
- The person authorizing prosecution/release must be listed on all Burlington Coat Factory apprehension case reports.
- Any exceptions to these prosecution guidelines can only be made with the approval of the SVP Asset Protection.
- Accomplices can only be referred for prosecution if they physically participated in the commission of the theft ,e.g., helped conceal merchandise, knowingly carried bag with unpaid for merchandise out of store, etc.

APPREHENSION	SPECIAL CIRCUMSTANCES	PROSECUTION/RELEASE APPROVAL
- Shoplifting $25 or higher - w/admission, merchandise recovered - no unusual circumstances	- Accomplices who actively participated in theft.	• Store LP Associate • Regional Loss Prevention Manager • Territory LP Manager
- Associate cases - Shoplifting w/o admission and strong denial of any wrongdoing. - Immediate relative of Associate - Non-theft incidents, e.g., vandalism, trespassing, etc.	- age, over 65/under 13 - mental infirmity - evidence of ownership - ticket switching - integrity test case with additional admissions for previous theft - persons with , or claiming to have serious medical conditions - subject is physically or metnall disabled	• Regional Loss Prevention Manager • Manager Investigations/Training • Territory LP Director • SVP Asset Protection
- Associate with 5 years or more of service - Burlington Coat Factory Executive	- Restroom incidents - Law Enforcement Officer - Public/Elected Official - Persons of notoriety	• Territory LP Director • SVP Asset Protection

Reporting of Potential Civil Claims

In the case of dismissal, it may be possible to re-file criminal charges, assuming you do not have speedy trial or related issues (e.g. witness or evidence). The only person allowed to re-file criminal charges is the SVP Asset Protection. In the case of a "not guilty" finding, the Territory Director of Loss Prevention must be immediately notified so that there can be a timely investigation and all evidence must be preserved

Concerns:

Juveniles

The apprehension of subjects who are under the age of legal majority brings additional responsibilities beyond those we encounter for other apprehended subjects.

Loss Prevention Associates must make every effort to notify a parent or guardian prior to releasing a juvenile subject. Ideally, the parent or adult will come to the store and pick up the juvenile. If they are unwilling to come in person, we should get their permission to release the subject to go home on their own accord (this permission must be documented in the Case Report). If a parent or guardian cannot be contacted, the Loss Prevention Associates may not release a juvenile without first consulting with their Regional Loss Prevention Manager. As Juveniles may not be released without parental consent, the Police must be called if a parent or guardian cannot be contacted.

Additionally, certain jurisdictions have special requirements pertaining to juvenile apprehensions. It is the responsibility of the Regional Loss Prevention Manager to inform all Loss Prevention Associates of these requirements and to see that they are fulfilled.

Subjects of Different Sex

After apprehending a subject who is not the same sex as the Loss Prevention Associate, the Loss Prevention Associates are required to ensure that a Store Associate or Manager of the same sex as the subject is present in the room at all times. There is to be no exception to this rule

Subjects with Children

It is possible that Loss Prevention Associates will need to apprehend a subject who has children or infants with them. Unless the subject demonstrates an inclination to inflict harm to themselves or to others, the subject should not be separated from the children. Additionally, Loss Prevention Associates should be sensitive to the impact upon the children of having their parent or guardian apprehended. Every effort should be made

to handle the recovery of merchandise and the processing of the case in a calm and professional manner

Subjects with Medical Problems

It is incumbent upon Burlington Coat Factory to provide for the safety and welfare of all individuals within the store, and this includes apprehended subjects.

Should a subject become injured in the apprehension process, Loss Prevention Associates should ensure that certified medical professionals treat the injury. Where appropriate, the local Emergency Medical Service (or equivalent) should be summoned to tend to all subjects who become injured during an apprehension, who subsequently injure themselves during detainment, or who indicate sickness or some serious ailment. Any alleged injuries must be noted in the Case Incident Report and reported to the responding police officers.

Subjects with other health problems that are aggravated by, or otherwise manifest themselves during the apprehension and detainment, may also warrant immediate medical care. Where appropriate, the local Emergency Medical Services should be summoned.

In any case where a subject becomes injured or seriously ill, the Loss Prevention Associate is required to make notifications as follows:

If a Loss Prevention Associate cannot contact the first, then an attempt must be made to contact the second, and so on.

- The store's Regional Loss Prevention Manager
- Territory Director of Loss Prevention
- The Manager of Central Investigations
- SVP Asset Protection

An Accident Incident report must be filed if a shoplifting subject needs medical attention or is injured during the apprehension

Other Individuals in the Office

Only individuals apprehended for a criminal act should be brought back to the stores office. Other persons in the company of these individuals should be told to wait outside. Occasionally, Loss Prevention Associates may agree to have persons related to the offender, but who were not involved in the commission of a crime, come back to the

office with the apprehended party. Examples of this would be the mother of an apprehended minor, or the spouse of an apprehended adult. It must be made clear to individuals who express the desire to return with the shoplifter that they are not under arrest and are free to go at anytime, further Loss Prevention Associates should only agree to let these individuals accompany the suspect for as long as the individual exhibits good behavior. Should an individual wishing to stay with an apprehended subject become hostile or disorderly, their visiting privileges should be terminated.

Section Eight: Preparation For and Appearing at Court

Subpoenas

A subpoena is a legal document commanding the recipient to supply information; to surrender documents or other physical evidence; or commanding an individual to be present and to give testimony before a court of law or other legal proceeding.

Occasionally, Loss Prevention Associates will receive subpoenas due to an apprehension that they were involved in, or another incident that took place within the store. It is important that when interacting with Law Enforcement personnel you request that all summons and subpoenas be sent to the store address if possible.

The Loss Prevention Associate is to provide copies of this subpoena to their Regional Loss Prevention Manager as soon as it is received. Should the Regional Loss Prevention Manager have any questions regarding the subpoena or other aspects of the prosecution, he/she should contact the Legal Department.

Regional Loss Prevention Managers must keep track of their Loss Prevention Associate's court dates. Work schedules should be arranged and the Loss Prevention Associates should be reminded accordingly

Evidence

In order to support the case, we will submit evidence for the judge and/or jury to consider. The evidence we present may include a number of different things, such as:

- Recovered merchandise or photographs of recovered merchandise
- Video record (if applicable)
- Signed statements
- Tools used to commit a crime
- Photographs of evidence
- Testimony
- Price tickets (discarded or attached)
- SENSORMATIC tags (defeated or attached)
- Cut cables

- Booster apparatus

All of these things will help make the case. It is important that Loss Prevention Associates review all of the evidence that is to be presented prior to their court appearance or deposition. Loss Prevention Associates should be familiar with how the evidence was discovered or obtained and how it fits in with the events in question.

Evidence left in our custody must be secured in an evidence bag or box. The box must be sealed and dated the day the apprehension is made. Evidence containers must be secured in a secure location in the store designated for this purpose. It must remain unopened until it is presented in court.

Some jurisdictions allow photographs of the evidence in lieu of presenting the actual stolen merchandise. Your manager will inform you if that is the case, and if so, the merchandise may generally be returned to stock immediately after being photographed Otherwise, after the case has been completed, and all appeals exhausted, the merchandise may be returned to the selling floor.

Going to Court

All Loss Prevention Associates are required to present themselves in court upon the request of the Regional Loss Prevention Manager or the summons of a court, on the scheduled dates of a trial or inquiry. Loss Prevention Associates must appear in order to give testimony to actions they took themselves or witnessed others take. This is the culmination of the apprehension process and is essential part of our program.

Appearance

Loss Prevention Associates appearing in court must present themselves in a professional and businesslike manner. Loss Prevention Associates should be dressed according to the standards for Burlington Coat Factory Associates and should be well groomed prior to arriving at court. Loss Prevention Associate's appearance will be important to their credibility

Meeting with the Prosecutor

Upon arriving at court, the Loss Prevention Associate should seek out the attorney who will be prosecuting the case. The Loss Prevention Associate should arrive at court at least one half hour before the court convenes in order to have the opportunity to discuss the case with the prosecutor before trial.

If a case is factually complicated, or for some reason a "high profile" case, the Loss Prevention Associate should request a meeting with the prosecutor to review the facts prior to the court date.

The Loss Prevention Associate should have all of the evidence for the case during the meeting with the prosecutor and be able to give a concise description of the events of the case

Testimony

When called to the stand, the Loss Prevention Associate will be "sworn in", which means that Loss Prevention Associate will take an oath to tell the truth. The prosecutor and the defense attorney will take turns asking questions and the Loss Prevention Associate should answer each of them to the best of his/her knowledge, clearly and concisely.

Tips for Witnesses

1. **Tell the truth** - A lie may lose the case. In a lawsuit or criminal trial, as in all other matters, honesty is the best policy. Telling the truth, however, means more than refraining from telling a deliberate falsehood. Telling the truth requires that a witness testify accurately about what he or she knows. If you tell the truth and tell it accurately, nobody can cross you up.
2. **Don't guess** - If you don't know, say you don't know.
3. **Understand the question** - Be sure you understand the question before you attempt to give an answer. You can't possibly give a truthful and accurate answer unless you understand the question. If you don't understand the question, ask the lawyer to repeat it.
4. **Take your time** - Give the question such thought as it requires to understand it, then formulate your answer and give it to the questioner.
5. **Answer the question** - Answer the question asked, then stop. Don't volunteer information.
6. **Talk so you can be heard** - Talk loud enough for everyone to hear you. Don't chew gum, and keep your hands away from your mouth. You can't speak distinctly while chewing gum or with your hand over your mouth.

7. **Answer verbally** - Give an audible answer so that the court reporter can get it, and don't nod your head or say "uh-huh" or "un-uh".

8. **Don't: look to your lawyer for help** - You're on your own on the witness stand. Your lawyer can't help you. You won't get any help from the judge either. If you look to your lawyer when a question is asked on cross-examination, or look for a lawyer's approval when answering a question, the jury is bound to notice it and it will create a bad impression.

9. **Don't guess about times and distances** - Beware of questions involving times and distances. If you make an estimate, make sure everyone understands that you are estimating.

10. **Remember basic personal information** - In the heat of the moment, some people forget. Be sure you know your name, where you live, how old you are, when you were married, your children's full names and other basic information about yourself. If you don't, you will look foolish.

11. **Don't argue with opposing counsel** - Don't fence or argue with the lawyer for the other side. The lawyer has a right to question you, and if you give smart responses or evasive answers, the judge may scold you in front of the jury.

12. **Keep your cool** - Don't lose your temper, no matter how hard you are pressed. Lose your temper and you may lose the case. If you lose your temper, you have played right into the hands of the other side.

13. **Be courteous** - Being courteous is one of the best ways to make a good impression on the judge and jury. Be sure to answer, "Yes, sir (or ma'am)", and t address the Judge as "Your Honor."

14. **Don't be coy** - If asked whether you have talked to the lawyer for your side, or a Loss Prevention Associate, admit it freely.

15. **Avoid jokes and wisecracks** - A lawsuit or criminal trial is a serious matter.

16. **Tell your story** - Don't be afraid to look jurors in the eye and tell your story. Jurors are naturally sympathetic to the witness, and want to hear what he or she has to say.

17. **Be careful** - Give a positive response when you can. Don't let the lawyer for the other side catch you be asking whether you are willing to swear to what you know. If you were there and know what did or didn't happen, don't be afraid to swear to it. You were sworn to tell the truth when you took the stand

Reporting Results

On or before the first business day after a court appearance, Loss Prevention Associates should report to their Regional Loss Prevention Manager the final disposition of the case. Final disposition should be included as an update for the Case Incident Report for that incident.

All criminal cases that are dismissed or result in a finding of not guilty must be communicated immediately to the Territory Director of Loss Prevention or the SVP Asset Protection.

Section Nine: Safety

General

It is the responsibility of all Burlington Coat Factory employees to actively participate in efforts to improve the safety of our stores

Critical Standards for Safety

This list of ten action points is designed to insure a safe environment for our customers and Loss Prevention Associates. All Loss Prevention Loss Prevention Associates should understand these points and look for compliance in the store.

1. Rolling Racks - All empty rolling racks must be removed from the selling floor without exception.
2. Wrap Desks - The floors behind all wrap desks must be kept completely clear at all times. All electrical cords should be secured.
3. Ladders - A ladder and step stool must be in every stockroom. Nothing else should be used for reaching. Neither ladders nor step stools should be left on the selling floor unattended.
4. Caution Cones - Caution Cones and Rain Mats should be used during inclement weather, and during floor maintenance.
5. Escalators/Elevators - Actively promote the safe use of escalators and elevators by both Store Associates and customers.
6. Visual Displays - Visual displays must be inspected daily to insure that they are secure and free of defect.
7. Fixtures/Glass - Fixtures and glass must be inspected daily to ensure that they are stable and defect free. All fixtures with empty arms should be flagged.
8. Debris/Spills - All floors must be kept clean and clear at all times. They should be inspected often.
9. Stockrooms/Back Areas - All rear areas must be clean and clear. DO not stack merchandise too high. Inspect shelving for defects.
10. Hanging artwork, mirrors and similar items must be checked daily to ensure that they are secure and merchandised correctly.

11. Broken tiles, torn carpeting and floor obstructions should be cordoned off or otherwise secured to ensure that they do not cause a slip or trip fall.

All instances of non-compliance to these points should be brought to the attention of the Operations Manager, or Store Manager

Accidents and Injuries

It is a responsibility of the Loss Prevention department to respond to accident scenes and take actions to minimize injury to those involved in an accident, insure that help is made available, and to protect the interests of Burlington Coat Factory. In the execution of this responsibility, Loss Prevention Associates may be faced with the decision of whether or not to render First Aid care to injured individuals. Burlington Coat Factory encourages Loss Prevention Associates to be as helpful as possible to injured persons.

While acting in their capacity as an agent of the company, Loss Prevention Associates are permitted to render those acts of First Aid care in which they have received specific training. Loss Prevention Associates should not attempt treatment for which they have not been trained, or for which adequate equipment supplies are not available.

Loss Prevention Associates should keep in mind their personal responsibility to protect themselves from injury and illness when attempting to assist others.

Company Classification of Accidents

For purposes of response and reporting assignments, Burlington Coat Factory has classified accidents into two categories. These are:

Associate Accidents (Worker Compensation) - any individual who receives their paycheck from Burlington Coat Factory, is for the purposes of this policy, an Associate. Associate accidents should be responded to by Loss Prevention and/or Manager on Duty.

Customer Accidents - any individual who is present on Burlington Coat Factory property, but does not receive a paycheck from Burlington Coat Factory, is for the purposes of this policy, a customer. This does include:

- All customers
- Vendor representatives
- Employees of leased departments (e.g., Ultra Fine Jewelry should report the incident per their company procedures)

- Tailors
- Contractors
- Apprehended subjects

Loss Prevention and/or Manager on Duty must respond to customer accidents

Responding to an Accident or Injury

Upon notification, Loss Prevention Associates are required to report to the scene of any accident or injury that takes place on or about the store premises. The responsibilities of the responder are:

- The **safety of the injured person**(s) and all others within the area
- **Calling for emergency medical services** (if necessary)
- Ensuring that steps are taken to **avoid further accidents**
- Ensuring that the **victim's belongings are secured**
- **Reporting the facts** of the accident or injury

It is essential that all of these steps be completed

Customer

In the event of a customer accident, Loss Prevention agents will have the primary responsibility for managing the incident. Responding agents should:

- Immediately make sure that the customer is in no further danger of injury
- Consult with the customer to see if emergency medical attention is required - if the customer requests medical attention or if it is obvious that it is needed, then EMS should be called
- Keep a crowd from gathering
- Secure the customer's possessions so that they are not lost
- Get as much information from the customer as possible such as
    - Name and address
    - The nature of the accident (how it happened)

- Any obvious injuries or pains
- The victim's reactions to the incident

- Record the names of any Store Associates and others who witnessed the incident or who were in the vicinity at the time
- Contact the appropriate store personnel to correct any conditions that may have contributed to the incident (i.e., Housekeeping, Operations, etc.)
- Stay with the customer until they have received medical attention or they are able to leave the store on their own If they have not already been notified, the Manager on Duty should be apprised of the situation
- Take at least two photographs of the accident scene, chair, fitting room or fixture from different angles after the customer has left
- Prepare a complete Report

NOTE: Loss Prevention agents should make no statements regarding settlements, fault or payment of medical bills

Section Ten: Crisis Management

Robbery

In the event of a robbery, Loss Prevention Associates on duty should:

- Remain calm and do exactly as the robber instructs;
- Concentrate on memorizing the robber's physical description, including:
- Do not attempt to follow the robber or foil the robbery attempt.

After the robber leaves the scene, Loss Prevention Associates should:

- Notify the police
- Secure the area until the police arrive so that evidence may be gathered
- Do not release any information to the media -- any inquiries must be directed to Public Relations
- Complete a list of the descriptive attributes of the suspect, height, weight, hair color, clothing, eye color, facial hair, physical marks, and age.
- Report incident to a Senior Loss Prevention executive immediately

Bomb Threat

It is company policy **not** to evacuate the store in the event of a bomb threat unless an explosive device is found, or unless common sense dictates a quick evacuation. If the Fire Department or Police Department, or any agents of public safety or law enforcement agencies so require, the store must be evacuated immediately. If the entire mall in which our store is located evacuates, our store should as well.

When a bomb threat is received, Loss Prevention Associates and/or Stores Manager on Duty should:

- Notify the police department
- Immediately notify the store's Regional Loss Prevention Manager and/or Territory Director of Loss Prevention.
- Using the Stores office as the command post, all designated store Associates and Loss Prevention Associates should meet there

- The above mentioned personnel should conduct a thorough and organized search of the premises
- No one should attempt to move any item which appears to be suspicious -- remove customers and Store Associates from the area and block the area off to prevent entry
- Complete an incident report on the event

Fire/Smoke Conditions

All Loss Prevention Associates and executives must be trained in the correct interaction with the Fire Safety System in their stores. Location of fire extinguishers, control points and shut-off valves are fundamental pieces of information that all of our Loss Prevention Associates must understand clearly.

In the event of an actual fire and/or smoke condition, the following steps are to be taken:

- Immediately respond to the trouble area to assess the extent of the problem. Fire conditions are broken into two types for our purposes. First is a fire that an individual can easily extinguish by themselves (such as a fire in a wastebasket). In this case, the fire should be extinguished and store management, Regional Operations and Regional Loss Prevention Manager should be informed of the incident. The second type is a fire that cannot be controlled by simple actions of an individual.
- If the fire is uncontrollable, the fire department should be called and a Loss Prevention Associate should be assigned to meet the responding fire fighters at the appropriate entrance.
- The Store Manager on Duty is in charge of the store and should be turned to for direction until the fire department arrives -- the decision to evacuate or not rests with this executive until the Fire Department arrives.
- Loss Prevention Associates should never leave the area of the store, even if it has been evacuated, until dismissed by the senior executive on-duty. The fire alarm system should never be reset without permission from the fire department

Power Failure

In the event of a power failure, Loss Prevention Associates should take every effort to ensure the safety of our customers and Store Associates. Areas of the store that are not

particularly well covered by emergency lighting should be visited quickly (particularly bathrooms and fitting rooms) to determine if there are individuals in need of assistance.

Our exposure to loss during a power failure increases substantially. Camera systems, alarms and registers will typically not operate, and floor observations are made difficult. Loss Prevention Associates will have to be sensitive in the change in environment and exposure and react accordingly.

If Fire and Burglar alarm coverage is lost, a 24-hour fire watch must be established until it is completely restored. Contact your stores Regional Loss Prevention Manager for direction

Code Adam

The following are "Code Adam" operating procedures for BURLINGTON COAT FACTORY

When a parent or guardian notifies an associate that his/her child is missing in any store, here is what to do:

1. **Obtain a detailed description of the child.**
    - Name
    - Age
    - Hair Color, Eye Color
    - Appropriate Weight and Height
    - What the child is wearing (color and type of clothing, ***especially the shoes***).
    - Include scars and marks mark and other identifying features.
2. **After obtaining a detailed description:**

    Go to the nearest phone and page **CODE ADAM** and provide a detailed description of the child using the information you received, than give the extension of the phone you're using.

    The designated personnel will immediately begin looking for the child in their designated areas (aisles, restrooms, stockrooms, etc.) monitoring all doors until relieved by management.

    Ask customers with children, who are trying to exit, if they would please wait for management to arrive before exiting. If a customer insists on

leaving, we must honor their request. It is important that the parent or guardian reporting Code Adam be escorted to the nearest Exit to assist in identifying his/her children.

Members of management will monitor the front door (**DO NOT LOCK DOOR)** to make sure the child does not exit the store without the parent or legal guardian.

Do not let the parent leave the area.

3. **If the child is not found within 10 minutes:**

   Call the local police department as soon as abduction is suspected.

4. **If the child is found and appears to have been lost in the store and unharmed:**

   Reunite the child with the parent or legal guardian. Have the Code Adam canceled.

5. **If the child is found and accompanied by someone other than the parent or legal guardian:**

   Ask the child to state his or her name. If the name is different from that of the missing child, let them go.

   If the child states his/her name is that of the announced missing child ask who the adult accompanying the child is. This indicates a "Hit". Follow next procedures.

   Use reasonable efforts to delay the departure of the person believed to be accompanying the child.

   Call the police and identify the person(s) accompanying the child.

   Review store's camera system for potential information that could assist investigation. Retain all video records until child is found.

6. **Incident Conclusion:**

   Cancel the Code Adam over the PA system to signal that the incident is concluded.

   The Store Manager or Assistant Manager must report that the incident to the Regional Office, even if

   The child was just lost in the store and not abducted.

The store will assign personnel on each shift to:

- Attend Exits, Including Individual Loading Door
- Search Aisles
- Search All Rest Rooms
- Search All Stock Rooms
- Search any nook and cranny where a child who strays can hide.
- Search Parking lots (employees are to be assigned specific sectors).

NOTE: Searching personnel can do all searching in activities individually or in groups.

Fire Alarm / Loss Prevention Alarm

In the event of a Fire Alarm, Loss Prevention Associates should do the following:

- Investigate the source of the alarm to determine the cause;
- If a Fire or Smoke condition exist, follow the instructions outlined earlier in the chapter;
- If a Fire or Smoke condition does not exist, contact the alarm vendor responsible for the system and the store's Regional Loss Prevention Manager to notify them of the problem.

In the event of Burglar alarm activation, Loss Prevention Associates should do the following:

- Investigate the area of the alarm and determine its cause;
- Notify the Store's Regional Loss Prevention Manager of any unauthorized or forced entry immediately;
- Remain on premises until they can be secured and re-alarmed;
- If the alarm is malfunctioning, notify the responsible vendor.

Press and Media Events

Under no circumstances may Loss Prevention Associates offer comments, opinions or statements to members of the Press or mass media. All inquiries should be directed to the Public Relations office in Burlington NJ.

All picture taking and video is prohibited within the store. Permission to take photographs or film may only be granted by Public Relations or Senior Management of the company

Solicitation Guidelines

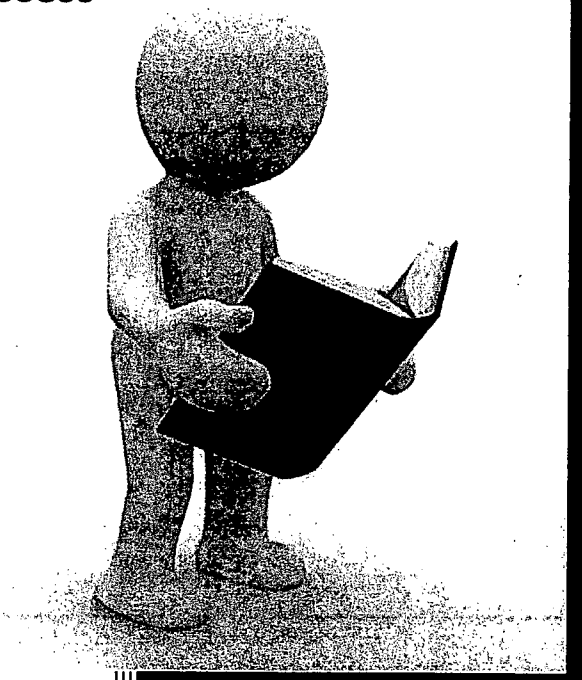
While Burlington Coat Factory generally has advanced notice of demonstration activity, it is possible to be caught off guard. In the event picketers/hand billers appear inside the store or on company property, the following steps should be followed:

1. The Manager on Duty should approach the picketers/hand billers and inform them that they are in violation of the Company's No Solicitation Policy and politely ask them to leave immediately. At the same time, inform them of the stores property lines and ask them to refrain from picketing/handballing on Company property.
2. If the picketers/hand billers insist that they have a right to be on Company property, store management must inform them that we are asserting the Company's legal rights.
3. Store management should not get into an extended discussion. They should tell the picketer/hand biller that Loss Prevention will be called if they refuse to leave the premises.
4. For mall locations, Loss Prevention will notify the mall security management of the potential activity and will ask the mall to enforce the mall's No Solicitation policy in the event of such activity.
5. The store's Regional Vice President and Regional Loss Prevention Manager must be notified of the situation and consulted for direction.

Burlington

Associate Handbook

Our Key to Success



For Continental US Stores

2015

Revised: 02/01/2015

PLAINTIFF'S EXHIBIT 3 3-15-17

Welcome

Welcome to Burlington, a company comprised of approximately 29,000 people winning together and growing. We are pleased that you chose to join us and we know that your contributions will assist us in remaining a leader in our industry and communities we serve.

We offer value to our customers by providing them with high quality merchandise at a competitive price. We are constantly challenged to improve the value proposition to our customers.

I believe credit goes to each one of our associates in maintaining our reputation which has set us apart from other retailers. Our success depends upon the collective energy and experience of all of our associates. We strive to create a work environment where motivated associates can flourish and achieve at their highest potential. We appreciate effort and reward results.

In order to maintain our position as a competitive retailer, we have put into practice basic Core Values that we strive to live by on a daily basis.

- **Develops Trust and Respect**- Gain the confidence of others, be honest and treat them with courtesy and professional regard.
- **Builds Teams and Partnerships**- Work collaboratively and cooperatively with others and strive to meet internal customers' needs.
- **Drives Results**- Take personal ownership and pride in the Company, drive work to conclusion and get things done.

We are happy you have joined the Burlington family and wish you much success during your career with us. We hope this handbook is informative and allows you to gain better insight into our policies, practices, and philosophies. We realize that you may have questions, and encourage you to speak to your manager or your Human Resources Representative.

Sincerely,

Thomas A Kingsbury

Thomas A. Kingsbury
Chief Executive Officer and President
Burlington

Burlington: Purpose of this Handbook

This handbook provides insight into Burlington's culture as well as an overview of many of Burlington's policies, procedures, and benefits. It is designed as a working guide for associates and provides general guidance on Company policies, procedures, benefits, and the standards by which we live. This handbook is not a legal document and should not be construed as and does not constitute an expressed or implied contract. This handbook should provide the proper foundation for associates to exercise sound judgment and decision making so that we can continue to foster a safe, engaged, and healthy workplace.

Burlington reserves the right to change or rescind any provision of this handbook as it deems necessary or appropriate in its sole discretion with or without notice to associates. Please note that the policies and procedures contained in this handbook may differ depending on the location and the state and local laws in effect. In addition, this handbook does not address every Company policy and procedure and may only provide brief summaries of some; accordingly, associates are encouraged to visit Burlington's Human Resources portal page for more information, complete policies and procedures, and benefits information, as well as to keep up with any amendments or changes.

All of us must work together to make Burlington a viable, healthy, and profitable organization. This is the only way we can provide a working environment that promotes genuine concern and respect for our fellow associates and our customers. It is every associate's responsibility to read and understand the provisions in this handbook. Associates should contact their immediate supervisor or Human Resources Business Partner with any questions or if any part of this handbook is not clear. This handbook supersedes any and all prior policies, procedures, and handbooks of the Company issued prior to February 1, 2015.

NOTE: This handbook applies to all associates in our continental US stores. This handbook does not apply to associates employed in our corporate offices, distribution centers, California or Puerto Rico stores.

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SECTION 1 OUR HISTORY

Monroe Milstein opened Burlington's first store in 1972. While our initial focus was on coats, it was not long before men's and ladies fashions were added to the product mix, and by 1974, we began offering children's apparel as well. Less than ten years later, in 1982, we added baby products and accessories to our offerings.

Our business continued to expand and in 1983 we grew to 31 stores (a number that more than doubled to 68 by the end of the following fiscal year). Four years later, in 1987, we added linens and other home categories to our product mix, and by 1993 we hit sales of one billion.

We expanded our product mix yet again in 1997 when we began operating our own shoe department, and reached another milestone in 2000 when we launched our national baby registry and our dot.com online business. By 2001 we opened our first MJM Designer Shoes store offering an extensive collection of famous maker shoes, sandals, boots, and sneakers, in styles to suit the entire family.

In 2006, Burlington was bought by Bain Capital, a leading private investment firm with a strong track record of supporting many retailers and consumer companies in their growth plans.

In October 2013, Burlington successfully conducted an initial public offering (IPO) of our stock. Shares of Burlington began trading on the New York Stock Exchange (NYSE) under the ticker symbol "BURL." This major milestone was accomplished through the commitment and hard work of Burlington's associates.

Today, Burlington is still growing and prospering. We operate more than 525 stores in 44 states and Puerto Rico. What began as just a men's and women's coat store has developed into a one-stop shopping experience for the whole family. We are an off-price retailer that – through strategic purchasing – can offer the latest in designer clothing, shoes, accessories, baby products, and home furnishings at great savings.

We continually strive to improve customer service to ensure that our customers have a shopping experience that leaves them feeling highly satisfied: An experience worth Bragging About!

SECTION 2 OUR WORK ENVIRONMENT

Equal Employment Opportunity

Burlington is an equal opportunity employer. In order to provide equal employment and advancement opportunities to all individuals, employment decisions at Burlington are based upon merit, qualifications and abilities. Burlington does not unlawfully discriminate in the offer, administration, or implementation of employment opportunities or practices based on the following characteristics: race, color, religion, creed, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, gender, gender expression, gender identity, national origin, ancestry, age, physical or mental disability, medical condition, veteran status, marital status (including domestic partnership status), genetic information, transgender status, weight, a perception that an individual has any of these characteristics or any other protected or personal characteristic protected by federal, state, or local law. This policy governs all aspects of employment, including hiring, job assignment, compensation, promotion, corrective action, termination and access to benefits and training.

The Americans with Disabilities Act ensures that individuals with disabilities will have equal access to jobs, public transportation, and private businesses that serve the public. It is our policy that all employment practices are free from discrimination of any kind, including discrimination based on the basis of real or perceived disability.

A qualified individual with a disability who meets the skill, experience, or other requirements of a position that he or she holds or seeks and who can perform the "essential functions" of the position, with or without reasonable accommodation, will be considered equally with other candidates or associates with the same or similar qualifications. All employment decisions will be made without regard to an individual's disability.

Associates, with questions or concerns about any type of discrimination in the workplace, should bring these issues to the immediate attention of their supervisor or follow the Burlington Open Door Policy described in this handbook. Associates should raise concerns and make reports without fear of reprisal. Associate concerns will be investigated, and anyone found to be engaging in any type of unlawful discrimination or harassment will be subject to disciplinary action, up to and including termination of employment for even a first offense.

Policy against Unlawful Discrimination or Harassment

Burlington is committed to providing a work environment free of unlawful discrimination or harassment and maintains a strict policy prohibiting its associates from engaging in unlawful discriminatory or harassing conduct based on the following personal characteristics: race, color, religion, creed, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, gender, gender expression, gender identity, national origin, ancestry, age, physical or mental disability, medical condition, veteran status, marital status (including domestic partnership status), genetic information, transgender status, weight, a perception that an individual has any of these characteristics or any other protected or personal characteristic protected by federal, state, or local law.

Scope

This Policy applies to all associates of Burlington, and no associate is exempt from compliance. It is the responsibility of every associate to maintain fair employment practices at all times and to refrain from unlawful discrimination or harassment.

Unlawful harassment may include actions, words, pictures, or jokes based on one of the following legally protected characteristics: race, color, religion, creed, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, gender, gender expression, gender identity, national origin, ancestry, age, physical or mental disability, medical condition, veteran status, marital status (including domestic partnership status), genetic information, transgender status, weight, a perception that an individual has any of these characteristics or any other protected or personal characteristic protected by federal, state, or local law.

Definition

Federal law defines sexual harassment as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an associate's work performance or creating an intimidating, hostile or offensive working environment.

The law defines sexual harassment as unwanted sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior. The following is a partial list:

- Unwanted sexual advances.
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct: leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, e-mails, websites or posters
- Verbal and written conduct: making or using derogatory comments, e-mails, letters, epithets, slurs, sexually explicit jokes, comments about an associate's body or dress
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations
- Physical conduct: touching, assaulting, impeding or blocking movements

It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females. Sexual harassment on the job is unlawful whether it involves coworker harassment, harassment by a supervisor or manager, or by persons, including customers or clients, doing business with or for the Company.

Procedure

Any associate who believes he or she has been subjected to unlawful discrimination or harassment should raise the concern to any of the following:

- Immediate supervisor
- Manager
- Regional Vice President
- Market/Regional Human Resources Manager
- Territory Human Resources Director
- Company's Integrity Hotline (PH: 1-877-371-0680 or EM: bcfreport@tnwinc.com)

The complaint must be filed as soon as possible after the occurrence of any incident. In order to thoroughly investigate, the Company should be provided the details of the incidents, the names of the individuals involved, and the names of any witnesses.

Once a complaint is received, Burlington will conduct a thorough and objective investigation of the allegations. The complaint will be kept as confidential as practicable, disclosing it only to the extent necessary to investigate the complaint properly and come to a resolution. To the extent deemed appropriate by Burlington, the associate lodging the complaint will be informed of any determination of action upon completion of the investigation.

If Burlington determines that unlawful discrimination or harassment has occurred, it will take effective remedial action commensurate with the severity of the offense. Remedial action may include counseling, oral or written warnings, suspension or termination of employment. Appropriate action will also be taken to deter any future discrimination, harassment or retaliation against the complaining associate.

No Retaliation

Burlington will not retaliate against any associate for filing a good faith complaint or for cooperating in the investigation of a complaint and will not permit retaliation by anyone employed by Burlington against an associate who brings forward a complaint or participates in an investigation. Any associate found to have engaged in retaliatory conduct will be subject to disciplinary action, up to and including termination. Burlington encourages all associates to report any incident of discrimination, harassment, or retaliation forbidden by this policy immediately so that complaints can be quickly and fairly resolved.

Pregnancy-Related Accommodations

Under the laws of the State of Illinois as well as other jurisdictions, additional protections are available to associates and applicants who are pregnant, who have recently given birth, or who have a medical or common condition related to their pregnancy or childbirth. In addition to other protections, such individuals can receive accommodations to assist them in performing their essential job functions, unless doing so would impose an undue hardship.

Examples of possible accommodations include, but are not limited to:

- More frequent or longer bathroom breaks
- Breaks for increased water intake or periodic rest
- Private non-bathroom space for expressing breast milk and breastfeeding
- Seating
- Assistance with manual labor
- Light duty work or assignments
- Temporary transfer to a less strenuous or hazardous position
- A part-time or modified work schedule
- Time off to recover from childbirth or leave required by the associate's pregnancy, childbirth, or related conditions

An associate who needs to request a reasonable *accommodation* due to pregnancy or childbirth should contact her supervisor to discuss her needs. For further information or concerns, associates should contact their Regional HR Manager.

Steps to Effective Problem Solving (STEPS)

STEPS is Burlington's early dispute resolution program which provides multiple opportunities to resolve almost any type of workplace dispute. In the event an associate has or develops concerns related to his/her employment, the STEPS program will ensure the associate's concerns are heard and resolved. The key to STEPS is early resolution, which helps to preserve our work relationships, upholds our company's Core Values, exercises transparency with open and honest two-way communication, and fosters a work environment that supports both individual and company success.

The STEPS program gives our associates a way to express their concerns and resolve workplace issues using a structured, unbiased, and fair process. The program is built on 3 key steps an associate may take in order to have any issues or concerns resolved:

- In Step 1 (Open Door), associates are encouraged to discuss their situation with their supervisor or Human Resources Representative who will work to understand and resolve any workplace issues.
- In Step 2 (Request for Reconsideration), when workplace issues are not resolved in Step 1 (or if Step 1 was not utilized), associates can submit a written request to the STEPS Program Administrator for an independent review of their concern.
- In Step 3 (Arbitration), when an issue was not resolved using Step 1 or Step 2 (whether or not both Steps were utilized), associates may request arbitration, which is much like a court proceeding, but less formal and less time-consuming.

The STEPS process is private and will only involve those with a business need to know.

All associates are automatically enrolled in the STEPS program; however, they have the choice to opt-out of Step 3 (Arbitration). Unless an associate chooses to opt-out of Step 3 (Arbitration) within the prescribed time period, they will be covered by the arbitration program throughout their employment with Burlington, and beyond employment should they leave the company.

An eCourse is available in our Learning Management System to help associates learn more about the program and its benefits. In addition, all associates receive a copy of Burlington Store, Inc.'s Early Dispute Program Rules & Procedures, which provides additional details about STEPS. This document can also be found on the portal.

For questions, please contact the STEPS Program Administrator:

- STEPS@burlingtonstores.com
- Toll-free: 1-844-500-STEP (7837)
- Fax: 609-589-3595

Open Door Policy

Burlington has an Open Door Policy and strongly encourages open communication. Associates are encouraged to openly voice concerns they may have regarding any issues concerning their employment. In return, the Company will respond quickly to these concerns and will be available for support, counsel and assistance. The Open Door Policy is to be used by associates without fear of reprisal. When

associates use the Open Door Policy, the Company will respect the confidentiality of the associate's concerns to the extent possible.

Examples of issues that can be addressed using the Open Door Policy include:

- **Pay and Benefits** (e.g., missing hours, incorrect pay rates, missing pay cards, pay increases, paid time off questions, etc.)
- **General Questions** (e.g., work/life balance, work environment, etc.)
- **Scheduling** (e.g., too few/too many hours, switching days/shifts, time off/leave of absence, calling out, etc.)
- **Tasks and Assignments** (e.g., transfers, working in different areas, promotions, inability to perform a task, etc.)
- **Co-Workers** (e.g., improper behavior, harassment, threats, violence, disagreements, etc.)
- **Management** (e.g., unprofessional behavior, harassment, discrimination, threats, favoritism, etc.)
- **Policy Violations** (any violations of Company policies and Procedures)
  **This list is not all inclusive*

Associates should seek help or answers regarding any work-related questions, concerns, or complaints by contacting their:

1. Immediate Supervisor
2. Store Manager
3. Market/Regional Human Resources Manager
4. Regional Vice President
5. Territory Human Resources Director
6. Vice President of Human Resources - Stores

If for any reason an associate is uncomfortable raising questions, concerns or complaints to one person, associates can contact the person at the next level. Similarly, if the associate feels that their question, concern, or complaint has not been satisfactorily handled at one level, they may address it to the next level. In addition, or as an alternative to using the above, associates can contact Human Resources via direct mail to:

Burlington
Attention: Human Resources
1830 Route 130
Burlington, NJ 08016

The Company reserves the right to discount anonymous communications which make allegations but do not provide sufficient information upon which to act.

Integrity Hotline

In conjunction with the Open Door Policy, Burlington has an Integrity Hotline to be used for reporting violations of applicable law and ethical rules, including violations of the Company's Code of Business Conduct and Ethics. We suggest that where appropriate, every attempt be made by the associate to first address any concerns with their immediate supervisor or Human Resources Representative before using the Integrity Hotline.

Below is a sample list* of claims that can be addressed using the Integrity Hotline:

- **Theft** (e.g., any unlawful theft or loss of Company merchandise, services, or resources, including violations of time by falsifying amount of time worked, etc.)
- **Illegal Practices** (e.g., Falsification of Company Records, Fraud, Substance Abuse, etc.)
- **Policy Violations** (any violations of Company policies and procedures)
- **Wage and Hour Law Violations** (any abuse of federal or state law designed to protect associates against lost wages, unpaid overtime, working off the clock, or being paid below minimum wage.)
- **Sexual Harassment** (any unwanted and offensive sexual advances, remarks or acts by a member of our management team or a peer)
- **Discrimination** (treatment or consideration of, or making a distinction in favor of or against, a person or thing based on distinctive characteristics that a person possesses or group they belong to, rather than on individual merit: i.e., *race, religion, gender, age, disability, sexual orientation, physical appearance, etc.*)
- **Work Place Violence** (any act of aggression that originates from associates or employers and threatens others safety, well-being or health)
  **This list is not all inclusive*

Associates are encouraged to use the procedure as outlined in the Open Door Policy for Associate Relations issues. However, if for any reason the question, concern, or complaint has not been satisfactorily handled via the Open Door Policy the associate can contact the Company's Integrity Hotline:

1-877-371-0680
bcfreport@tnwinc.com

Complaints and concerns will be handled and investigated by the appropriate individual.

Associates are within their right to remain anonymous when contacting this hotline; however, the Company reserves the right to discount anonymous communications which make allegations but do not provide sufficient information upon which to act.

Confidentiality Policy

In the course of employment, associates may have access to non-public information concerning our Company, our associates, our customers, vendors and other third parties with whom we conduct business. All such information, except information that is already in the public domain or becomes part of the public domain without breach of this statement of policy, is considered confidential. Associates are authorized to have access to confidential information only to the extent related to and necessary to perform their job. It is a violation of policy for any associate to obtain or seek to obtain confidential information not related to and necessary to perform their job. Associates should exercise good judgment in handling confidential information and in determining whether information should be regarded as confidential.

Examples of confidential information include: associate personal information, such as personnel files, social security numbers, drivers' license numbers, insurance policy information (including all information pertaining to designated beneficiaries), wage garnishments, background check results, bank account/direct deposit information, and an associate's personal 401(k) and profit sharing account information; customer information, such as names, addresses, telephone numbers, credit card numbers, and purchase records; and business information including, without limitation, business plans and strategies, sales and earnings figures and other financial or accounting records of Burlington,

office and work files, product source and product mix, confidential product information provided by outside vendors or suppliers, real estate ownership and leasing records, including, without limitation, vendor, landlord, over-landlord, sub-landlord and subtenant identification, relationships and other information, property location and costs, occupancy expense and other property data, as well as other data pertaining to the business and affairs of the Company or of other companies that have dealings with Burlington, such as confidential business methods and customer lists.

Confidential information, whether obtained while performing job duties or divulged unintentionally to the associate, or obtained in any other manner, must be protected at all times. Divulging confidential information or using such information for other than Company purposes may be harmful to the Company's competitive position. In no event should confidential information be disclosed or distributed outside the company or recorded, retained, and copied in any form without the express approval of the Legal department. Associates may not use any confidential information in any manner for personal or private gain, or that of any third party.

Associates must abide by the terms of any confidentiality agreement between Burlington and any other party whenever informed of the existence of such an agreement.

SECTION 3 HIRING and EMPLOYMENT PRACTICES

Employment Application Process

Burlington is an equal opportunity employer and hires individuals on the basis of their qualifications. Burlington relies upon the accuracy of information contained in the employment application and other data presented throughout the hiring process and continued employment. Any misrepresentations, falsifications, or material omissions in any of this information or data may exclude a candidate from further consideration for employment or, if they have been hired, may result in their termination from employment.

Employment Verification Eligibility

Burlington does not unlawfully discriminate on the basis of citizenship or national origin. In compliance with the Immigration Reform and Control Act of 1986, each new associate, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. Former associates that have been rehired must also complete this form if they have not completed an I-9 within the past three years; or if their previous I-9 is no longer retained or valid. Associates may raise questions or complaints about immigration law compliance without fear of reprisal.

Personal Data Changes

It is the associate's responsibility to promptly notify Burlington of any changes in their personal data. If any personal data has changed, associates should promptly log into the Workday system using their approved login and password and update the information.

The following tasks can be accessed through Workday:

Online Pay Information	View pay information one day before payday. Funds are available on Friday.
Associate Views	View employment and wage history.
W4 Maintenance	View or make changes to the W4 form electronically. This only affects federal W4 elections, not state elections. To make changes to state elections, associates must send an email to hrsupport@coat.com.
Personal Information	View or update name, marital status, phone number, address, and emergency contact. Please note proof of change will be required for benefits purposes for changes to name and marital status.
Benefits enrollment	At time of hire or during annual open enrollment.

Workday is available to all associates immediately upon their first day of work. For information about how to log on and to receive a login and password, contact hrsupport@coat.com. Directions for accessing the system can be found on the Burlington portal under the Human Resources Tab.

Rehiring of Former Associates

Associates who leave Burlington in good standing are usually eligible for rehire. Burlington is open to rehiring former associates; however, at the time of submitting an application for rehire, applicants must make known their former status, job location and reason for leaving. Consideration for job opportunities is on the same basis as other applicants.

Employment of Relatives

Burlington considers itself to be a family-friendly business and does not prohibit hiring qualified applicants who are relatives of existing associates. However, the employment of relatives in the same area of any organization may cause a conflict of interest. To eliminate such conflicts of interest, associates are prohibited from being in the position of supervising, reviewing or having any influence on the job evaluation or compensation of persons with whom they have a family or close relationship (such as dating or live-in relationship).

Burlington will take prompt action in the event of an actual or potential violation. Such remedial action may include, mandatory reassignment of affected associates, or, if necessary, termination of employment for one or more of the individuals involved. The same policy will apply to any individuals who become relatives or involved in a close relationship after they are already employed by Burlington.

For purposes of this policy, a relative is any person who is related by blood, adoption, or marriage, or whose relationship with the individual is similar to that of persons who are related by blood, adoption, or marriage (e.g. a child, stepchild, parent, stepparent, spouse, registered domestic partner, sibling, uncle, aunt, nephew, niece, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law), and those with a close relationship to the associate (such as a romantic, dating, or live-in relationship).

Nepotism

Decisions about hiring, promoting, awarding salary increases and terminating associates should be based on objective criteria such as qualifications for the position, experience, ability, performance and the requirements of the Company, among others. Care must be taken to avoid favoritism, the appearance of favoritism, and conflicts of interest in employment decisions. Accordingly, the Company's Nepotism Policy prohibits hiring a family member of an Officer of the Company. Exceptions can only be made with the review and approval of the Chief Executive Officer and Executive Vice President of Human Resources.

"Officer" includes vice president and above.

"Family member" includes the Officer's child, stepchild, parent, stepparent, spouse, registered domestic partner, sibling, uncle, aunt, nephew, niece, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and those with a close relationship to the Officer (such as a romantic, dating or live-in relationship).

The Company's Nepotism Policy is effective as of September 2012. All family members of Officers, already employed by the Company before September 2012, may remain associates of the Company; provided, however, that

- Such associates are not direct reports of the Officer with whom they have a family member relationship
- Officers shall not make any employment decision affecting such associates with whom they have a family member relationship unless the decision is first reviewed and approved by the Chief Executive Officer and the Executive Vice President of Human Resources

Personal Relationships/Dating in the Workplace

Burlington strongly believes that associates should maintain clear boundaries between personal and business relationships. Burlington does not seek to prevent the development of friendships or romantic relationships between co-workers; however, care must be taken so that personal interests or activities do not interfere with business decisions.

In order to minimize the risk of conflicts of interest and to promote fairness, no associate in a supervisory position may have a romantic or dating relationship with an associate whom he or she directly supervises or whose terms or conditions of employment he or she may influence. When such a romantic or dating relationship happens in the course of employment at Burlington, full disclosure must be made to their direct supervisor who should notify the Compliance Counsel.

Associates are expected to conduct themselves in a professional manner at all times. Accordingly, associates are expected to keep personal exchanges limited and refrain from behavior that may make others feel uncomfortable.

Associates are strictly prohibited from engaging in inappropriate physical contact (e.g. overt displays of physical affection and using sexual language) in the workplace.

Associate Status

Associates are classified as **Full-Time, Part-Time, On Call** or **Seasonal** for the purpose of determining the allowance of certain associate benefits:

- Full-Time Associate - An associate who maintains an average of thirty-seven and a half (37.5) hours per week (to include a minimum of 2 evenings and 1 weekend shift per week). If the average hours per week (averaged over 52 weeks) fall below 37.5 hours, the associate will lose their full-time status.
- Part-Time Associate - An associate who works less than an average of thirty (30) hours per week on a regular basis (averaged over 52 weeks). These hours can be mornings, afternoons, evenings or a combination of the three during all pre-open, open and closed/recovery store hours. The maximum number of hours that would be scheduled will be based upon the following part time options:
  - PT1—is a maximum of 20 hours scheduled per week
  - PT2—is a maximum of 30 hours scheduled per week
- On Call Associate – An associate who works hours as needed; these associates may not be routinely scheduled.
- Seasonal Associate - An associate who is temporarily hired during specific times of the year to support our business trend; schedules will vary to meet business needs and will include evenings and weekends each week. Seasonal associates are not eligible for any Burlington benefits or paid time off, with the exception of the associate discount. Service as a seasonal associate does

not count as service as a Regular Associate for benefit eligibility purposes.

Open Positions/Transfers/Advancement Practices

Open management positions are posted on the Burlington website via the CareerWorks link, at management's discretion. Burlington prefers that applicants have a minimum of 6 months of service in their current job and must not have any unresolved corrective action or performance issues.

Associates who wish to transfer to another location must notify their manager as well as their Human Resources Representative of their interest in a transfer, and then apply for the position via the CareerWorks link. Requests for transfer will be considered on a case-by-case basis according to Burlington's needs. A transfer is not approved until management and Human Resources approve the transfer.

Performance Appraisals/Performance Management

Managers and associates are strongly encouraged to provide feedback on job performance and goals on an informal, day-to-day basis. Annually, Burlington formally reviews the performance and pay of each associate. At this time associates' job performance, productivity, behavior and personal growth will be reviewed as well as the attainment of pre-established goals and objectives. Merit increases may be awarded to those associates who have demonstrated positive work performance during the previous year and who have contributed to the growth and success of the Company. Annual merit increases are not guaranteed and are subject to approval by executive management. Burlington's policy and goal is to recognize and reward contributions made by individual associates.

Associates with unacceptable performance must develop a Performance Advisory Counseling (PAC) in collaboration with their manager. The plan is documented through the assistance of the Market/Regional Human Resources Manager, and is comprised of an action plan which lists steps necessary to improve performance. The goal of the plan is to help the associate become successful. Progress is monitored and feedback provided frequently. As with any plan, failure to show improvement could lead to termination of employment.

SECTION 4 TIMEKEEPING AND WAGES

Payday

Burlington issues pay on Fridays on a weekly and bi-weekly basis. The payroll period runs from Sunday to Saturday. An associate's pay will include earnings for all work performed through the end of the previous payroll period. Non-exempt associates will be paid on a weekly basis and exempt associates will be paid on a bi-weekly basis. Associates can view their current and past pay information on the iPay website at https://ipay.adp.com/iPay/login.jsf. Any questions regarding pay should be discussed with the associate's Supervisor immediately so that the problems or errors can be corrected without delay.

Exempt Associate Pay

In general, an exempt associate will receive his/her salary for any week in which any work is performed, regardless of the number of days or hours worked. However, in accordance with applicable laws, the Company may make deductions from an exempt associate's salary in certain limited situations.

If an associate believes that his/her salary was improperly reduced, please advise Human Resources right away. The Company will investigate and will provide the associate with any compensation to which he/she is entitled in a timely fashion.

Timekeeping

Accurately recording time worked is the responsibility of every non-exempt associate. Federal and state laws require Burlington to keep an accurate record of time worked in order to calculate pay and benefits. Time worked is the time associates actually spend engaged in a work-related activity.

Identification cards are issued to all associates when they begin their employment at Burlington. The identification card is used for recognition purposes to enter the building and for non-exempt associates to swipe the time clock.

All non-exempt associates are required to record their daily attendance and hours of work on a time clock. Time clocks are placed strategically around the building. Associates must accurately record the time they begin and end work, as well as the beginning and ending time of each of their meal periods. Associates must also record the beginning and ending time of any split shift or departure from work for personal reasons. It is prohibited by law and Company policy to allow associates to work off the clock or continue to work after clocking out. Associates and managers are required to immediately report any instance of associates working without being compensated for the time to their Market/Regional Human Resources Manager. All reported instances of off the clock work will be investigated in a timely fashion and required compensation will be paid. Managers who permit off the clock work may be subject to disciplinary action up to and including termination.

Pay for non-exempt associates is computed on the basis of the entries in to the time keeping system, approved and verified by their supervisor or delegate, which reflects the times they clocked in or out using their Burlington swipe card at the time clock. For this reason, the process of clocking in and out

must be strictly followed. If an associate misses a time punch, he or she must notify their supervisor immediately. The associate's supervisor or delegate will adjust their time accordingly.

Under no circumstances may time records be altered, falsified, or tampered with. It is also prohibited for an associate to ask another associate to clock in or out for them or to perform this service for another associate. Failure to fully comply with these requirements may result in corrective action, up to and including termination of employment.

Overtime

Occasionally, when operating requirements or other needs cannot be met during regular working hours, it may become necessary for associates to work overtime hours. Whenever possible, advance notification of these overtime requirements will be provided.

Overtime compensation is paid to all associates who are not exempt from federal and state wage/hour restrictions.

- Overtime compensation will be paid, to non-exempt associates, at a rate of 1 ½ times their regular rate of pay for all hours worked during the pay week in excess of 40 hours (except where state law dictates otherwise).

Overtime pay is based on actual hours worked. Time off for sick leave, vacation leave, holidays or leave of absence will not be considered hours worked for purposes of performing overtime calculations (these rules may vary according to certain state laws).

All overtime work must be pre-approved by the associate's supervisor. Under no circumstances shall an associate work overtime without prior approval from their supervisor. An associate's failure to receive prior authorization from their supervisor before they work overtime may result in corrective action.

Meal Periods

The meal period is a minimum of half an hour and is unpaid. Meal periods are scheduled to accommodate operating requirements as well as wage and hour regulations and are provided to associates who work a shift that is 6 hours or longer (unless otherwise dictated by state law). Associates are relieved of all duties and permitted to leave the building during this time. Non-exempt associates must swipe out and back in for the meal period.

Paid Rest Breaks

Unless otherwise dictated by state law, associates who work a four (4) hour shift receive one (1) paid 15-minute rest break. Associates who work a shift of eight (8) hours or more receive two (2) paid 15-minute rest breaks.

Whenever possible, rest periods will be provided in the middle of work periods. In general, a total of 15 minutes should be taken in the morning, not to accumulate to the afternoon or to any other day. A total of 15 minutes should be taken in the afternoon, not to accumulate to the next day.

Associates must be relieved of all duties during this time and are not required to swipe for their paid rest breaks; however, since this time is counted and paid as time worked, associates must not leave the premises and should not be absent from their work station beyond the allotted rest period time.

Failure to adhere to your schedule, including failing to take required meal and rest periods may result in disciplinary action up to and including termination.

SECTION 5 ASSOCIATE BENEFITS

Burlington is pleased to offer a full menu of benefit options to provide for the well-being of our associates and their family. Recognizing that the benefits available to our associates make up a considerable part of their total compensation, and are also an important personal benefit, it is our goal to provide them with a comprehensive benefits package. Please refer to the Benefits Overview brochure for full descriptions and eligibility criteria for of all of the Company's benefit plans.

The Benefits Overview brochure, Summary Plan Descriptions, and other materials provided directly from our benefit providers, are available on the Burlington portal under the Human Resources tab.

Eligibility for Medical Benefits is defined as follows:

Full Time Status is defined as working 7.5 daily average hours (DAH) over a rolling 52 week period. For full-time exempt (salaried) and non-exempt (hourly) associates eligibility for medical plans is as follows:

- Exempt associates are eligible the first of the month following 30 days of employment
- Non-exempt associates are eligible the first of the month following 45 days of employment
  - Full-time, non-exempt associates are eligible to participate during the waiting period. The waiting period is defined as time period between the 1st of the month following 30 days and the 1st of the month following 45 days.

Note: Part-time associates hired prior to January 1, 2007 who maintain daily average hours of 3.85 to 7.49 are 'grandfathered' and eligible for full time status benefits (medical and PTO only).

Part Time Status is defined as working 3.85 up to 7.49 daily average hours (DAH) over a rolling 52 week period. Part-time associates eligibility for limited medical plans is as follows:

- Non-exempt associates are eligible the first of the month following 30 days of employment.

Temporary Status is defined as working for a specific, mutually agreed upon, period of time are not eligible for benefits.

New Hires

- Exempt associates are eligible the first of the month following 30 days of employment
- Non-exempt associates are eligible the first of the month following 45 days of employment maintaining 7.5 hours per day or higher
- Note: Full-time, non-exempt associates are eligible to participate in the limited medical plan during the waiting period. The waiting period is defined as time period between the 1st of the month following 30 days and the 1st of the month following 45 days.

Promotions

Non-exempt to exempt

- If already eligible based on new hire status; no change
- If promotion occurs during the waiting period; benefit eligibility is the 1st of the month following 30 days of the promotion

Part –time non-exempt to full –time non-exempt

- Eligibility for company sponsored benefits is determined by full time status of daily average hours of 7.5 or higher over a 52 week rolling period

Temporary to non-exempt or exempt

- Benefit eligibility is the same as new hire; see Eligibility for Associate Benefits above

Enrollment

Associates may enroll for benefits when newly hired, subject to eligibility, and because the associate's premium contribution for health and dental insurance is deducted from their pay on a pre-tax basis, the Internal Revenue Code limits when changes to coverage can be made.

The IRS states that the elections made during an enrollment period must stay in effect for the entire plan year (January 1 through December 31). An associate may only enroll, make changes or cancel benefits as follows:

- During our annual enrollment period
- Within 31 days of a Qualified Life Event, such as;
  - Change in marital status
  - Birth or adoption of a child
- A change in associate's residence or worksite resulting in a change in associate's benefit options
- Associate's dependent's eligibility changes due to age or student status
- The associate or their spouse have a change in employment status, such as a change from full-time to part-time or vice versa, causing a loss or gain of coverage
- Death of associate's spouse or dependent
- Entitlement to or loss of Medicare or Medicaid by the associate, their spouse or dependent

Changes due to a qualified life event must be consistent with the event. For example if the associate gets married, her or she may change coverage level from "single" to "you and your spouse," but the associate may not elect coverage in a different medical plan. Please note that for any change to be implemented, the associate MUST provide written notice to The Corporate Benefits Department within 31 days of the change in status.

For more complete information regarding benefit programs, please contact the Benefits Hotline at extension 3300 or go online to the Burlington portal under the Human Resources Tab.

How to Enroll

To make benefit elections, follow these simple steps:

- **Get ready to enroll** - Read the Benefits Overview carefully
- **Make selections** - Log into the Workday system, which allows associates to make their benefit elections and enter their dependents' information directly on-line.
  - The Benefits Overview and Instructions for self-service are available on the Burlington portal under the Human Resources Tab; also, a copy of the manual will be available at the computer by the location dedicated for enrollment. Only the benefits for which the associate is eligible will be displayed
- **Enrollment Period** - The associate has until the date indicated in their orientation paperwork to enter their benefit elections

What Happens If I Do Not Enroll?

If the associate does not complete their enrollment, and are a full-time benefits eligible associate, their Company Sponsored medical coverage will default to the POS – Low option for associate only coverage (local plans if POS – Low option coverage is not available) and to no coverage (Waive) for all other

benefits such as Dental, Vision, Supplemental Life and AD&D, Disability Insurance and the Dependent Care Spending Account with the exception of those provided to the associate by the company for which they are eligible, Basic Life and Accidental Death & Dismemberment (AD&D), Business Travel Accident Insurance and the Employee Assistance Program.

The benefits the associate elects (or their default to "Waive" if they do not elect voluntary benefits) will remain in effect until the next Open Enrollment period and cannot be changed unless they experience one of the changes in status described earlier in this section. Please keep in mind that some benefits, such as Supplemental Life and AD&D and Disability Insurance, may require approval and acceptance by the insurance carrier if the associate elects at a time other than their initial eligibility period.

If for any reason the information in this handbook contradicts information in the summary plan, the summary plan shall govern in all cases as to all terms and conditions, rights and obligations. Burlington reserves the rights to amend, modify, or terminate any of its benefit programs or to require or increase associate premium contributions or other associate costs with or without advance notice at its discretion.

In the event that the associate leaves the employment of the Company and is therefore no longer covered by Burlington benefits plans, but they return to employment at any future date, they must obtain eligibility status by working the required length of time and hours required for each Burlington benefit.

Inclement Weather Pay

All associates are eligible for inclement weather pay immediately upon employment with Burlington. In the event the Store must be closed due to inclement weather, all associates who are actually working when it closes will be paid for actual hours clocked or a minimum of 3 hours of regular pay, whichever is more (except where state law dictates otherwise). An associate must actually have reported to work on that day in order to receive inclement weather pay.

We are concerned for everyone's safety. Managers will make every reasonable effort to contact associates scheduled for work to inform them of the pending closure. Inclement weather pay is included in calculating benefits. However, only hours actually worked are included in the calculation of overtime.

Jury Duty

Eligibility: Except as otherwise provided by applicable law, full-time associates as defined in the Benefits Eligibility section of this Associate Handbook are eligible. **Note:** Part-time associates hired prior to January 1, 2007 who maintain daily average hours of 3.85 to 7.49 are 'grandfathered' and also eligible.

Burlington encourages all associates to fulfill their civic responsibilities by serving jury duty when required. Associates may receive up to 3 days of paid absence for scheduled days of work missed due to jury duty. This benefit is offered immediately upon employment with Burlington. The following guidelines apply:

- Calculation of an associate's daily wages for purposes of jury duty pay will be based upon the hours the associate was scheduled for the jury duty days (up to three) or three days pay for an exempt associate.
- Associates must show the jury duty summons and/or any related documentation to their immediate supervisor as soon as possible so that their supervisor can make arrangements to accommodate their absence.
- Associates are not eligible for jury duty pay for days outside their regular work schedule or if they are already out on paid or unpaid leave of absence, on lay off, or receiving disability or worker's compensation benefits.
- If an associate is required to serve jury duty beyond the period of paid jury duty leave, he/she may use any available time off (e.g. paid time off) or may request an unpaid jury duty leave of absence.
- Burlington will continue to provide health insurance benefits during jury duty. Associates will be required to continue paying their portion of the insurance premiums.
- Associates are required to report for work whenever court is not in session and will be required to submit to Burlington verification of the time they served jury duty.
- Laws may vary from state to state

Bereavement Pay

Eligibility: Except as otherwise provided by applicable law, full-time associates as defined in the Benefits Eligibility section of this Associate Handbook are eligible. **Note:** Part-time associates hired prior to January 1, 2007 who maintain daily average hours of 3.85 to 7.49 are 'grandfathered' and also eligible.

In the unfortunate event that an immediate family member passes away, associates will be granted up to 3 consecutive work days of paid bereavement leave for days of work missed that the associate was scheduled to work.

This benefit is offered to full time associates immediately upon hire by Burlington. Associates must provide appropriate documentation to their supervisor for use of this benefit.

The following guidelines apply (except where state law requires otherwise):

- An associate's immediate family member is defined as their mother, father, sister, brother, grandmother, grandfather, spouse, domestic partner, child/domestic partner's child, or grandchild. In the case of mother-in-law and father-in-law, associates will be granted 1 day of bereavement; however, they may also schedule any earned vacation or ask for scheduling consideration from their supervisor.
- Calculation of an associate's daily wages for purposes of bereavement pay will be based upon the average hours worked per day, including all categories of benefit pay, during the 52 weeks (or such shorter period) prior to the week in which the associate requests the time off, excluding other special forms of compensation such as incentives, commissions, or bonuses. Overtime will be included in calculating average hours worked over the previous 52 weeks. However, bereavement pay will not exceed 8 hours average per day.
- If an associate needs time off, he/she must contact his/her supervisor as soon as possible to make them aware of their situation so that his/her supervisor can plan for his/her absence.
- Associates are not eligible for bereavement pay if they are already out on paid or unpaid leave of absence, or receiving disability or worker's compensation benefits.

- Bereavement pay is not included in overtime calculations, but is included in calculating all other benefits.
- For time off without pay due to the loss of a family member other than those listed above, associates must contact their supervisor and/or Human Resources Representative. If possible, they may allow the associate unpaid time off. Any unpaid approved time off exceeding 3 consecutive days will be deducted from the associate's Burlington LOA entitlement (if applicable).

Associate Discounts

Burlington associates, their spouses/domestic partners, and their extended family members (e.g. children, parents, grandparents, siblings, aunts/uncles, cousins, nieces, nephews, mother and father-in-law, brother and sister in-laws, stepparents, and stepchildren), are eligible to receive a 10% discount for all purchases made at any Burlington store. This benefit is offered to all associates immediately upon employment. Approximately 45 days after their start date, associates will receive five (5) Family Discount Cards for their extended family members to use on purchases so they may enjoy the same shopping discount.

The following guidelines apply to the use of associate discounts:

- Associates must be on their personal time
- Associates and family members using family discount cards can visit any register to make purchases
- Associates cannot ring their own transactions or that of a family member
- Associates must show their ID badge in order to receive the discount. Family members must present their Family Discount Card in order to receive the discount

Periodically, Burlington may offer additional discounts during special Associate Appreciation Days for more savings.

Please note, it is a violation of Company policy to use the associate discount to purchase merchandise for resale or to receive reimbursement from a third party. Violation of this policy may result in disciplinary action up to and including termination.

Leaves of Absence

Military Leave

General leave and reemployment rights: In accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), Burlington grants military leaves of absence to associates who enlist for up to five years of active duty in the United States military or who miss work because of reserve or National Guard training or a call-up to active duty.

Notification of absence: Associates who are absent because of military obligations should request military leave as far in advance as possible.

Pay during leave: While absent on military leave, associates remain in good standing, but do not receive

pay. Associates do not receive pay for any holidays falling during the period of their absence. However, exempt associates are paid in full for any week during which they are called on to perform some work. The company may offset any amounts received by the associate as military pay against the salary due for that particular week.

Health plan coverage during leave: During an unpaid military leave of absence, Burlington continues to subsidize an associate's group health care benefits for up to 30 days. Associates absent on military leave for 31 days or longer are eligible for family health benefit coverage from the military. They also can arrange to continue their coverage under Burlington's group health plan for up to 24 months. Associates opting for continued coverage under Burlington's health plan are responsible for paying 102 percent of the premium cost.

Impact of leave on other benefits: Associates on military leave do not accrue paid time off. However, the time off counts toward an associate's length of service for purposes of determining the rate at which associates earn vacation after returning. Similarly, for purposes of determining benefits and pay when associates return from leave, time spent on military leave counts as service with Burlington. On an associate's return from active-duty, Burlington makes up any missed retirement plan contributions. Further, associates participating in the 401(k) plan can choose to make up missed contributions to the plan on their return from active duty, and such contributions are eligible for Burlington matching.

Use of accrued vacation: Associates who have accumulated vacation leave can schedule vacation at the same time as military leave and be paid. However, associates are not required to use their vacation time while on military leave.

Family and Medical Leave Act (FMLA)

In accordance with the Family and Medical Leave Act of 1993 ("FMLA"), the Company provides family and medical leaves of absence ("FMLA Leave") *without pay* to eligible associates who wish to take time off from their work duties to fulfill obligations relating directly to any of the following:

- Birth or care of a newborn son or daughter;
- A child newly placed for adoption or foster care;
- The associate's spouse, child, dependent, or parent with a serious health condition;
- A serious health condition that makes the associate unable to perform an essential function of his/her position.

Eligibility

To be eligible for FMLA Leave, the associate must have worked for the Company for at least twelve (12) months, and must have worked for at least 1,250 hours during the twelve (12) month period immediately preceding the requested leave. FMLA leave may be taken for a period not to exceed twelve (12) work weeks of unpaid leave during one twelve (12) month period. An associate may take intermittent leave or may work a reduced work schedule to reduce the usual amount of hours per day, per week. Prior approval to take FMLA leave may be required in accordance with the Family and Medical Leave Act. If a paid holiday falls during the period that the associate is on FMLA leave, the associate will not be eligible for Holiday Pay and forfeits the holiday.

If the associate's spouse is also an associate of the Company, the Company may restrict their leave to a combined total of twelve (12) weeks within any twelve (12) month period for childbirth, adoption, or placement of a foster child of a healthy child; or to care for a parent with a serious health condition. Time spent receiving state disability benefits or workers' compensation will count towards the twelve

(12) week FMLA Leave maximum. Eligibility for FMLA leave based on birth or the placement for adoption or foster care of a child expires at the end of the twelve (12) month period, beginning on the date of the birth or the placement. A "child," for purposes of this section means a son or daughter under the age of 18 or who is over the age of 18 but incapable of self care because of a physical or mental disability.

Associate Notice Requirements

Associates must submit FMLA Leave requests to their Store Manager. In addition, associates must also contact MetLife at 1-866-729-9201. MetLife is the administrator of all FMLA leaves for the Company. In cases where the need for FMLA Leave is foreseeable, ***the associate must provide the Company with at least thirty (30) days advance notice of the leave.*** If the leave is for an emergency situation and must begin in less than thirty (30) days, the associate shall notify the Company at the earliest time possible. If the associate fails to provide thirty (30) days notice for a foreseeable leave, except in cases of an emergency, with no reasonable excuse for the delay, the leave may be denied until at least thirty (30) days from the date the notice is provided.

If FMLA Leave is requested due to a serious health condition, the associate is required to submit to MetLife a Medical Leave Certification Form from the associate's treating healthcare provider. MetLife may also require the associate to be examined by a physician designated by the Company for a second opinion at the Company's expense.

It is the associate's responsibility to provide MetLife with timely, complete and sufficient medical certifications. Whenever MetLife requests associates to provide FMLA Medical Certification forms, associates must provide the requested certification within 15 calendar days after MetLife's request, unless it is not practicable to do so despite an associate's diligent, good faith efforts. MetLife will inform associates if submitted medical certifications are incomplete or insufficient and provide associates at least 7 calendar days to cure deficiencies. MetLife will deny FMLA Leave to associates who fail to timely cure deficiencies or otherwise fail to timely submit requested medical certifications.

To trigger FMLA Leave protections, associates must inform their supervisor and MetLife of the need for leave and the anticipated timing and duration of the leave, if known. Associates may do this by either requesting FMLA Leave specifically, or explaining the reasons for leave, to MetLife, so as to allow MetLife to determine that the leave is FMLA-qualifying. Simply calling in "sick," will not be considered sufficient notice for FMLA Leave under this policy. Associates must respond to both the Company and MetLife's inquiries to determine if absences are potentially FMLA-qualifying.

Types of Leave

FMLA Leave can be taken consecutively, intermittently (leave taken in separate blocks of time, in hours, days or weeks, due to the same qualifying condition), or through a reduced work schedule (decrease in an associate's usual number of working hours per week or hours per work day).

FMLA Leave can be taken intermittently or on a reduced schedule only when medically necessary for a serious health condition or prenatal care, or to provide care to an immediate family member with a serious health condition. Intermittent or reduced work schedule leave must be scheduled so as not to unduly disrupt the Company's operations. When intermittent leave is granted based upon foreseeable planned medical treatment, the Company has the right to transfer the associate temporarily to an available position with equivalent pay and benefits that better accommodates recurring periods of leave than the regular position of the associate. Updated medical certifications may be required for intermittent leave (no more frequently than every 30 days.)

The Company may, in its sole discretion, permit associates to continue working on an intermittent or reduced schedule leave after the birth or placement for adoption or foster care of a child.

Use of Paid Time Off
An associate is required to take any and all earned paid time off (banked sick, sick, vacation, personal days) for any part of the 12 weeks of FMLA Leave. For example, if an associate has 2 weeks of earned vacation time and is eligible for FMLA Leave, the associate will receive 2 weeks of paid time off and 10 weeks of unpaid leave.

Benefits Available During Leave
During the FMLA Leave, the associate will be responsible for his or her portion of premiums for insurance coverage at the same level and conditions as if the associate were actively employed during the period of the leave. Associates who normally make premium payments for insurance coverage must continue to do so during the leave.

The Company's obligation to maintain health care coverage ceases if an associate's premium payment is more than 30 days late. If an associate's payment is more than 15 days late, the Company will send a letter notifying the associate that coverage will be dropped on a specified date unless the co-payment is received before that date.

Restoration of Employment and Benefits
Associates returning from FMLA Leave must submit a medical certification verifying the associate's ability to perform the essential functions of their position. Failure to provide such medical certification may delay reinstatement or result in separation from the Company.

Associates returning to work after an approved FMLA Leave will be, to the extent required by law, returned to the same position. If, however, the associate's former position is unavailable when he or she is ready to return from an approved leave, in accordance with applicable laws, reasonable efforts will be made to place the associate in a comparable position for which he or she is qualified. If an associate does not accept the offered position or fails to return to work on or before the agreed-upon return date, the Company will assume that the associate has voluntarily resigned and/or terminated his or her employment with the Company, effective as of the day such refusal is made.

All returns to work must be reported to MetLife as well as Leave.of.Absence@coat.com.

Military Family Leave

Eligible associates are permitted to take FMLA-qualifying, military family-leave as follows:

- Up to twelve (12) weeks of leave for certain qualifying exigencies arising out of the fact that the spouse, son, daughter, or parent of an associate is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces in support of a contingency operation;
- Up to twenty-six (26) weeks of leave in a single twelve (12) month period for an associate who is the spouse, son, daughter, parent, or next of kin of a covered service member to care for a service member recovering from a serious injury or illness that occurred in the line of duty on active duty. Eligible associates are entitled to a combined total of up to twenty-six (26) weeks of all types of FMLA Leave during the same single twelve (12) month period.

Upon request, the first time associates seek leave due to qualifying exigencies arising out of the active duty or call to active duty status of a covered military member, the Company may require associates to provide:

- A copy of the covered military member's active duty orders or other documentation issued by the military indicating the covered military member is on active duty or call to active duty status and the dates of the covered military member's active duty service, and
- A certification from the associate setting forth information concerning the nature of the qualifying exigency for which leave is requested. Associates shall provide a copy of new active duty orders or other documentation issued by the military for leaves arising out of qualifying exigencies arising out of a different active duty or call to active duty status or the same or a different covered military member.

When leave is taken to care for a covered service member with a serious injury or illness, the Company may require associates to obtain certifications completed by an authorized health care provider of the covered service member. In addition, and in accordance with the FMLA regulations, the Company may request that the certification submitted by associates set forth additional information provided by the associate and/or the covered service member confirming entitlement to such leave.

Burlington Leave

The Burlington Leave of Absence (Burlington LOA) is a leave available to full and part-time associates who

- Do not meet the eligibility requirements for the Family and Medical Leave Act (FMLA) or other leaves provided for under applicable law
- Require additional time off following the exhaustion of other leave options

Burlington LOA is provided without pay to eligible associates who wish to take time off from their work duties to fulfill obligations relating directly to any of the following:

- Birth or care of a newborn son or daughter
- A child newly placed for adoption or foster care
- The associate's spouse, domestic partner, child (including children of domestic partners), parent, mother-in-law, father-in-law, grandparent, grandparent-in-law, or legal dependent, with a serious health condition
- A serious health condition that makes the associate unable to perform an essential function of his/her position
- Qualifying emergencies arising out of the fact that the spouse, domestic partner, child (including children of domestic partners), parent, mother-in-law, father-in-law, grandparent, grandparent-in-law, or legal dependent of an associate is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces in support of a contingency operation.
- The associate is needed to care for a spouse, domestic partner, child (including children of domestic partners), parent, mother-in-law, father-in-law, grandparent, grandparent-in-law, or legal dependent who is a covered service member recovering from a serious injury or illness that occurred in the line of duty on active duty

Prior to consideration for Burlington LOA, the associate must first have exhausted his or her FMLA and other leave options or be confirmed ineligible for FMLA and other leave options.

Burlington LOA may be taken for a period of up to twelve (12) weeks during a twelve (12) month period. When possible, prior approval to take Burlington LOA is required. If a paid holiday falls during the period that the associate is on Burlington LOA, the associate will not be eligible for Holiday Pay and forfeits the holiday. Additional time needed under this policy will be reviewed on a case-by-case basis.

Burlington LOA may be restricted to a combined total of twelve (12) weeks within any twelve (12) month period if an associate's spouse is also an associate of the Company. This restriction includes: childbirth, adoption, or placement of a foster child; or to care for a family member with a serious health condition. Time spent receiving state disability benefits or workers' compensation will count towards the twelve (12) week Burlington LOA. Eligibility for Burlington LOA based on birth or the placement for adoption or foster care of a child expires at the end of the twelve (12) month period, beginning on the date of the birth or the placement. A "child," for purposes of this section means a son or daughter under the age of 18 or who is over the age of 18 but incapable of self care because of a physical or mental disability.

Associate Notice Requirements

All requests for Burlington LOA must be submitted to the Benefits Department (leave.of.absence@coat.com). In addition, associates must also contact and work with MetLife through the Leave process at 1-866-729-9201. MetLife is the administrator of all leaves for the Company. In cases where the need for Burlington LOA is foreseeable, **the associate must provide the Company with at least thirty (30) days advance notice of the leave**. If the leave is for an emergency situation and must begin in less than thirty (30) days, the associate shall notify the Company at the earliest time possible. If the associate fails to provide thirty (30) days notice for a foreseeable leave, except in cases of an emergency, with no reasonable excuse for the delay, the leave may be delayed or denied until at least thirty (30) days from the date the notice is provided.

If Burlington LOA is requested due to an associate's own serious health condition, the associate is required to submit to MetLife documentation from the associate's treating healthcare provider necessary to provide an accommodation. An associate will also be required to submit other types of supporting documentation in order to support other types of leaves under the Burlington LOA.

It is the associate's responsibility to provide MetLife with timely, complete and sufficient documentation to support his or her leave request. Whenever MetLife requests associates to provide supporting documentation, associates must provide the requested documentation within 15 calendar days after MetLife's request, unless it is not practicable to do so despite an associate's diligent, good faith efforts. MetLife will inform associates if submitted documentation is incomplete or insufficient and provide associates at least 7 calendar days to cure deficiencies. MetLife will deny Burlington LOA to associates who fail to timely cure deficiencies or otherwise fail to timely submit requested documentation.

To trigger Burlington LOA protections, associates must inform their supervisor and the Benefits Department of the need for leave and the anticipated timing and duration of the leave, if known. Associates may do this by either requesting Burlington LOA specifically, or explaining the reasons for leave, to MetLife, so as to allow MetLife to determine that leave is Burlington LOA-qualifying. Simply calling in "sick," will not be considered sufficient notice for Burlington LOA under this policy. Associates must cooperate with both the Company and MetLife's inquiries to determine if absences are potentially Burlington LOA-qualifying.

Types of Leave
Burlington LOA can be taken consecutively or intermittently. An associate's supervisor and HR Representative will work with each request on a case by case basis.

Use of Paid Time Off
An associate is required to take any and all earned paid time off (banked sick, sick, vacation, personal days) for any part of the 12 weeks of Burlington LOA. For example, if an associate has 2 weeks of earned vacation time and is eligible for Burlington LOA, the associate will receive 2 weeks of paid time off and up to 10 weeks of unpaid leave.

Benefits Available During Leave
During the Burlington LOA, the associate will be responsible for his or her portion of premiums for insurance coverage at the same level and conditions as if the associate was actively employed during the period of the leave. Associates who normally make premium payments for insurance coverage must continue to do so during the leave. The Company's obligation to maintain health care coverage ceases if an associate's premium payment is more than 30 days late. If an associate's payment is more than 15 days late, the Company will send a letter notifying the associate that coverage will be dropped on a specified date unless the co-payment is received before that date.

Associates returning to work after an approved Burlington LOA will be returned to the same position to the extent possible. Should the Company's business needs require a position to be filled while an associate is on a Burlington LOA the associate will be notified and reasonable efforts will be made to place the associate in a comparable position for which he or she is qualified upon return. If an associate does not accept the offered position or fails to return to work on or before the agreed-upon return date, the Company will assume that the associate has voluntarily resigned his or her employment with the Company, effective as of the date such refusal is made or failure to return to work on the agreed-upon return date.

All returns to work must be reported to MetLife as well as Leave.of.Absence@coat.com.

State laws may provide other benefits. Please see the Burlington portal under the Human Resources tab for additional information.

For more information, please contact the Benefits Department:

Leave Hotline
Phone: 609-387-7800 Ext. 3329
Fax: 609-589-9851
Internal Fax: 1851
Email: leave.of.absence@coat.com

Discretionary Time Off

The Discretionary Time Off Policy is designed to provide support and structure to Burlington associates requesting unpaid time off for situations not covered by FMLA, Burlington LOA, or any other available state leave options.

The Discretionary Time Off Policy takes into consideration associate requests for unpaid time off not

covered by FMLA, Burlington LOA, or any other available state leave options. Examples of requests covered by this policy include but are not limited to:

- Extended vacations
- Extended family visits
- Volunteer or Community work

Discretionary Time Off may be approved for a minimum of two (2) weeks and a maximum of four (4) weeks and is granted one time during any three-year period.

Associate Notice Requirements

The associate must request Discretionary Time Off at least four (4) weeks in advance of the anticipated start date. All requests will be considered by both the Manager and HR Representative and will be approved or denied in the Company's sole discretion and based on the needs of the business.

Benefits Available During Discretionary Time Off

While taking Discretionary Time Off, the associate will be responsible for his or her portion of premiums for insurance coverage at the same level and conditions as if the associate was actively employed during the Discretionary Time Off period . Associates who normally make premium payments for insurance coverage must continue to do so during their Discretionary Time Off. The Company's obligation to maintain health care coverage ceases if an associate's premium payment is more than 30 days late. If an associate's payment is more than 15 days late, the Company will send a letter notifying the associate that coverage will be dropped on a specified date unless the co-payment is received before that date.

Restoration of Employment*

Associates returning to work after approved Discretionary Time Off will be returned to the same position. If, however, the associate's former position is unavailable when he or she is ready to return from Discretionary Time Off, reasonable efforts will be made to place the associate in a comparable position for which he or she is qualified. If an associate does not accept the offered position or fails to return to work on or before the agreed-upon return date, the Company will assume that the associate has voluntarily resigned and/or terminated his or her employment with the Company.

*Note: Protected Status applies only to Discretionary Time Off requests submitted and approved in accordance with this policy.

Eligibility Criteria

- Full and part-time associates are eligible to request Discretionary Time Off after one (1) continuous year of service
- Paid Time Off (PTO) must be exhausted prior to/during Discretionary Time Off. An associate is required to take any and all earned paid time off (banked sick, sick, vacation, personal days) concurrently with any Discretionary Time Off. For example, if an associate has two (2) weeks of earned vacation time and is approved for four (4) weeks of Discretionary Time Off, the associate will receive two (2) weeks of paid time off and two (2) weeks of unpaid time off.
- Associates may receive consideration for one grant of discretionary time off every 3 years
- Associates must be in good standing – this is defined as:
  - Performance rating of 3 or above on most recent review
  - No current attendance issues
  - No current disciplinary action
- Associate's request must be approved in advance.
- Discretionary Time Off is not available during the blackout period (as defined each year)

- Approvals/denials are within the sole discretion of the Company and based on the needs of the business

Process

- Associate approaches manager seeking Discretionary Time Off at least four (4) weeks in advance of the anticipated start date.
- Manager provides the associate with a Discretionary Time Off Request Form
- The associate completes the Discretionary Time Off Request Form and provides it to manager
- Manager and HR Representative discuss the request and business need
- Manager enters the request into the system
- Human Resources reviews and approves or denies request in the system
- Manager provides a copy of the Discretionary Time Off Request Form , approved or denied, to the associate and files a copy of the form in the associate's personnel file

For additional information, please contact the Benefits Department:

Leave Hotline
Phone: 609-387-7800 Ext. 3329
Fax: 609-589-9851
Internal Fax: 1851
Email: leave.of.absence@coat.com

Other Employment While on Leave

An associate on a leave of absence (with the exception of Military leave) is required to notify and obtain approval from the Company prior to performing any work for another employer while on leave from Burlington. This requirement applies regardless of whether the associate worked for the other employer prior to going out on leave. Failure to obtain approval for outside employment while on leave may result in disciplinary action up to and including termination of employment.

SECTION 6 STANDARDS WE LIVE BY

Burlington remains committed to working with the highest standards of integrity and asks that our associates follow the Company's Code of Business Conduct and Ethics to promote this commitment. Burlington's success is built on integrity and trust – knowing right from wrong -- failure to maintain these standards may result in corrective action, up to and including termination of employment.

Burlington Coat Factory's Code of Business Conduct and Ethics

Burlington's Code of Business Conduct and Ethics ("Code") is the Company's guide to ensuring that business decisions are made with the highest level of integrity and ethics and in accordance with applicable laws. Adhering to the Code and to this handbook, along with using good judgment and asking for help are essential to maintaining our reputation for uncompromising integrity in all that we do. The handbook only addresses a small portion of the Code. The full Code may be accessed on Burlington's portal under the Human Resources tab.

Associates are all responsible for living and working in accordance with the Code which includes bringing to the attention of management any suspected violations. To report a violation an associate should contact the **Company's Integrity Hotline** by calling **1-877-371-0680** or via email at **bcfreport@tnwinc.com**.

Associates who wish to report suspected Code violations or unlawful conduct may also do so by informing any of the following:

- Their immediate Supervisor
- Their Store Manager
- Their Regional Vice President
- Their Market/Regional Human Resources Manager
- Their Territory Human Resources Director
- Vice President – Stores Human Resources
- The Legal Department
- Leaving a voice mail for the Audit Committee, (609) 387-7800 ext. 3211

The Company will conduct an investigation and respond appropriately to all reports. Reports will be kept confidential to the extent possible to conduct an investigation. Associates making a report may do so anonymously where permitted by law. Anyone who reports a concern is protected from retaliation.

Remember, the purpose of the Code is to assist associates in making the right decision and to ensure that the Company's reputation for integrity is maintained. It is every associate's responsibility to understand these guidelines, to act responsibly and to report unethical or illegal business practices.

Burlington is committed to our core values and conducting business with integrity and ethics. Our Code of Business Conduct and Ethics ("the Code") provides the guidance to ensure that business decisions are made in compliance with applicable laws and regulations and company policies.

By checking the box below, you acknowledge that you have received a copy of the Code of Business Conduct and Ethics ("the Code"), that you have read and fully understand the Code, and that you will fully comply with the Code during your employment with the company.

Conflict of Interest

A conflict of interest occurs whenever our private interests interfere with the interests of the Company as a whole. It is important that associates avoid activities that create or appear to create a conflict of interest with the Company. Associates must therefore refrain from entering into relationships that might impair their judgment as to what is best for the Company. Associates cannot avoid these standards by acting through someone else, such as a friend or family member.

Some examples of a possible conflict of interest include, but are not limited to:

- Outside employment and directorships
- Investments
- Loans to associates
- Family members and close personal relationships
- Public Service
- Corporate opportunities
- Vendor gifts, loans, or bribes

It is important that associates speak up if they have concerns about any real or perceived conflicts of interest. Disclosure is the key, so that a determination can be made whether there are any real or potential conflicts of interest. Disclosures can be made to any of the following:

- Corporate Compliance Officer
- Senior Vice President - Stores Human Resources

Attendance and Punctuality

To maintain a safe and productive work environment, Burlington expects associates to be reliable and punctual in reporting for scheduled work. Absenteeism and tardiness place a burden on other associates and on Burlington.

When an associate cannot avoid being late to work or is unable to work as scheduled, the associate must contact their supervisor before the start of the work day to allow the supervisor as much time as possible to prepare for the absence. If an associate is ill or absent for any reason for more than one day, they must contact their supervisor each day and keep them informed of their condition. If the associate fails to call or show up for work for 3 consecutively scheduled work days, they will be deemed to have abandoned their job. In addition, associates who are excessively late and/or absent will be subject to corrective action, up to and including termination unless the reason for the absence or tardy is otherwise protected by applicable law or excused.

If an associate is absent from work due to illness for 3 or more consecutive days, before returning to work they must provide a physician's note indicating they are released to duty. The note does not need to indicate the illness or reason for the absence, and it should be provided to the associate's supervisor.

Acceptable Use Policy

Email, Internet and Instant Messaging Usage

The Company Email, Internet and other technology resources are the property of the Company. Associates' use of Burlington's E-mail, Internet and/or Instant Messaging systems constitutes their agreement to abide by the Company policies governing the systems as set forth below or as modified in the future. All associates who have been granted access to Burlington's information or systems to work on or off Burlington premises are covered by this policy.

The Company provides Internet access and Email for business communications and work-related activities. Limited, occasional or incidental use of these systems for personal purposes is acceptable, as long as it is done in a professional manner that does not affect job performance or productivity, or negatively impact the Company's reputation or operations in any way. This limited personal use is a privilege and may be rescinded if abused.

Limited personal use of Company Email, Internet or Instant Messaging must:

- Not imply sponsorship or endorsement by the Company or any of its subsidiaries
- Exclusively use approved technologies which are licensed by the Company (e.g., file sharing programs are not allowed)
- Not violate any law or Company policy or procedure

Information sent from Company Email addresses must be composed using the same standards and care as information sent using Company letterhead since it may be interpreted as an official viewpoint or opinion.

Associates must refrain from the following prohibited uses of the Company's Internet access and Email:

- Associates are prohibited from streaming non-business related video or audio or other high bandwidth Internet applications and from participating in non-work related chat rooms
- Mass or "chain" Emails and non-business use of Email distribution lists are not acceptable
- Associates must not download, save or execute ("run") unknown or suspicious software or Email attachments

Instant Messaging is permitted for business communication with the approval of the Regional Vice President. Associates may not use or download Instant Messaging software without approval.

Associates should keep the following things in mind when using Instant Messaging:

- Instant Messaging is intended for business use and is allowed for occasional personal use if done in a professional manner that does not interfere with business use
- Instant Messaging must not be used to transmit confidential or Sensitive Information (as defined below)
- Instant Messaging must not be used to transfer files between the Company and a party outside the Company
- Users of Instant Messaging should take precautions to ensure that Instant Messages are viewed by the intended parties and are encouraged to verify the identity of the other party to whom the user is communicating to avoid impersonation or misrepresentation

Social Media & Blogging Policy

At Burlington, we understand that social media can be a fun and rewarding way to share your life and opinions with family, friends, and co-workers. Burlington encourages all associates to join the online community and use social media the right way. This includes participation in Facebook, Twitter, Instagram, YouTube, Flickr, blogs, and any other online platform that allows user participation and conversations. This policy should help guide your participation in social media, both personally as well as when you are officially representing Burlington. It is critical to remember that the use of social media should mirror behavior and communications elsewhere. The same rules apply. Follow the rules, be nice, tell the truth, use your common sense, and have fun.

Know and follow the law and the rules.

- Read these guidelines, the Code of Business Conduct and Ethics and the Associate Handbook and ensure your participation is consistent with these policies. One of Burlington's Core Values is "develop trust and respect," and that applies to Social Media as well. Burlington associates gain the confidence of others by being honest and treating them with courtesy and professional regard.
- Be respectful and courteous to fellow associates, customers, vendors or others that may work on behalf of Burlington. Try to resolve any workplace conflicts using the company's Open Door Policy rather than posting online complaints. Nevertheless, if you decide to post online, inappropriate postings that would not be permissible in the workplace are not permissible online. This includes discriminatory remarks, harassment, threats of violence, retaliation or other unlawful conduct. Avoid using statements, photographs, video or audio that could reasonably be viewed as malicious, obscene, or intimidating; that disparage customers, associates, or company business partners; or that may constitute harassment or bullying.

Be honest and transparent.

- Make sure you are honest and accurate when posting online. Social Media is fast and not easily erased. Double check your messages and communications before posting to make sure it fits Burlington's Social Media & Blogging policy and Core Values.
- If Burlington is the subject of the content you are creating or writing about, you should be clear and open about the fact that you are a Burlington associate and that your views do not represent that of Burlington. You must use a disclaimer like "The postings on this site are my own and do not necessarily represent the views of Burlington." Never represent yourself as a spokesperson for Burlington as only a few people are official spokespersons.
- You are an important ambassador for Burlington and you are encouraged to promote the company and its products and services so long as you disclose your affiliation with the company. This is to ensure that your audience has all the facts when reading your online content. A sample disclosure is "I am an associate at Burlington and the following product review is based on my opinion and experience."
- Burlington regards blogs and other forms of online discourse as a forum for communications, relationship building and networking. While blogging and social networking are fun and valuable, there are some specific risks to keep in mind when blogging.
  - Avoid conflicts of interest. A conflict of interest exists if you have a personal interest or benefit that interferes with your job responsibilities or affects your business judgment. For example, being compensated to promote a competitor's product or fashion line on a blog or social media page is a conflict of interest that should be avoided.

- If you have any questions, please talk to your supervisor or contact the Compliance Counsel. The Company's Conflict of Interest policy is set forth in the Code of Business Conduct and Ethics.

Protect private and confidential information.

- Burlington's Confidentiality Policy and Insider Trading Policy apply to your online activities. You may talk about Burlington and its products and services (see Be Honest and Transparent) but it is not ok to talk about or publish any Burlington trade secrets or confidential information. This includes:
  - Non-public financial or operational information like company performance, development of systems, prospective vendors, processes, products, know-how and technology. Keep in mind that it is illegal to give an inside "tip" to others for the purposes of buying or selling stocks or securities.
  - Internal communications, reports, policies, procedures, future ads or promotions, or strategies. Just because information is sent to the whole company or is on the portal does not mean that you may let the entire online world know about it.
- Respect copyright and intellectual property laws. For Burlington's protection, as well as your own, it is critical that you are mindful of the copyright and intellectual property rights of others and of Burlington's when posting. This includes refraining from posting photos, videos, or other content that you do not own for have the license to use.
- Do not post pictures of others (customers, fellow associates, etc.) without their permission.

Use of Technology Resources

The Company is committed to protecting its technology and information resources. The following policies establish the policies and procedures for acceptable use of the Company's **Technology resources** and information.

> **"Technology resources"** includes all computer equipment and software, programs, databases, applications and functions accessible thereby, including but not limited to Email, the Internet, telephone, voicemail, and mobile devices.

Associates are prohibited from engaging in the following activities:

- Associates may not set up their own wireless networks at work or use any wireless network while on Company premises that is not owned and managed by the Company
- Associates may not install unauthorized software or otherwise deliberately engage in unauthorized activities that could lead to system malfunction or failure
- Associates may not install or use software in a way that violates software licensing agreements
- Associates may not use another associate's password or account without securing authorization from the Regional Vice President
- Associates may not cause unlawful or intentionally harmful use of Company systems (including Email and Internet use) that may cause liability or financial harm to the Company
- Associates may not use the Company's technology resources to view, access, upload, download, store, transmit, create, or otherwise manipulate inappropriate or offensive information. Examples include, but are not limited to: pornographic or other sexually explicit materials, offensive jokes, offensive remarks, offensive pictures or offensive information

- Associates may not use the Company's technology resources for illegal or use contrary to Company policies or business interests

Associates that do not have explicit authorization are prohibited from engaging in, or attempting to engage in the following actions:

- Monitoring or intercepting the files or electronic communications of other users
- Sending electronic communications that attempts to hide or misrepresent the identity of the sender (e.g., Email forging and web site session high jacking)
- Hacking, intentionally propagating malware or viruses, password cracking, performing social engineering or obtaining access to systems, unauthorized accounts or information
- Testing or disabling security controls like anti-virus, system and Internet access controls

Company technology resources and all electronic documents created, entered, stored or downloaded to the Company's technology resources and all communications using Company technology resources (including those sent or received via Email, voicemail, telephone, or over the Company's Internet connection) are the property of the Company. The Company may access and monitor all documents, information, and communication stored on its property and transmitted on its systems for any purpose without notice to the user and without seeking permission of the user. Users have no expectation of privacy when conducting limited personal affairs using the Company's technology resources.

Associate accounts and passwords are the keys used to gain access to the Company's information and Technology resources. It is critical that all associates who have user accounts and passwords protect their user accounts by safeguarding their passwords. Associates must comply with Company access procedures, including use of assigned user ID's for Email, Internet and properly licensed software. User IDs must not be shared with unauthorized persons. Everyone is accountable for his/her action(s) performed under his/her account(s). Associates are also responsible for keeping account passwords secure at all times and must adhere to the following:

- Associates are not to give out any Company user ID, password or access codes to any other person at any time, for any reason without the express authorization of their supervisor or manager
- Associates may not allow anyone else to access their account or use any account other than their own for any reason without the express authorization of their supervisor or manager

Handling Sensitive Information

As part of their job, associates may have access to Sensitive Information belonging to the Company. "Sensitive Information" includes, but is not limited to the following:

- Financial account number or credit or debit card numbers with or without any required security code, access code, personal identification number or password of customers and associates

Personally Identifiable Information of customers or associates which includes but is not limited to social security numbers, combinations of name and address or combinations of name and date of birth, and driver's license number or state-issued identification card number.

- Sensitive Information does not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public

All users must exercise caution with Sensitive Information by limiting access and distribution of such information to a business "need-to-know" basis. The following policies and procedures are intended to protect the Company's Sensitive Information related to its use, storage, transmission, and destruction.

It is the responsibility of every user to be able to identify if the information they use is sensitive and to employ the appropriate security practices to protect Sensitive Information. It is the responsibility of every supervisor to ensure that those associates they supervise appropriately handle Sensitive Information.

Sensitive Information must be protected when it is stored (i.e. saved on file shares or workstations) as well as when it is transmitted (i.e., sent by Email or through Internet access) by using approved methodologies. Consult IT Security for questions regarding approved methodologies.

The following guidelines should be followed when handling Sensitive Information:

- Sensitive Information transmitted electronically across public networks (i.e. between the Company and a party outside the Company) and wirelessly must be encrypted. "Encrypted" is the transformation of data into a form in which meaning cannot be assigned without the use of a confidential process or key. (Associates should contact the Global Service Center (609-387-7800 ext. 1111 or gsc.support@coat.com) if they require the software necessary to encrypt Sensitive Information
- Associates must not transmit or store Sensitive Information using a personal (non-Company) Email system, like Yahoo, Gmail, Hotmail or other mail applications
- When printing Sensitive Information, associates should immediately retrieve the documents from the printer so as to not leave them unattended
- Hard-copy documents containing Sensitive Information must always be stored in locked storage or in a locked office when not actively being reviewed or used
- All hard-copy documents containing Sensitive Information must be securely disposed of pursuant to the Company's Record Retention Policy by rendering it unreadable (e.g. shredding)
- If an associate becomes aware that they have excessive or mistaken account privileges that are not required to fulfill their job duties, they must immediately report to IT Security (609-387-7800 exts. 1111 or 5150, or data.security@coat.com)
- If an associate becomes aware of insufficiently protected Sensitive Information, they must immediately submit a report to IT Security

Physical Security at the Workplace

Associates must do their part to prevent unauthorized physical access to technology resources and information by adhering to the following policies and procedures for physical security.

- When leaving their desk, office or designated work area, associates must secure all Sensitive Information in locked storage or in a locked office and/or secure any computers or laptops containing Sensitive Information by shutting down or enabling a screen lock/screens saver with a password
- To provide for the safety and security of associates and our facilities, technology resources and information, only authorized visitors will be allowed in areas of the Company's facilities that are generally accessible to associates only. Restricting unauthorized visitors helps us maintain safety standards, protects against theft, ensures security of equipment, protects confidential information, safeguards associate welfare and avoids potential distractions and disturbances.

Visitors in the workplace who are not customers and deemed to be loitering will be asked to leave the store. In addition, associates may not bring children or relatives into the workplace during their scheduled shifts

- Visitors must be escorted at all times when in the Company data centers or in areas where Sensitive Information is regularly handled or stored

Personal Electronic Devices

Personal devices are not maintained by the Company and can introduce security risks into our environment. Associates must be aware of the restrictions on using personal devices for Company business:

- Associates must not store or access Sensitive Information on personally-owned devices, media or other hardware
- Associates may not use personal storage devices (Flash, USB, SD, external hard drives, etc) to store Sensitive Information
- Associates may not install Company software on personal hardware (including, but not limited to home computers) unless approved by the Company. The Company has no obligation to support the configuration of home wireless routers or home networks. However, it is permitted for approved Users to connect to the Company VPN using a home network

Non-Exempt associates are strongly discouraged from using personal electronic devices to perform business related activities outside of the normal work week schedule. However, in rare circumstances if work is performed operating a personal electronic device:

- Prior approval from the immediate manager must be obtained to operate personal electronic devices to complete requested work
- Associates must report the time worked to their immediate manager
- Time spent working on personal devices is compensable and managers must record this time using the Company's time and attendance system

Reporting Security Incidents and Theft

The Company depends on associates to report suspicious activity or suspected compromise of technology resources or information. Associates should recognize the signs of a potential security incident and know who to contact.

All associates and any other individual given access to Burlington systems must report suspected or actual security events to the IT Security Department. Types of incidents include, but are not limited to:

- Virus alerts
- Unauthorized use of technology resources or information
- Phone calls asking for passwords or other suspicious information
- Unsecured electronic or hard-copy Sensitive Information

The loss or theft of any corporate-owned hardware or mobile device must be reported to Asset Protection immediately and without exception. Reporting lost or stolen Company assets is critical to maintaining security due to the risks of unauthorized use and information loss. Associates must contact the Global Service Center to change passwords for Company User and VPN accounts.

The Company reserves the right to monitor network traffic, perform random audits, and to take other steps to insure the integrity of its information and compliance with this policy. Violations of this policy will lead to the appropriate disciplinary action, which may include temporary and permanent restrictions on access to certain information, networks, or technology resources and in certain offenses, may lead to termination.

The following departments and people may be contacted if an associate has any questions, concerns or need to report violations or incidents:

IT Security Department	P: 609-387-7800 exts. 1111 or 5150 or E: data.security@coat.com
Legal Department	P: 609-387-7800 ext. 2761 or E: legal.department@coat.com
Global Service Center	P: 609-387-7800 ext. 1111 or E: gsc.support@coat.com or Self Service Website: www.service-now.com/burlington
Director of Infrastructure & Security	P: 609-387-7800 ext. 5150 or
Senior VP of Information Services	P: 609-387-7800 ext. 2240 or
Compliance Counsel	P: 609-387-7800 ext. 2761 or

Violations of this policy may subject an associate to disciplinary actions up to and including termination.

Use of Equipment

When using Company property, associates are expected to exercise care, perform required maintenance and to follow all operating instructions, safety standards and guidelines.

Associates should notify their supervisor of any fixtures, equipment, machines, tools, or any part of the building that appears to be damaged, defective, or in need of repair. Prompt reporting of damages, defects and the need for repairs could prevent deterioration of equipment and possible injury. Supervisors can answer any questions associates may have regarding the maintenance and care of equipment they use on the job.

Note that the improper, careless, negligent, destructive or unsafe use or operation of equipment is unacceptable and could result in disciplinary action, including revocation of the use of the equipment and up to and including termination of employment.

In the event an associate leaves the employ of the Company, they will be required to return all Company-owned equipment on or before their last day of active employment with Burlington.

Security Inspections

Burlington wishes to maintain a work environment that is free of illegal drugs, alcohol, firearms, explosives or other improper materials. To this end, Burlington prohibits the possession, transfer, sale or use of such materials on its premises. Burlington requires the cooperation of all associates in administering this policy. Burlington also wishes to discourage theft or unauthorized possession of the property of associates, Burlington, visitors and vendors.

To facilitate enforcement of these goals, Burlington and/or its representatives may inspect not only desks and cubicles but also persons entering and/or leaving the premises and any packages or other belongings. Any associate who wishes to avoid inspection of any articles or materials should not bring such items into Burlington's workplace.

Personal Property

Please be aware that personal belongings such as handbags, gym bags, coats, knapsacks, briefcases, and other carrying containers should be kept in an authorized area during work hours. Associates are encouraged to not bring valuables to work. Burlington will not be responsible for any loss associates may incur.

Investigations

In the event of an investigation into any matter related to Burlington policies and procedures, including security issues as well as issues pertaining to Human Resources, associates are expected to cooperate fully. This duty to cooperate requires that associates must be truthful and forthcoming with all information. Failure to do so may result in disciplinary action, up to and including termination of employment.

Witness Statements

In the event an associate is named as a witness in an investigation, they may be requested to provide a written statement detailing their account of the alleged incident. All witness statements should be a firsthand account of the situation and should include the date as well as the associate's signature.

Use of Recording Devices

Except in connection with a company investigation or in the performance of official duties, it is a violation of Company policy to record on tape or any other medium any conversation with a co-worker, supervisor, manager, or other associate of Burlington without the express consent of such person. If any associate is found to have recorded a conversation in violation of this policy, they will be required to surrender to Burlington all copies of the recording and they will disciplined, up to and including termination.

Good Housekeeping

Associates are responsible for doing their part to keep their area as safe, clean, neat and organized as possible. Our fellow associates and visitors deserve our best efforts.

Smoking

In keeping with Burlington's intent to provide a safe and healthful work environment, smoking in-doors is prohibited throughout the workplace (this prohibition includes the use of electronic cigarettes or e-cigarettes). This policy applies equally to all associates and visitors. If an associate chooses to smoke outdoors on Company premises, they may only do so during authorized break or meal periods and only in designated locations, at least 20 feet away from all open doors and windows.

Dress and Appearance

Dress, grooming and personal cleanliness standards improve the morale of all associates and have a direct impact on the business image Burlington presents to its customers and visitors. As representatives of Burlington, associates must always present a neat, clean, and well-groomed appearance as well as always wear their associate name badge to convey to customers that they are dedicated to providing an outstanding store experience.

The following chart suggests what is deemed required and unacceptable dress for work:

Required	Unacceptable
Black, professional tops (collared shirts, blouses, turtlenecks and sweaters)	T-shirts, sleeveless shirts, tank tops, midriff tops, shirts with potentially offensive words, terms, logos, pictures, cartoons, or slogans; halter tops, tops with bare shoulders and sweatshirts
Khaki/beige pants or skirts, black pants, skirts, or dresses Receiving associates may wear professional style black jean pants (unless regularly working on the sales floor)	Jeans, jean khakis, pants worn below the hip, all types of shorts, skorts, sweatpants, exercise pants, bib overalls and spandex or other form fitting pants, skirts more than 3" above the knee
Conservative athletic or walking shoes, loafers, sneakers, boots, flats, dress heels, leather deck type shoes and open heel shoes	Open toe shoes, flip flops, beach style shoes, slippers and sandals
Burlington name badge and company issued pins	Non-company issued pins or buttons with logos, all hats, bandanas, etc.

All clothing should be neat, clean, well-fitted, and free of tears or holes.

If associates experience uncertainty about their attire for work, they should ask their supervisor or Human Resources Representative.)

If an associate's supervisor or a member of the store management team determines that an associate's dress fails to meet these standards, the associate will be asked to not wear the inappropriate attire again. If the problem persists, the associate will be given a verbal warning and may be sent home to change clothes. Progressive discipline will be applied if dress code violations continue.

Public Relations Guidelines

These general public relations guidelines should be followed to ensure that our external and internal corporate communications are accurate, consistent and in accordance with our policies.

Media Communications

It is important that only authorized Burlington spokespersons speak to the media, investors, or the general public regarding Company matters. If an associate is approached by the media or anyone else for information and/or an interview regarding the Company, either by formal request or informally in conversation, the associate should politely let them know that they are not an authorized Burlington spokesperson and should not try to respond to their inquiry. For example, an associate should not discuss non-public information such as sales figures, or local interest matters such as the opening of a new store and how many associates will be employed. Instead, when approached for information and/or an interview, use the following statement:

> ***"We appreciate your interest in Burlington. While I am not an authorized spokesperson, please provide me with your name, media outlet, phone number and deadline and I will forward this information on to our Corporate Marketing Department who will be happy to assist you."***

Please email this information immediately to media.relations@coat.com. Members of the Marketing Department will respond promptly to the reporter. To speak with someone quickly, please call (609) 387-7800 ext. 3077.

Speaking Engagements and Awards

From time to time, associates may be asked to speak, make a presentation, or receive an award at a conference, industry event, trade show, or other work-related group/association. Associates will need to secure prior approval before accepting such engagements. Associates should notify their supervisor about the invitation and also submit an email to media.relations@coat.com with details about the invitation. The Marketing Department will contact the supervisor to determine whether to approve the associate's request.

Online

- If an associate blogs or posts about topics related to a store or the Company's products and business, they must be truthful and make it clear to the readers that they work for Burlington. If the associate is not an authorized Company spokesperson, he/she should always make sure that they include a disclaimer that the views expressed are theirs alone and do not necessarily reflect the Company's views.
- The Company's brands are valuable corporate assets. Do not post our logos, trademarks, photos or copyrighted information on personal sites or in personal statements
- Do not publish, post, or release business information that is considered confidential or not public

- Blogs and social media must not be used to harass, threaten, discriminate against or disparage associates, customers, vendors or anyone associated with or doing business with the Company. If an associate is dissatisfied with any aspect of the Company or their work environment, he/she can use the Open Door Policy or they can contact the Integrity Hotline (1-877-371-0680) so that their concerns may be addressed. Complaints about work are more likely resolved by speaking directly with a supervisor or Human Resource Representative than by posting complaints on a blog

If you have any questions regarding these guidelines, contact any of the following individuals:
VP Marketing: 609 387-7800 ext. 2675
Director Marketing & PR: 609 387-7800 ext. 2660
Compliance Counsel: 609 387-7800 ext. 2761

Non-Disclosure

The protection of confidential business information and trade secrets is vital to the interests and the success of Burlington. Such confidential information includes, but is not limited to, financial information, sales data, compensation data, reports of investigation, buying reports, merchandising trade secrets, vendor lists, and information concerning other companies involved in transactions with Burlington. Associates are prohibited from disseminating confidential business information outside of the Company. Further, associates may not engage in conversations regarding prices, service, or other business information within earshot of customers or vendors or other unauthorized persons.

Associates may be required to sign a non-disclosure agreement as a condition of employment. If an associate improperly uses or discloses trade secrets or confidential business information they may be subject to disciplinary action, up to and including termination of employment, even if they do not actually benefit from the disclosed information.

Compliance Counsel

From time to time, legal documentation or correspondence is delivered to our stores. Examples include service of process relating to lawsuits, subpoenas for records, and notices from various state or federal agencies. As the timing of the company's response is often critical, it is extremely important to immediately deliver all such documentation and correspondence to the Legal Department per the instructions below.

Document or Correspondence	Instructions	Contact
Service of Process	Fax immediately & call to confirm receipt	Fax - ext. 3404 or ext. 4800 Phone - ext. 2022 or ext. 4030
Subpoenas for Associate Records & Associate Records Request	Fax immediately	Fax - ext. 1098
Associate Requests to View Their Personnel Files	Fax immediately	Fax - ext. 1098
Subpoenas for All Other Company Records	Fax immediately	Fax - ext. 4800
OSHA or Department of Labor Correspondence	Call immediately	Phone - ext. 1129

Attorney Demands	Fax immediately	Fax - ext. 3404 & ext. 4800
All Other Legal Correspondences or Documents	Fax immediately	Fax - ext. 3404

Please contact the Legal Department immediately if you:

- have questions or concerns regarding these instructions,
- are unsuccessful in reaching the appropriate contact person identified above, or
- are unsure if a document or correspondence you received should be sent to the Legal Department.

Solicitation

Associates - All associates are prohibited from engaging in solicitation of any sort during working time. This includes the distribution and/or posting of literature, the taking of collections, and the selling, buying or distribution of items for sale in any working area of the Company.

Company bulletin boards are only to be used for the posting of Company notices, and associates are expressly prohibited from using the Company bulletin boards for the posting of non-Company notices of any kind.

Non-Associates - Non-associates and former associates are strictly prohibited from entering upon the premises without authorization to engage in solicitation of any sort on Company property at any time. This includes the distribution and/or posting of literature, the taking of collections, and the selling, buying, or distribution of items for sale on Company property.

Procedure for Handling Charitable Donations

Observe the following guidelines for donation requests for merchandise or sponsorship:
Requests should be clearly detailed in a letter written on the organization's letterhead with a copy of the organization's proof of qualification under Section 501(c) (3).

Requests should be directed to:

Burlington
1830 Route 130
Burlington, NJ 08016
Attn: Donation Committee
Or by E-Mail at: community.development@coat.com.

Solicitors may be directed to the Company's website, where detailed procedures are spelled out, or instruct them to call (609) 387-7800, ext. 2211 to hear a recording of the instructions.

Substance Abuse

It is Burlington's desire to provide a drug-free, healthful, and safe workplace. To promote this goal, associates are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.

No associate may use, possess, distribute, sell, purchase, or be under the influence of alcohol or illegal drugs while at work on Burlington's premises or conducting business-related activities on Burlington's premises. The legal use of prescribed drugs is permitted on the job only if it does not impair an associate's ability to perform the essential functions of the job safely and effectively. It is the associate's responsibility to consult his/her physician regarding any work restrictions and to notify his/her supervisor of these restrictions.

Associates with questions or concerns about substance dependency or abuse are encouraged to contact our EAP provider AETNA at 1-888-238-6232; company id is EAP4COATS, to receive assistance or referrals to appropriate resources in the community.

Travel Time (non-exempt associates)

Time spent commuting between home and regular work sites does not count as time worked and is not paid. An associate's work day begins when they swipe their badge as required by the Time Keeping Policy. Under certain limited exceptions and subject to applicable laws, travel time is considered work time and will be paid. These exceptions are:

- When a non exempt associate is required to travel to another location within a day's commute, the time spent traveling there and back counts as time worked and is paid. The time the associate would normally spend commuting from home to their regular work site is deducted in the calculation of actual hours worked
- Time spent by an associate in local travel as part of their duties counts as work time and is paid
- Time spent traveling out of town during normal work hours as well as after work hours, counts as time and is paid. If an associate is required to spend the night, the associate will not be compensated for time spent sleeping, eating or engaged in other personal pursuits. Associates are required to keep track of all time spent traveling or working while out of town. They are also required to take all required meal and rest periods as well as report all overtime worked

SECTION 7 HEALTH AND SAFETY

The Company is concerned with the safety and health of its associates and the general public. We seek to provide a safe work environment and to prevent accidents and casualties caused by associates under the influence of controlled substances or alcohol. Associates are forbidden to sell, distribute, possess, or use illegal drugs or controlled substances on company time or premises.

All associates have the right to a place of employment that is free from behavior that can be considered harassing, abusive, disorderly, or disrupting. Associates should not engage in any acts of horseplay (e.g. throwing objects, running in the workplace, jumping/climbing on equipment or elevated surfaces, etc.). Any acts of threats of violence, including extreme or inappropriate verbal or physical threats, will not be tolerated. Weapons, firearms, ammunition, explosives, and incendiary devices are forbidden on company property.

We are committed to occupational health and safety and will comply with all applicable safety and health laws, regulations, and industry standards. All work areas should be kept clear of items that can cause slips or falls including debris, spills, electrical cords, etc. Electrical panels, fire equipment, and emergency exits should be free from all obstructions. Associates are encouraged to promptly report any existing or potential hazards as well as any concerns, accidents, or "close calls." Associates should not; attempt to make electrical or equipment repairs, use damaged equipment or equipment that is not approved by OSHA and Burlington, lift or move items that are too heavy for them, or handle or dispose of chemicals improperly.

If an associate observes an unsafe or potentially hazardous condition, they should report it to their supervisor or contact a member of the Risk Management Department at 609-387-7800 ext. 2680.

For more detailed guidelines related specifically to workplace safety, all associates should review the **Workplace Safety Rules For Burlington** document located in the Burlington Accident Prevention Program Manual (ask your supervisor or manager for the manual) or on the portal under safety.

Reporting Injuries

If an associate sustains a work-related injury or illness, he/she must inform their immediate supervisor or store management immediately. Supervisors or managers must report the incident to our insurer within 24 hours using the Accident Form on the portal (click the Stores tab, highlight Security, and select Loss Prevention). No matter how minor an on-the-job injury may appear, it must be reported without delay. Failure to report a work-related injury or illness within a timely manner may result in disciplinary action up to and including termination.

Workers' Compensation Insurance

Burlington provides a comprehensive workers' compensation insurance program. This program covers any work-related injury or illness substantiated by the workers' compensation insurance carrier that requires medical, surgical or hospital treatment. Associates will be provided with workers' compensation insurance coverage in accordance with applicable state law.

Workers' compensation leave will run concurrently with FMLA Leave/Burlington LOA , where applicable. If an associate returns to work before expiration of his/her FMLA leave, the associate will be reinstated to the position held before the leave or to an equivalent position unless during the leave the associate's position is eliminated for reasons such as a reduction in force. If an associate returns to work after expiration of his/her FMLA Leave, but before the end of 26 weeks, the Company shall make a reasonable effort to hold open the associate's position or a similar position, but it may be necessary, depending on business needs, to reassign an associate to a different job position.

During a leave for a workers' compensation injury, the Company will continue to pay its normal portion of premiums for insurance coverage for the associate at the same level and conditions as if the associate were actively employed during the period of the leave only to the extent required by applicable law. Associates who normally make premium payments for insurance coverage must continue to do so during the leave. If any premium payment is more than 30 days past due, their insurance coverage will be terminated after 15 days' notice for the duration of the leave period. Lapsed insurance coverage will be restored upon an associate's return to work from leave, provided the associate remits any unpaid insurance premiums which are due. Failure to do so will result in cancellation of coverage.

Weapons Policy

Burlington maintains a weapons-free workplace and strictly enforces the following rules. Burlington prohibits any individual from using, carrying, or possessing deadly weapons or destructive devices while working at a store or while working on behalf of Burlington.

Applicability
The prohibition against using, carrying, or possessing weapons or destructive devices while working in a store or other Burlington facility or during the course of performing duties on behalf of Burlington applies to all associates, clients, and other visitors, regardless of whether such individuals possess a license to carry or possess such weapons or devices.

Exceptions
This prohibition does not apply to weapons or devices in the possession of law enforcement officers who are authorized by law to carry such items. This policy will not be enforced where any aspect of this policy is inconsistent with State laws. To the extent state law supersedes any part of this policy, all other provisions will remain in full force and effect.

Prohibited Weapons and Devices
This policy applies to using, carrying, or possessing any of the following weapons or devices:

- firearms, including, but not limited to, handguns, rifles, pellet guns, and similar devices;
- knives, including pocket knives;
- instruments capable of inflicting a heavy blow, including, but not limited to, nightsticks, clubs and similar devices;
- explosive devices, including, but not limited to, bombs, grenades, and similar devices; and
- other devices whose primary purpose is the infliction of bodily harm

Violations of the prohibition against using, carrying, or possessing prohibited weapons or devices by associates while working in the store of performing services on behalf of Burlington is considered gross misconduct and will result in immediate discipline or termination.

SECTION 8 COUNSELING RECORDS

With respect to disciplinary issues, these steps and others may be followed: Counseling Record – Note to File, Counseling Record – Violation of Policy, Counseling Record – Performance Advisory Counseling (First Warning, Final Warning, Suspension, or Termination of Employment). If an associate is issued a Counseling Record, they will be asked to read and sign it. The purpose of this is to acknowledge his/her receipt of the warning and to make sure they understand the problem. **Some or all of these steps may be skipped, and associates may be discharged for even a first offense within the sole discretion of the Company. Employment with Burlington is at will, and Burlington retains the right at all times to terminate the employment relationship at will, with or without cause or advance notice. The Company is not required by this or any other policy to use progressive discipline in all situations.**

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in corrective action, up to and including termination of employment:

- Boisterous or disruptive activity in the work place
- Damaging or attempting to damage Company property or facilities or the unauthorized use of Company facilities, tools or equipment
- Discourteous or abusive behavior towards co-workers, supervisors, managers, vendors, or suppliers
- Excessive absence from work station during the workday
- Excessive absences or tardiness, unless the reason for the absence or tardy is protected by applicable law or otherwise excused
- Making dishonest statements about the Company or any other associate
- Misuse of associate discount privileges
- Smoking, eating or drinking in unauthorized areas
- Unauthorized use of another associate's user ID and/or password
- Unauthorized use of telephones, fax machines, mail systems, Internet services or other employer-owned equipment or services
- Unsatisfactory performance or conduct
- Use of a Company shopping/gift card which does not belong to them
- Violation of personnel policies or standards of conduct set forth in this handbook

The following infractions are considered gross misconduct and may result in immediate discharge without prior warning:

- Abandonment of job or failure to report to work without notifying their immediate supervisor
- Any act of dishonesty, whether associates are directly involved or aid in another's act of dishonesty. This includes lying to their supervisor or any manager, the theft of any Company or associate property, defrauding the Company in any manner, or failure to report known dishonesty by another individual
- Any act or threat of violence made by an associate, directly or indirectly by words, gestures, or symbols, against another person's life, health, family, or property
- Breaches in security procedures and/or refusal to cooperate in a Company investigation
- Disorderly conduct; striking another associate; using any form of physical force
- Insubordination

- Obtaining employment on the basis of false or misleading information or falsification on an application or any other company document
- Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace
- Swiping the time clock for another associate, allowing someone else to swipe the time clock for them, or any other violation of the Timekeeping Policy.
- Removing, sending or furnishing Company records or information to unauthorized persons
- Tampering with the time clock or making unauthorized changes on an associate's time card or edit slip
- Using, possessing, buying or selling illegal drugs; being under the influence of alcohol or illegal drugs while at work; or violating the Company's Substance Abuse Policy
- Violation of Burlington's policy against unlawful discrimination or harassment
- Violation of Code of Business Conduct & Ethics

SECTION 9 IN CONCLUSION

This handbook provides an overview of many of Burlington's policies, procedures, and benefits. It is designed as a working guide for associates and provides general guidance on Company policies, procedures, benefits and the standards that we live by. This handbook does provide the proper foundation for associates to exercise sound judgment and decision making so that we can continue to foster a safe and healthy workplace.

Burlington reserves the right to change or rescind any provision of this handbook as it deems necessary or appropriate in its sole discretion with or without notice to associates. Please note that the policies and procedures contained in this handbook may differ depending on the location of the store and the state and local laws in effect. In addition, this handbook does not address every Company policy and procedure and may only provide brief summaries of some; accordingly, associates are encouraged to visit Burlington's portal page for more information, complete policies and procedures and benefits information, as well as to keep up with any amendments or changes.

It is every associate's responsibility to read and understand the provisions in this handbook. Associates should contact their immediate supervisor or Human Resources Business Partner with any questions or if any part of this handbook is not clear. This handbook supersedes any and all prior policies, procedures, and handbooks of the Company issued prior to December 1, 2014.

NOTE: This handbook applies to all US continental stores associates. This handbook does not apply to corporate, distribution center, or Puerto Rico and California stores associates.

ALSO, UNDERSTAND THAT THIS HANDBOOK IS NOT A CONTRACT OF EMPLOYMENT AND IS NOT INTENDED TO CREATE CONTRACTUAL OBLIGATIONS OF ANY KIND. ALL BURLINGTON ASSOCIATES ARE EMPLOYED "AT WILL," WHICH MEANS THAT THEY MAY DISCONTINUE THEIR EMPLOYMENT AT ANY TIME FOR ANY REASON, AND BURLINGTON RETAINS THE RIGHT TO TERMINATE THEIR EMPLOYMENT AT ANY TIME, WITH OR WITHOUT CAUSE OR ADVANCE NOTICE. WHILE WE HOPE THAT THEIR EMPLOYMENT WITH BURLINGTON WILL BE LONG AND PROSPEROUS, NOTHING CONTAINED IN THIS HANDBOOK LIMITS BURLINGTON'S AUTHORITY TO TERMINATE AN ASSOCIATE'S EMPLOYMENT FOR ANY REASON.

No Burlington associate has the authority to enter into a written or oral contract with an associate or to make representations to them concerning the terms and conditions of their employment. Nothing contained in this handbook is intended to alter this fact. Only written contracts of employment which have advance approval of the Legal Department will be recognized by Burlington.

SECTION 10 ACKNOWLEDGMENT OF RECEIPT OF HANDBOOK

The Associate Handbook describes important information about Burlington, and I understand that I should consult my supervisor or any member of Human Resources regarding any questions not answered in this handbook.

The information, policies, and benefits described in the handbook are necessarily subject to change at the Company's discretion. I understand that revised information may supersede, modify or eliminate existing policies, with the exception of the at-will policy. I also acknowledge that no representative of the Company has the authority to enter into any oral or written contract or agreement with me about the terms and conditions of my employment unless it has been approved by the Legal Department first.

I FURTHER UNDERSTAND THIS HANDBOOK IS NOT A CONTRACT OF EMPLOYMENT AND IS NOT INTENDED TO CREATE CONTRACTUAL OBLIGATIONS OF ANY KIND. MY EMPLOYMENT WITH BURLINGTON IS AT WILL, WHICH MEANS THAT I MAY DISCONTINUE MY EMPLOYMENT AT ANY TIME FOR ANY REASON, AND BURLINGTON RETAINS THE RIGHT TO TERMINATE MY EMPLOYMENT AT ANY TIME, WITH OR WITHOUT CAUSE AND WITH OR WITHOUT NOTICE.

Further, I acknowledge that I have received the handbook and I understand that it is my responsibility to read and understand the policies contained in this handbook and any revisions made to it.

_____ _____

Associate's Name (please print) Date

_____ _____

Associate's Signature Date

SECTION 11 ACKNOWLEDGMENT OF RECEIPT OF POLICY AGAINST UNLAWFUL DISCRIMINATION OR HARASSMENT

I, the undersigned, hereby acknowledge that I have received Burlington's Policy Against Unlawful Discrimination or Harassment on the date shown below. I understand Burlington's long term commitment to provide a professional work environment free of any type of discrimination or harassment. This commitment can only succeed if all incidents of discrimination or harassment are reported to management. I agree that if I witness or am advised of conduct that could violate the policy, whether that conduct was directed at me or not, I will immediately report that incident in writing to any one of the following: my supervisor, their manager, and/or a Human Resources Representative; or by calling the Company's Integrity Hotline at 1-877-371-0680 or via email at bcfreport@tnwinc.com.

I acknowledge that it is my responsibility to read and fully understand the Policy Against Unlawful Discrimination or Harassment and to comply with it to the best of my ability. I also understand that if I have any questions about the policy, I may ask for clarification or additional information about the policy from a supervisor, Manager or Human Resource Representative.

Associate's Name (please print)	Date
Associate's Signature	Date

Believe in ***SAFETY***

Safety Orientation - Sales Floor Associate Safety

1. Pick it up, don't pass it up. Pick up all debris, merchandise or fixture parts that could cause a slip, trip or fall.

2. Clean up spills or any other slippery conditions. Call maintenance if necessary and block off the area until it is completely cleaned up. Always use WET FLOOR signs.

3. When lifting, stand close to the object. Ensure firm footing, with feet spread comfortably apart and one foot slightly forward. Grasp the object firmly; be sure your grip will not slip. Breathe in, inflated lungs help support the spine. Keep your back straight and your head up. Lift with your legs - slowly straighten them. Hold object firmly and close to your body.

4. When carrying a load, hold box or merchandise below shoulders and close to body. Avoid twisting and bending.

5. If a load is too heavy or awkward to lift alone, use a mechanical aid, such as a flat bed or hand cart, or get help from another associate.

6. Rolling racks, flat beds and hand carts should never be left empty and unattended on the sales floor.

7. Check all floor displays, such as furniture, shelves and bust forms. Make sure that they are secure and level to prevent tipping.

8. Do not leave stock in aisles or pathways where it can be tripped over.

9. Never leave any dangerous tools, such as ticket guns or sensor pins, unattended on the sales floor.

10. Sensor pins and clips should always be kept in the designated, separate containers.

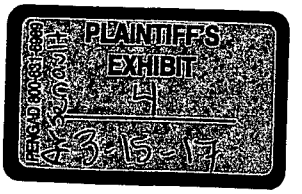
11. Fixtures should be positioned so they do not block aisles or pathways.

12. Fixtures or face-outs should never be left on the sales floor empty. Any empty fixtures should be filled or removed.

13. Each department should have a designated area for staging merchandise on the sales floor. Use caution tape when necessary to rope off the area where the move is being done.

14. Shopping carts should be stored neatly, cleared of doorways, aisles, and other areas where employees and/or customers can trip over them.

15. Store all top stock safely by stacking light weight boxes on top of heavier boxes.



16. When using rolling ladders, remember to re-chain the ladder to prevent unauthorized use or injury.

17. When lifting, PUSH don't PULL when moving heavy fixtures or merchandise.

18. Keep fitting rooms clear of hangers, tags and other debris to prevent slipping.

19. Check all displays, fixtures and furniture and remove any defective items from the sales floor.

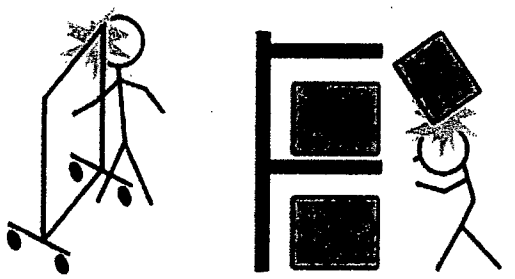
20. Always wear safe shoes and properly fitting clothing.

21. Report all accidents or injuries to management immediately, no matter how minor the accident or injury may be.

Sales Floor Safety

Struck by:

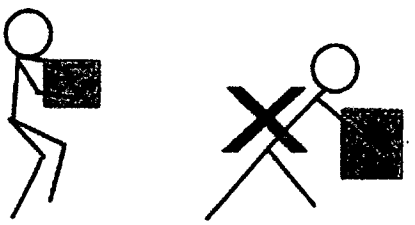
Falling boxes, rolling bars, etc.



Lifting and Material Handling

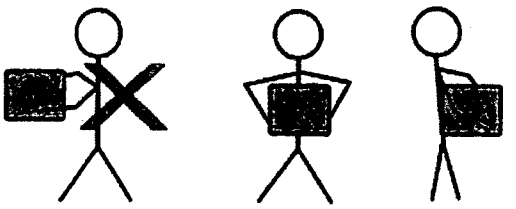
Lifting:

Squat, don't bend at the waist:



Carrying:

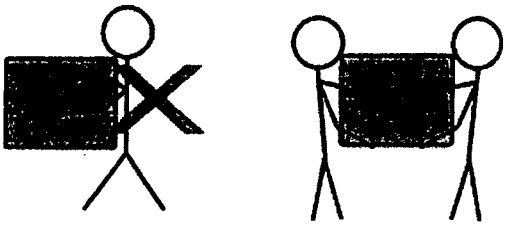
Move feet, do not twist trunk. Keep boxes in towards body:



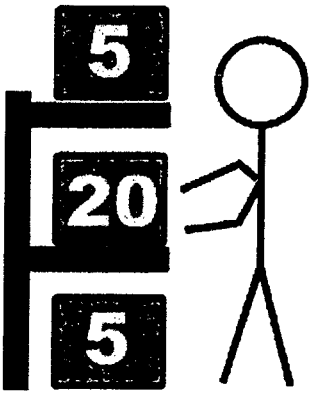
Heavy Boxes

- Do not overextend, get two people
- Store heaviest boxes at mid level to

to prevent back injury:

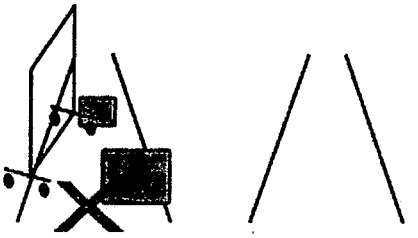


avoid lifting/bending:

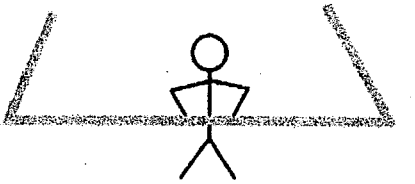


Floor Move Safety

- Remove rolling bars, boxes and Fixtures immediately.

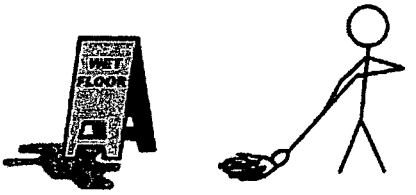


- Tape off area before floor move begins.



Slips, Trips and Falls

Wet Floor:
Sign and dry mop.



Pick up loose debris:
Hangers, Trash, etc.

SAFETY is not Magic

Receiving and Baby Depot Associates

1. When lifting, stand close to the object. Ensure firm footing, with feet spread comfortably apart and one foot slightly forward. Grasp the object firmly; be sure your grip will not slip. Breathe in - inflated lungs help support the spine. Keep your back straight and your head up. Lift with your legs - slowly straighten them. Hold object firmly and close to your body.

2. When carrying a load, hold box or merchandise below shoulders and close to body. Avoid twisting and bending.

3. If a load is too heavy or awkward to lift alone, use a mechanical aid, such as a flat bed or hand cart, or get help from another associate.

4. When lifting, PUSH don't PULL when moving heavy fixtures or merchandise.

5. Be sure to stack top stock neatly and balanced to avoid tipping.

6. Store all top stock safely by stacking light weight boxes on top of heavier boxes.

7. When opening boxes, be sure to use an appropriate cutting tool, cutting away from you to prevent possible harm.

8. Sensor pins and clips should always be stored in separate containers.

9. Always return the protective cap to tagging guns when not in use.

10. Always remember to use the proper ladder for the job. Do not climb on makeshift devices such as boxes, shelves, or carts.

11. When using rolling ladders, remember to re-chain the ladder to prevent unauthorized use or injuries.

12. Always keep work area free and clear of debris, use large clear trash bags for loose trash, such as plastic straps, plastic bags or other packing materials. Never let trash accumulate.

13. Only associates over the age of 18, who are authorized and trained, may use the bailer or compactor. At no time should anyone enter the compactor or bailer for any reason.

14. Never leave pallets standing on end against stock, merchandise or the wall. If a pallet falls over, it could hit someone's leg or foot. When storing pallets, lay them flat on the floor.

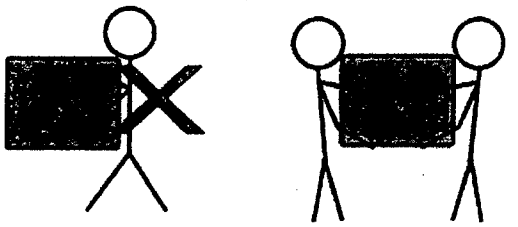
15. Always wear safe shoes and proper fitting clothing.

16. Report all accidents or injuries to management immediately, no matter how minor the accident or injury may be.

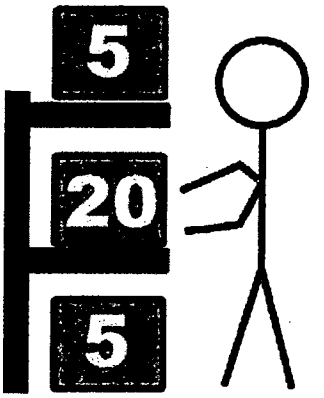
Receiving Room Safety

Heavy Boxes

- Do not overextend, get two people to prevent back injury:



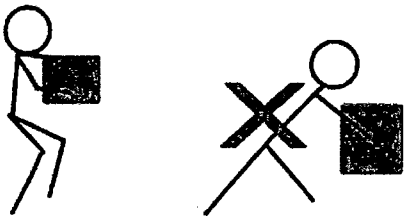
- Store heaviest boxes at mid level to avoid lifting/bending:



Lifting and Material Handling

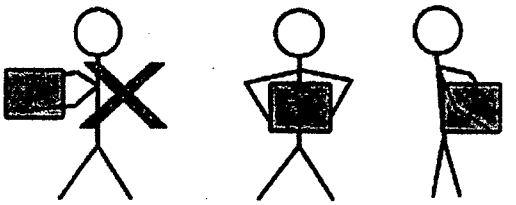
Lifting:

Squat, don't bend at the waist:



Carrying:

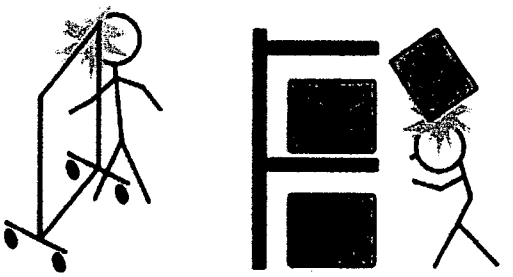
Move feet, do not twist trunk. Keep boxes in towards body:



Sales Floor Safety

Struck by:

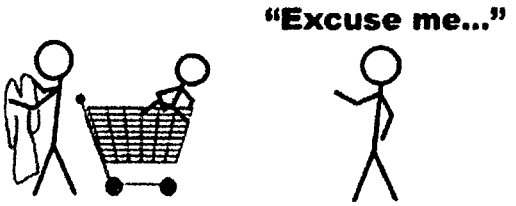
Falling boxes, rolling bars, etc.



Preventing Customer Accidents

Shopping Cart Safety:

- Make sure children are secure and sitting in shopping carts.



Escalator Safety:

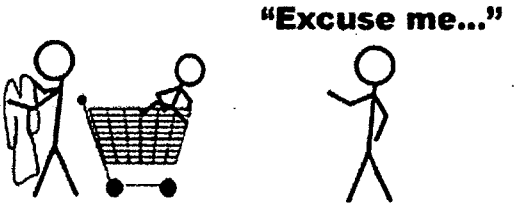
- Do not allow shopping carts on escalators.

SAFETY is not Magic

Preventing Customer Accidents

Shopping Cart Safety:

Make sure children are secure and sitting in shopping carts.



Escalator Safety:

Do not allow shopping carts on escalators.

Topic: Illness & Injury Prevention Program

Burlington

Company Policy:

Burlington is committed to providing a safe and healthy workplace for all of our associates and to observe all state and federal laws and regulations. The Injury & Illness Prevention Program or "IIPP" is designed to train our associates to work safely and to recognize and correct unsafe conditions and work practices.

Safety Standards:

- All stores shall operate in a safe manner
- Safe work practices are followed by management and associates
- Exposure to injury is minimized, at all costs

Action Required:

- Associates shall promptly report all accidents, injuries or workplace illnesses to their manager or MOD (Manager on Duty)
- Burlington encourages and requires all associates to inform management of any unsafe or hazardous working condition
- Comply with Burlington's General Workplace Safety Rules (posted in the break room)

NOTE: If any unsafe or unhealthy condition exists in the workplace, the Store Manager or MOD will take whatever steps necessary to ensure that any dangers to associates are eliminated.

Store Manager's Signature: _____

This Safety Topic has been presented to all store associates

Tom Culotta, Director of Risk Management (x2575) Juliet DeLuise, Corporate Safety Specialist (x2007)
1830 Route 130 North, Burlington, NJ 08016
(609) 387-7800

SAFETY – Talk About It!

Topic: Back & Lifting Safety

Burlington

Safety Standards:

- Plan ahead before lifting, clear your path and evaluate your load
- If a load is too heavy or awkward in shape, **ask** for assistance!
- Place feet shoulder width apart and hold load close to your body
- Bend with your knees keeping your back straight and head up
- Lift *slowly* and avoid jerking and twisting
- Maintain a firm grip on the load throughout the entire lift

Store Manager's Signature: _____

This Safety Topic has been presented to all store associates

Tom Culotta, Director of Risk Management (x2575) Juliet DeLuise, Corporate Safety Specialist (x2007)
1830 Route 130 North, Burlington, NJ 08016
(609) 387-7800

SAFETY – Talk About It!

Topic: Inventory Safety

Burlington

Safe work practices must be maintained throughout the Inventory process, including preparations made leading up to Inventory and throughout Inventory Day. Reducing the potential for injury is everyone's job at Burlington. Please review the following safety guidelines:

Safety Standards:

Safety & Security – Carefully manage people coming into the building before and after hours, making sure they have a valid Burlington ID or other form of ID, e.g. RGIS.

Ladders & Step Stools – We encourage everyone to use ladders and step stools during Inventory prep, organizing merchandise and the counting process. Use the right ladder or step stool for the right job.

Standing on a chair, box or unsteady item is absolutely prohibited!

Lifting & Reaching – Items placed on high shelving or boxes that are stacked high can be difficult to reach. Climb up close to the location you need, hold items firmly and close to your body, lift with your knees (not your back) and ask for help if you can't manage the load yourself.

Safety Knives – Only use the company approved safety knifes for cutting, opening boxes and consolidating recycled boxes. The safety knives are featured with a retractable blade. Using a metal Jiffy Cutter or other unauthorized utility knife is strictly prohibited because the blades stay opened and increase the likelihood of someone getting cut.

RGIS – Ensure RGIS employees follow and obey Burlington safety standards! When working in our buildings, RGIS employees must work safely and follow our company guidelines.

Speak Up – Don't be afraid to speak up and address any unsafe acts performed by an associate or RGIS employee. This will help prevent an injury and foster a safe working environment.

Store Manager's Signature: _____

This Safety Topic has been presented to all store associates.

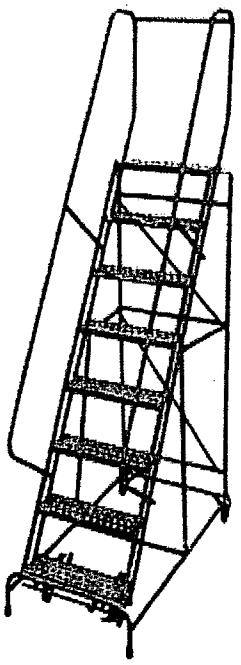
Tom Culotta, Director of Risk Management (x2575) Juliet DeLuise, Corporate Safety Specialist (x2007)
1830 Route 130 North, Burlington, NJ 08016
(609) 387-7800

SAFETY – Talk About It!

Ladder Safety

LADDER RULES

- **ALWAYS FACE LADDER WHEN ASCENDING OR DESCENDING**
- **USE AT LEAST ONE HAND TO GRASP LADDER**
- **TOP OF LADDER SHOULD NEVER BE USED AS A STEP**
- **LADDERS SHOULD NEVER BE MOVED, SHIFTED, OR EXTENDED WHILE OCCUPIED**
- **NEVER CARRY AN OBJECT OR LOAD THAT COULD CAUSE YOU TO LOSE BALANCE**

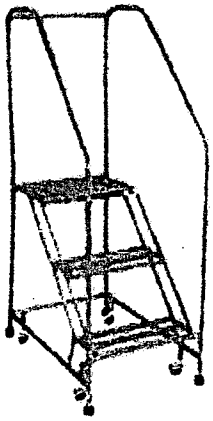


Burlington

LADIES · MENS · KIDS · HOME · COATS

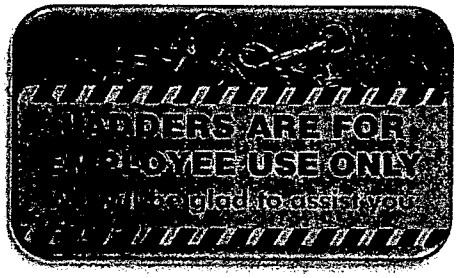
Safety Standards:

1. Ladders must always be **inspected** before use, secured when not in use and maintained in good condition at all times!
2. Choose a ladder, step stool or safety stairs for the **designed purposes**.
3. Set the ladder base or rubber feet on a **level surface** that is free and clear of debris.



3-Step Ladder

4. Ladders that **block** doorways, aisles or walkways must **immediately** be moved after use. Alert customers when areas are blocked on the selling floor.
5. Safety stairs that are provided with a **Chain and Sign (Employee Use Only)** must be applied when not in use to prevent customers from using it and children from climbing up.



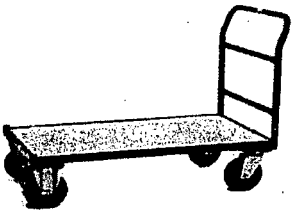
Chain and Sign

Store Manager's Signature: _____

This Safety Topic has been presented to all store associates.

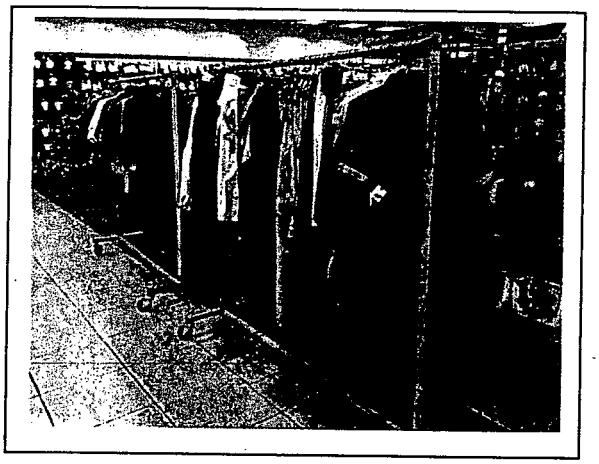
Tom Culotta, Director of Risk Management (x2575) Juliet DeLuise, Corporate Safety Specialist (x2007)
1830 Route 130 North, Burlington, NJ 08016
(609) 387-7800

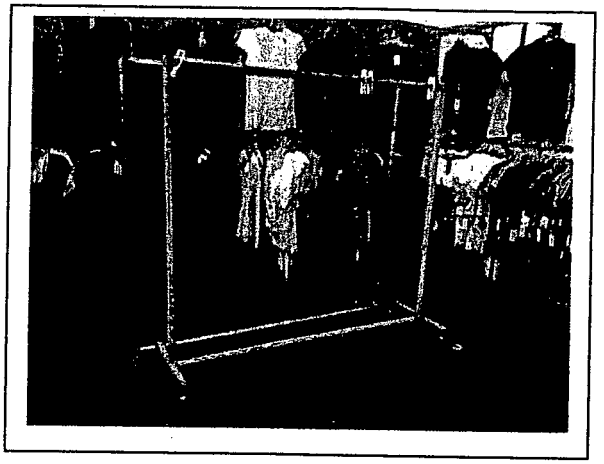
SAFETY – Talk About It!



Topic: Material Handling

Burlington





Safety Standards:

- **Rolling Racks** – BE AWARE of rolling racks on the selling floor! Associates are required to attend to rolling racks while merchandising on the selling floor and keep empty rolling racks off the selling floor at all times. Wheel back empty rolling racks to receiving/storage areas, when applicable.
- **Trolleys & Flat Beds** – Neatly stack boxes to avoid them from becoming overloaded and unstable.
- **Bins & Tables** – Utilize bins, folding tables and other company approved materials while working.
- **Nestaflex** – Avoid pinching hazards by working smart and safe around Nestaflex units.
- **Pallet Jacks** – Boxes must be stacked securely prior to and during the operation of a hand truck and pallet jack. When not in use, the equipment must be stored properly to avoid trip and fall hazards.

Store Manager's Signature: _____

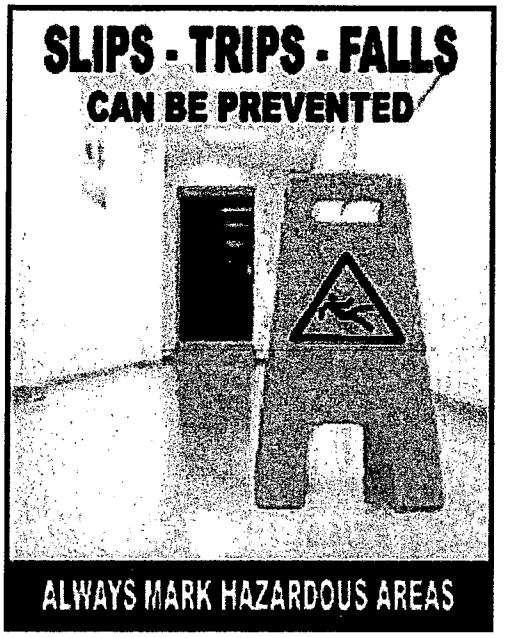
This Safety Topic has been presented to all store associates.

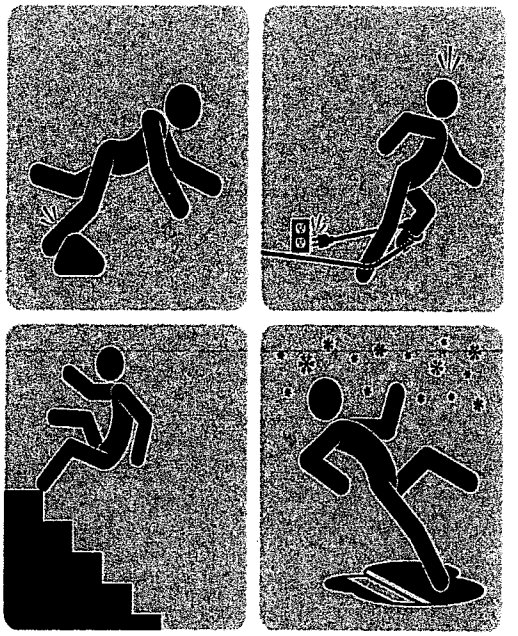
Tom Culotta, Director of Risk Management (x2575) Juliet DeLuise, Corporate Safety Specialist (x2007)
1830 Route 130 North, Burlington, NJ 08016
(609) 387-7800

SAFETY – Talk About It!

Topic: Slips, Trips & Falls

Burlington





Safety Standards:

- **React promptly** – Don't ignore a spill
- Note – If you are helping a customer, notify a manager or another associate to clean up the spill
- Proper use of spill clean-up materials – Spill Kits coming soon (April 2016)
- Inspection of the cleaned surface to ensure it is safe and dry after clean-up
- Safe removal and disposal of used materials

Store Manager's Signature: _____

This Safety Topic has been presented to all store associates.

Ash Warren, Corporate Safety Manager West (609) 500-9325
Juliet Lynaugh, Corporate Safety Manager East (609) 273-5504
1830 Route 130 North, Burlington, NJ 08016
(609) 387-7800

SAFETY – Talk About It!

Topic: Housekeeping

Burlington

Store Manager's Signature: _____

This Safety Topic has been presented to all store associates.

Tom Culotta, Director of Risk Management (x2575) Juliet DeLuise, Corporate Safety Specialist (x2007)
1830 Route 130, Burlington, NJ 08016
(609) 387-7800

SAFETY – Talk About It!

Burlington Coat Factory
NetClaim General Liability

Client Information

Name:	BURLINGTON COAT FACTORY 128
Address:	302 BUSH RIVER ROAD COLUMBIA, SC 29210
Business Phone	(803) 798-5990

Caller Information

Name:	PAMELA ARSENAULT
Job Title:	STORE MANAGER
Address:	
Business Phone:	(803) 798-5990
Home Phone:	

Incident Information

Location Name:	BURLINGTON COAT FACTORY
Address:	302 BUSH RIVER ROAD FRONT END COLUMBIA, SC 29210
Occurred:	07/31/2015 2:50 pm
Employer Notified:	07/31/2015 2:50 pm

Report Information

Number:	121858282
Created:	7/31/2015 3:34:00 PM Eastern
Escalated:	☐

Insurance Information

Policy Number:	Self-Insured
Insurer Name:	Self-Insured
Address:	
Insurer Phone:	
Policy Dates:	12/01/2014 to 11/30/2015
FEIN:	

Authorities

Title:	NOT PROVIDED
Name:	
Reference Number:	NOT PROVIDED
Phone:	

Description: Customer Lalie Qualls and her daughter Catrina were walking in front of the registers when Lalie slipped and fell on some soda that was on the floor. A customer who was exiting the register area just before this, must have spilled it and did not say anything. The cashier on Reg 6 immediately notified MOD-Store Manager Pam who was already at front registers helping another customer. MOD ran over to see what happened, Catrina told Pam to call 911, her mother had fallen and broke her leg. MOD Pam stayed with customer who was in pain...comforted her, held her hand while retrieving her information. EMT showed up and took customer to Richland Hospital.

Involved Parties

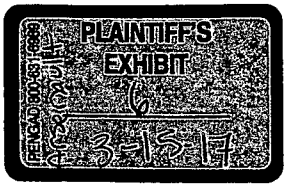
Name:	LALIE QUALLS	Employer Address:	
Address:	2020 QUALLS RD RIDGEWAY, SC	Employer Phone:	
Home Phone:	(803) 337-4528	Medical Prov Name:	NOT PROVIDED
Date of Birth:	08/03/1951	Med Prov Address:	NOT PROVIDED NOT PROVIDED
Date of Death:		Med Prov Phone:	
SSN:		Hospital Name:	RICHLAND HOSPITAL
Gender:	FEMALE	Hospital Address:	NOT PROVIDED NOT PROVIDED
Relationship to Ins:	CUSTOMER	Hospital Phone:	
Job Title:	NOT PROVIDED	Medical Transport:	
Employer Name:	NOT PROVIDED		

Injury Description: FALL, SLIP OR TRIP INJURY ~ FROM LIQUID OR GREASE SPILLS - LOWER EXTREMITIES ~ LOWER LEG - SPECIFIC INJURY ~ FRACTURE

Supplementals

Additional Information

Accident Conditions:	SODA WAS SPILLED ON THE FLOOR ACROSS THE WALK WAY EIN FRONT OF REGISTERS
Are there Unsafe Acts that need reporting?	SODA ON FLOOR, TILE IS SLIPPERY WHEN WET
What were the contributing factors?	MUST HAVE BEEN SPILLED RIGHT BEFORE CUSTOMER FELL, NOTICEABLE SPILL, HEAVY TRAFFIC AREA
Were photos taken?	NO



What is the injured's/claimant's attitude?	NOT PROVIDED
What type of shoes was the claimant wearing?	FLIP FLOPS
What is the loss area of the accident?	FRONT END

Notes

Notes/Additional Comments	NONE PROVIDED

Additional Escalation Criteria

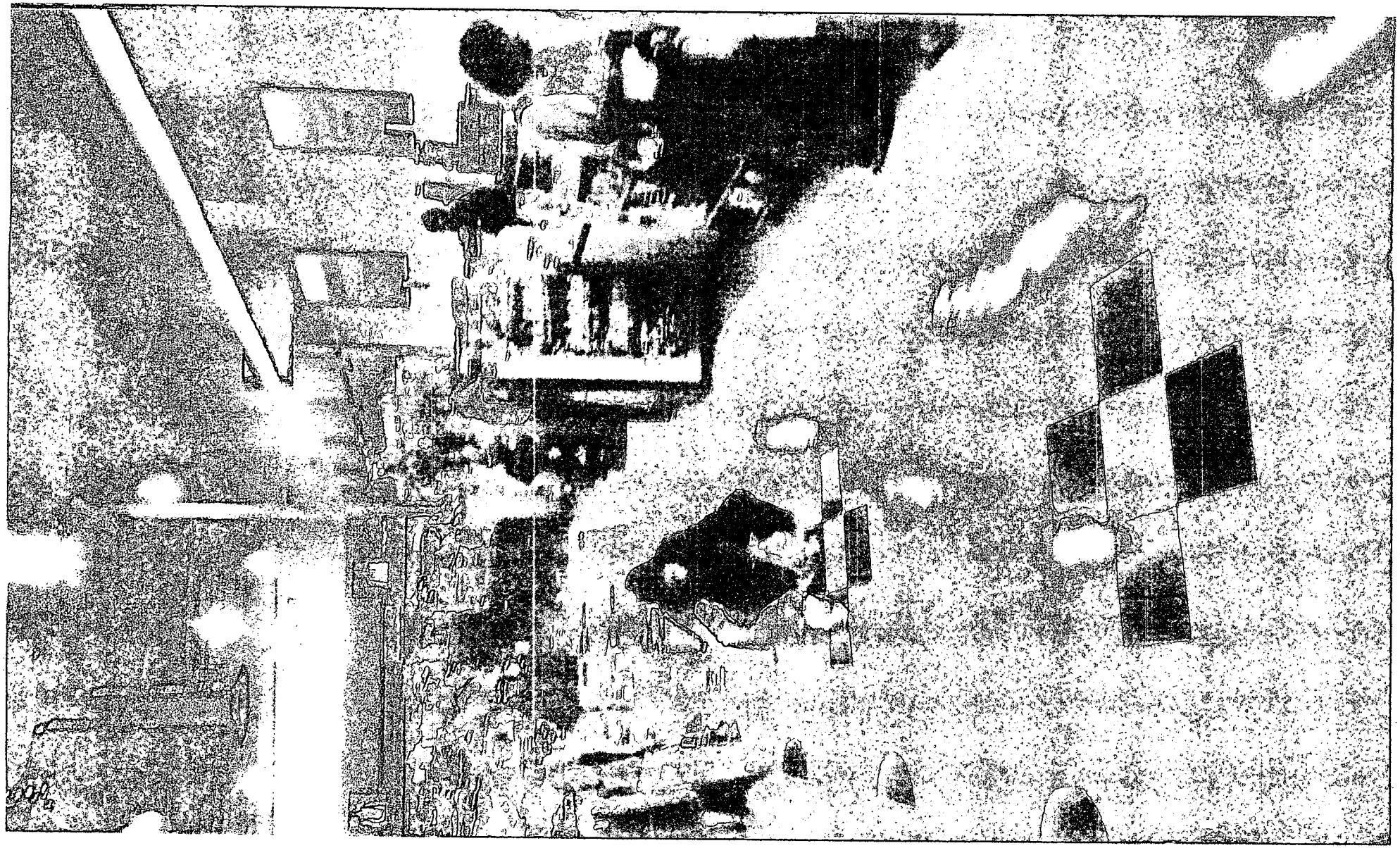
Does this claim meet any escalation criteria below?	NO

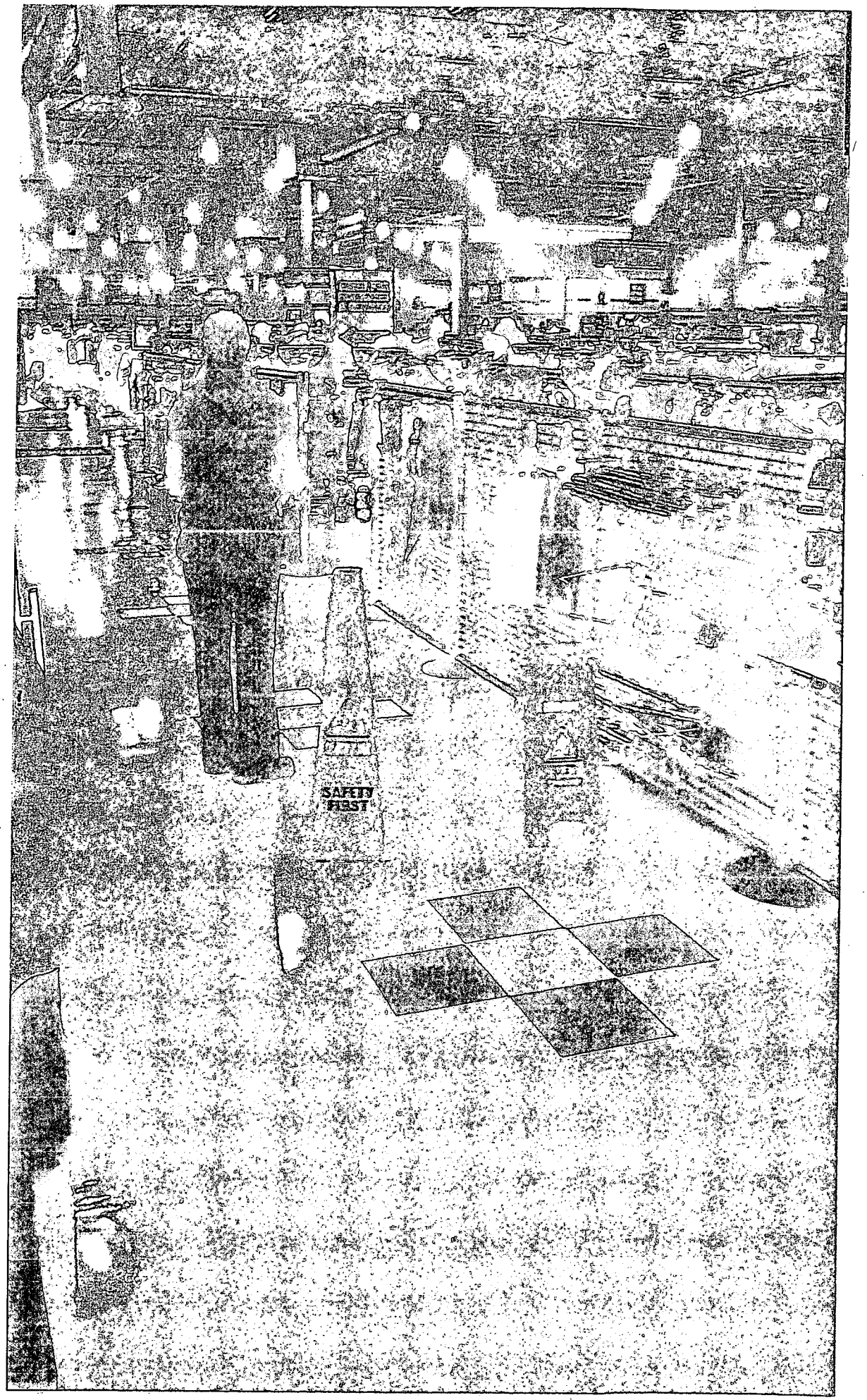
Data Entry Team ONLY

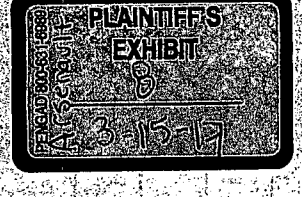
FMS#	981650

PLAINTIFF'S
EXHIBIT
7
Arguit
3-15-17
PENGAD 800-631-6989

WET FLOOR
SAFETY FIRST




SAFETY
FIRST


PLAINTIFF'S
EXHIBIT
9
4:3 15-17

Burlington

Injury & Illness Preventic Program (IIPP) Annual Recertification

June 2016 Monthly Safety Topic – June Week 1

05.26.16

Owners

- Store Manager (owns/ensures recertification)
- Assistant Store Managers (supports/drives daily safety priorities)

Injury & Illness Prevention Program Overview

At Burlington, we are committed to providing a safe and healthy workplace for all of our associates and customers. Our safety program is designed to teach our associates to work safely, recognize and correct unsafe conditions and work practices, and maintain all state & federal laws / regulations. We sustain the program through open and honest two-way conversations, continued training, and keeping overall awareness present. It is very important to re-certify your IIPP Program annually to maintain regulatory compliance and most importantly, ensure your store team is living our safety standards day-to-day.

Action Required

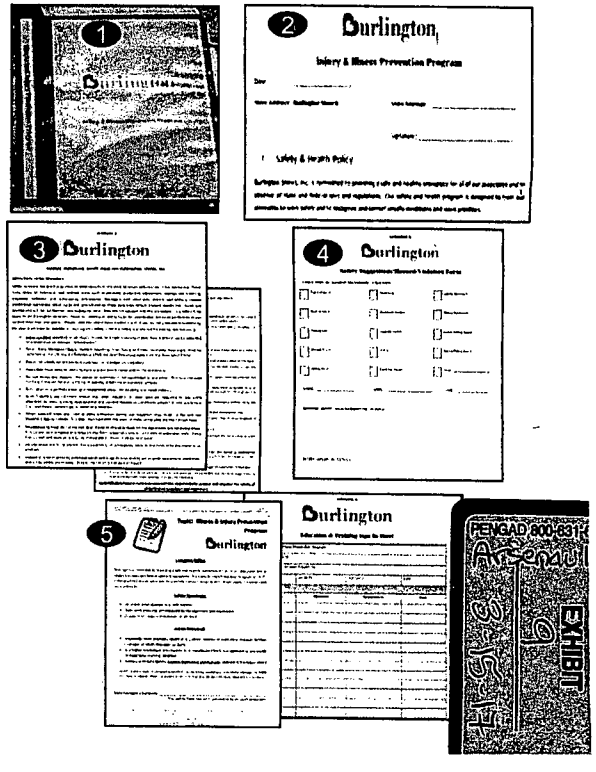
- ❑ PRINT the entire Injury & Illness Prevention Program (IIPP) document
- ❑ Remove and dispose of the previous Injury & Illness Prevention Program (IIPP) document from your Blue Binder (1) and replace it with the new IIPP document (keep all training sheets, completed forms, etc. for five years in the binder). All management should read the program and stay informed of the content (the program is unchanged from last year).
- ❑ IMPORTANT: Input Date, Store #, Location Address, Store Manager's Name on page four of Injury & Illness Prevention Program. (2) Store Manager is REQUIRED to sign page four
- ❑ Post a copy *General Workplace Safety Rules for Burlington Store, Inc. (Appendix F)* (3) on the Shortage/Safety board so all associates can access
- ❑ Print several copies of the *Safety Suggestion/Hazard/Violation Form (Appendix B)* (4) and have copies on hand for the associates who need to report an unsafe condition in the store
- ❑ Using the Safety Topic of the Month guide/flyer, train all associates on the program's safety standards during store rallies June Week 1. As with each month's safety topic, ensure all associates complete *Safety Training Sign-In Sheet (Appendix A)* (5)
- ❑ Stores in CA, NH, OR, LA & WA, please ensure monthly Safety Meetings (Appendix E) are held

Rally Script: *"Burlington's main objective is to reduce the number of injuries that occur in our stores. Proactively, Burlington works to ensure that all stores operate in a safe manner, safe work practices are followed by management and associates, and exposures to injuries are kept at a minimum or eliminated altogether. It's important that we all work together to reach these goals. For this month's Safety Topic, we want to re-certify the company's program...*(review the Monthly Safety Topic Flyer: Illness & Injury Prevention Program with associates to train them on the program). *By ensuring all associates report their safety concerns to management and comply with the company Safety Rules, this will help keep both associates and customers safe."*

Please direct any questions to Juliet Lynaugh, Safety Manager @ Juliet.Lynaugh@burlingtonstores.com

Program at a Glance

- ✓ Promote a safety culture daily by following the IIPP guidelines
- ✓ Conduct monthly safety inspection (LPA's), periodic inspections as needed, and report/ investigate all safety incidents
- ✓ Comply with all OSHA standards
- ✓ Monitor compliance and react proactively to all unsafe conditions
- ✓ Ensure General Workplace Safety Rules are posted for all associates to access
- ✓ Encourage associate reporting of any accidents or unsafe / hazardous conditions (to management)
- ✓ Hold Safety Topic of the Month rallies and ensure associate signoff (this supports training management and associates on the Program's core priorities). Training signoffs are maintained in your IIPP binder



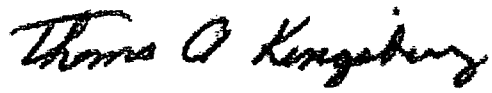
Burlington

Injury & Illness Prevention Program

Burlington

Message from Tom Kingsbury - CEO

We consider every associate, guest, and customer who visits one of our offices or stores to be part of the Burlington family, and we care a great deal about their well-being. As such, we have established an Injury & Illness Prevention Program, outlined on the following pages, which will help to ensure a safe working and shopping environment for everyone. It is important that we all work together to follow the guidelines and practices specified within this document. Remember that working together is how we continue winning together. Burlington will regularly review these guidelines and practices to ensure that we are not only keeping up with industry standards, but that we remain a safety leader in the retail and warehousing industries.



Thomas Kingsbury - CEO
Burlington Stores, Inc.

Burlington

Message from Fred Hand, EVP Stores, Burlington Stores

This packet contains our Burlington Stores, Inc. Injury & Illness Prevention Program (IIPP), an important element of our company's overall safety program. The IIPP has critical information as it regards protecting Burlington team members and customers from injury. This program is a living document that should be read and adhered to by all store management staff and associates. By maintaining and following the IIPP, we will meet the mandates of important OSHA regulations and will help in our efforts to make our stores a safer place to work and shop. It should not be placed in a file cabinet and forgotten. This document should be referred to often and must be kept updated, as required by law. As we strive to become an "Employer of Choice" at Burlington, we must keep in mind that the safety of our stores stands out as a major driver toward that goal.

Thank you in advance for your attention to safety and core values at Burlington.

Fred Hand

Burlington

Injury & Illness Prevention Program

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XIII. Additional Documents:

Education & Training Sign In Sheet (Attendance Record) ..... Appendix A
Safety Suggestion/Hazard/Violation Form ..... Appendix B
Store Safety Audit (Inspection) ..... Appendix C
Employee Incident Form ..... Appendix D
Store Safety Committee Meeting Agenda/Minutes (Template) ..... Appendix E
Safety Rules ..... Appendix F

Burlington

Injury & Illness Prevention Program

Date: _____

Store Address: **Burlington Store #**

Store Manager: _____

Signature: _____

I. Safety & Health Policy

Burlington Stores, Inc. is committed to providing a safe and healthy workplace for all of our associates and to observe all state and federal laws and regulations. Our safety and health program is designed to train our associates to work safely and to recognize and correct unsafe conditions and work practices.

Burlington's main objective is to reduce the number of injuries and workplace illnesses that occur in the company network. Proactively, our company works to ensure that all stores operate in a safe manner, exposures to injuries are kept at a minimum or eliminated altogether, and safe work practices are followed by management and associates.

The responsibilties for safety and health are shared at Burlington and include the following:

- Burlington, as the employer, accepts the responsibility for leadership of the safety and health program, for its effectiveness and continued improvement, for promoting a culture of safety and providing an environment where safety is practiced.
- Managers and supervisors are responsible for demonstrating a positive attitude towards safety and developing a culture to ensure that all operations and work duties are performed with the utmost regard to safety and health.
- Associates are expected to fully participate and carry out all aspects of the safety and health program, including compliance with all rules and regulations and performing safe work practices.

The Director of Risk Management and Safety, Thomas Culotta is responsible for overseeing and implementing the provisions of this program. For more information or questions, contact him at (609) 387-7800 x2575.

Sincerely,

Tom Culotta

Thomas B Culotta
Director of Risk Management & Safety

Burlington

Injury & Illness Prevention Program

II. Responsibility

A. Store Manager

1. The implementation and administration of the Injury & Illness Prevention Program (IIPP) at their assigned store.
2. Monitoring compliance with Burlington's safety rules and regulations and applicable safety and health standards of federal and state Occupational Safety and Health Acts.
3. Investigating, correcting and eliminating unsafe working conditions or potential hazards that have been uncovered.
4. Conducting periodic safety inspections of all work areas, equipment, grounds and other potentially unsafe or hazardous areas.
5. Training managers, supervisors and associates on safety rules and regulations to ensure they are performing their assigned responsiblities.

B. Associate (Employee)

1. All associates are required, as condition of employment, to demonstrate safe work habits in the course of their work to prevent injuries to themselves and their fellow associates.
2. Immediately report all accidents, near miss accidents, injuries and/or unsafe conditions to their manager or supervisor that takes place within the course of their employment.
3. Cooperate with all accident investigations with management, providing accident details, written statements and any information pertaining to the incident. NOTE: Management has the responsibility to identify the "root cause" of an accident to prevent reoccurrances.

Burlington

Injury & Illness Prevention Program

III. Compliance

All associates, including managers and supervisors are responsible for complying with safe work practices. Burlington is responsible for ensuring that all associates comply with these practices, as applicable, including the following:

- Inform associates of any provisions of the Injury & Illness Prevention Program
- Evaluate and become familiar with the safety performance of all associates
- Provide training to associates regarding safe work practices, where applicable
- Discipline associates for failure to comply with safe work practices
- Periodic inspection to document safety conditions
- Provide personal protective equipment (PPE), where necessary
- Maintain and evaluate safety records and reports, as required
- Take prompt action to correct work safety hazards

IV. Communication

All managers and supervisors are responsible for communicating with associates about occupational safety and health, in a form readily understandable by all associates. Burlington supports open communication between associates, their managers and/or supervisors about workplace hazards, without the fear of retailiation.

As applicable, our communication systems include:

- Online safety training – Safety e-Course on theTalent Management System (TMS), including safety procedures during new hire orientation
- Display of **Safety Rules** (Appendix F) in Employee Lounge
- Review of the Injury & Illness Prevention Program annually
- Safety Training – Safety Topic of the Month at "rally" meetings
- Attendance shall be documented using the **Education and Training Sign In Sheet** (Appendix A)
- Posted safety information, including Safety Topic of the Month and Safety Focus Memos
- A system for associates to inform management about workplace hazards, such as the **Safety Suggestions/Hazards/Violations Form** (Appendix B)

The communication of all matters relating to occupational safety and health shall be posted on the bulletin board in the break room frequented by associates. Associates who observe safety and/or health hazards, as well as any other dangerous or unsafe activities, must report this information to their manager or supervisor, who will notify Corporate Risk Management. Associates should also properly complete a **Safety Suggestion/Hazard/Violation Form** to report these hazards and turn it into management.

Burlington

Injury & Illness Prevention Program

V. Employee Reporting

Encouragement of Employee Reporting

- Burlington encourages and requires all associates to inform management of any unsafe or hazardous condition.

Non-Discrimination for Employee Reporting

- No associate shall be disciplined or discriminated against for reporting an unsafe condition to management or for correcting an unsafe condition.

- Associates shall report all unsafe conditions to their manager or supervisor. An associate observing another associate or supervisor violating **Safety Rules** should immediate report the violation to management.

Safety Suggestion/Violation/Hazard Report Form

- Associates may report unsafe conditions or violations of safety rules using the **Safety Suggestion/Hazard/Violation Form**, included in the IIPP.

Burlington

Injury & Illness Prevention Program

VI. Hazard Assessment, Identification & Inspections

A. Monthly inspections to identify and evaluate workplace hazards shall be performed by a Loss Prevention Associate utilizing the **Store Safety Audit** (Appendix C). All results of the audit are required to be inputted into the CAMS system on the Burlington portal.

B. Periodic inspections are performed according to the following schedule:

1. When new substances, processes, procedures or equipment which present potential new hazards are introduced in the workplace
2. When new, previously unidentified hazards are recognized
3. When occupational injuries and illnesses occur
4. Whenever workplace conditions warrant an inspection

C. Burlington has established a system for identifying, evaluating and preventing workplace hazards. This system includes, but is not limited to, the following actions:

1. The establishment of **Safety Rules**, which are provided to each associate in the Associate Handbook. The Safety Rules are reviewed annually by the corporate safety team.
2. Investigation of all work related injuries and illnesses performed by store management staff, including the Loss Prevention Associate, if available
3. Evaluation of information provided by associates on safety and health matters. Burlington encourages associates to report concerns regarding unsafe or hazardous conditions
4. Review with managers, supervisors and associates information regarding materials that may be hazardous
5. Compliance with General Industry Occupational Safety and Health regulations applicable to our operations

Burlington

Injury & Illness Prevention Program

VII. Hazard Correction

Unsafe or unhealthy work conditions, practices or procedures shall be corrected in a timely manner based on the severity of the hazards. As appropriate, hazards shall be corrected according to the following procedures:

1. If practical, once observed or discovered

2. When an imminent hazard exists which cannot be immediately abated without endangering associates and/or property, all exposed workers will be removed from the area, except those necessary to correct the existing condition. Workers who are required to correct the hazardous condition shall be provided with necessary personal protective equipment (PPE).

3. Unsafe or unhealthy conditions and work practices will be corrected in an expeditious manner, with the most hazardous exposures corrected promptly

4. Hazard assessment and corrections are to be documented using the **Safety Suggestion/Hazard/Violation Form** (Appendix B) or the **Store Safety Committee Meeting Minutes** (Appendix E)

Burlington

Injury & Illness Prevention Program

VIII. Accident/Exposure Reporting & Investigations

A. Requirements

Associates shall promptly report all accidents, injuries, or workplace illnesses to their manager or supervisor. A complete report is to be made by management for any accident, illness or injury.

B. Investigation

Store management, along with a Loss Prevention Associate will investigate all occupational injuries and illnesses. The investigation will incorporate the following elements:

1. An investigation completed within 24 hours of the report
2. An interview with injured associate and witnesses, without delay
3. A clear and complete description of the sequence of events that led to the accident or illness
4. The factors identified, stated clearly and completed correctly
5. The cause of the accident/exposure
6. A list of immediate corrective measures taken to ensure prevention of a similar accident
7. Recommendations made by the investigator to correct, reduce or eliminate the probability of recurrence of a similar accident or illness
8. A report that is reviewed and signed by management

C. Correction of Unsafe Conditions

If an unsafe or unhealthy condition exists, the Store Manager will take whatever steps are necessary to ensure that any dangers to associates are eliminated. If an imminent hazard exists that cannot be mitigated without endangering associates, all affected associates will be removed from the danger in a manner that is as quick and safe as possible. The Store Manager is responsible for reporting the incident/condition to Corporate Risk Management for review.

D. Records

All IIPP records will be retained by location (*with original forwarded to Corporate Risk Management*) pursuant to the requirements of the law.

Burlington

Injury & Illness Prevention Program

IX. Training & Instruction

A. Training

All associates, including managers and supervisors, shall have periodic training or instruction on general and job-specific safety and health practices, up to and including:

1. Whenever the IIPP Program is first established or revised
2. New hire safety orientation
3. Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard
4. Whenever management is made aware of a new or previously unrecognized hazard
5. To familiarize managers and supervisors with the safety and health hazards to which associates under their immediate direction and control may be exposed, as needed
6. Informing associates of specific hazards related to his/her job assignment, as needed

B. Instruction

Safety instruction may include the following:

1. Implementation and maintenance of the Injury & Illness Prevention Program
2. Emergency action and fire prevention
3. Provisions for medical services, first aid and emergency procedures
4. Prevention of musculoskeletal disorders, including proper lifting techniques
5. Proper housekeeping, such as keeping stairways and aisles clear, work areas neat and orderly, and promptly cleaning up spills
6. Prohibiting horseplay or other acts that tend to adversely influence safety
7. Proper storage to prevent stacking goods in an unstable manner
8. Proper reporting of hazards and accidents to supervisors or managers
9. Hazard communication, including awareness to potential chemical hazards and proper labeling of containers
10. Understanding and following all **Safety Rules**

Burlington

Injury & Illness Prevention Program

X. Disciplinary Action

Every associate will be expected to abide by the safety standards as set forth in the IIPP. Infractions of the safety rules may result in disciplinary action, up to and including termination. Situations that may warrant termination are reviewed by Human Resources before being finalized. Human Resources will assist store management and provide guidance in determining appropriate action.

XI. Safety Committee

Note: This section applies to states that require Safety Committees (CA, NH, OR, LA, WA):

A. The Store Manager will establish a safety committee to help facilitate IIPP compliance. The Safety Committee will consist of appointed members and shall meet monthly to accomplish the following tasks:

1. Prepare and make available to the associates written records of the safety and health issues discussed at the committee meetings using the **Store Safety Committee Meeting Minutes** form (Appendix E).
2. Review results of the store safety audit inspections.
3. Review investigations, including near miss investigations, occupational accidents and causes of incidents resulting in injury, occupational illness or exposure to hazardous substances. Where appropriate, committee members will submit suggestions to management for the prevention of future incidents.
4. Review investigations of potential hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, it may conduct its own inspection and investigation.
5. Assist in evaluating associate safety suggestions and submit recommendations.
6. The committee may be asked to help verify any required abatement actions taken as specified in Federal OSHA citations.

B. Designated associates are required to attend the safety meetings and safety trainings. Attendance will be documented using the **Education and Training Sign-In Sheet** (Appendix A). Participation from the associates is encouraged at the meeting. Failure to attend will be discussed with store management.

Burlington

Injury & Illness Prevention Program

XII. Recordkeeping

A. Records of safety or hazard assessment inspections and store safety audits, including the name of the person conducting the inspection, any unsafe conditions or work practices identified and the action taken to correct the conditions are to be recorded on the following forms:

- **Safety Suggestion/Hazard/Violation Form**
- **Store Safety Audit**
- **Store Safety Committee Meeting Minutes**

B. Documentation of safety and health training for each associate, including the associate's name, training dates, training topic, and training providers are recorded on the **Education and Training Sign In Sheet**.

C. Inspection records and training documentation will be maintained at the store location, in the manager's office for five years.

D. Other recordkeeping will include:

1. Accident reports on every injury or illness are to be reported on the **LPMS Incident Management System**, located on the company portal. (Files are to be created and maintained in the manager's office, filed under associate name and date of injury.)

2. Recording each injury or illness on the OSHA Log and Summary of Occupational Injuries and Illnesses, **OSHA Form 300**

3. Supplementary records of occupational injuries and illnesses on recordable cases on **OSHA Form 301** will be prepared and maintained, as required

4. Every year the summary **OSHA Form 300A** will be posted no later than February 1, until April 30, for associates review

5. These records will be maintained for <u>five years</u> at the store location and filed accordingly

APPENDIX A

Burlington

Education & Training Sign-In Sheet

TOPIC: **Injury & Illness Prevention Program**			
Description: Lecture			
Media/Materials: Written Procedure			
Store #:	Location:	Instructor:	Date:

Print Name	Signature	Department	Date

APPENDIX B

Burlington

Safety Suggestions/Hazard/Violation Form

CHECK AREA OF SUGGESTION/HAZARD/VIOLATION:

☐ Front of Store	☐ Receiving	☐ Ladies Restroom
☐ Back of Store	☐ Customer Service	☐ Men's Restroom
☐ Parking Lot	☐ Layaway Room	☐ Ladies Fitting Room
☐ Storage Room	☐ Office	☐ Men's Fitting Room
☐ Selling Floor	☐ Electrical Room	☐ Other: _____

NAME: _____ DATE: _____ TIME: _____

DESCRIBE SAFETY ISSUE/SUGGESTION IN DETAIL:

SAFETY VIOLATION DETAILS:

Burlington

Safety Suggestions/Hazard/Violation Form - Continued

All safety issues/suggestions will be brought to the attention of the Store Manager and Safety Committee.

- ☐ Noted issues (violations/hazards) were immediately corrected.
- ☐ Noted issues (violations/hazards) will be corrected in a timely manner.
- ☐ Store Manager notified. Name _____

CORRECTIVE ACTION/COMMENTS:

_____

_____

_____

STORE MANAGER NAME: _____ DATE _____

SAFETY COMMITTEE MEMBER NAME: _____ DATE _____

APPENDIX C

Burlington

Store Safety Audit

STORE #	
STORE LOCATION	
DATE OF INSPECTION	
INSPECTED BY	
MOD	

Slip/Trip/Fall Exposures		Possible Pts	Answer	Pts Earned	Prev. Failed
		2			
1	Floor tiles loose/broken? Carpet frayed? Transition strips?	1			
2	Store clean/free of leaks (roof, pipes, toilets, etc.)? Walk-off mats in place/good condition?	1			
Slip/Trip/Fall Exposures		2			

Entrances/Exits		Possible Pts	Answer	Pts Earned	Prev. Failed
		3			
1	Exits free/paths cleared for prompt egress (evacuation)? Emergency exit lights bright when test button pushed?	1			
2	Glass partitions at store entrances have Burlington decals?	1			
3	Outside lighting illuminated for proper exterior lighting?	1			
Entrances/Exits		3			

Electrical & Fire Equipment		Possible Pts	Answer	Pts Earned	Prev. Failed
		3			
1	Electrical rooms clear of combustible materials? Electrical panels closed and unobstructed? Extension cords used properly and only used for temporary tasks?	1			
2	At least 18" clearance below all sprinkler heads?	1			
3	Fire extinguishers accessible, wall-mounted and inspected? Initial and date the hang tag?	1			
Electrical & Fire Equipment		3			

Receiving Area		Possible Pts	Answer	Pts Earned	Prev. Failed
		4			
1	Are pallets laying down flat and not standing on end?	1			
2	Are only the orange safety knives being used by associates?	1			
3	Compactor—no magnets bypassing the safety interlock?	1			
4	Drawstring Poster posted in the processing area?	1			
Receiving Area		4			

Selling Floor Areas		Possible Pts	Answer	Pts Earned	Prev. Failed
		7			
1	Selling floor/walkways free of trip hazards?	1			
2	Shelving, mirrors and wall fixtures firmly secured?	1			
3	"Employee Only" signs chained on all safety stairs?	1			
4	Display furniture in Baby Depot in good working order? Check for chair stability and loose nuts and bolts.	1			
5	Are all Fitting Room walls, doors, and benches stable and undamaged?	1			
6	Do Fitting Room seats/benches have required bracing in place to support a customer's body weight?	1			
7	Does the seat/bench flex or bend when weight is applied?	1			
Selling Floor Areas		7			

Safety Program		Possible Pts	Answer	Pts Earned	Prev. Failed
		4			
1	Safety Topic of the Month signed/posted on SC Board? Signed by all associates? Past safety topics on file?	1			
2	Employee/Customer Accident Reports on file in Manager's Office? OSHA Log up-to-date?	1			
3	Is the Injury & Illness Prevention Program implemented? Is it printed, signed by the manager and associates where required? Are	1			
4	Active Shooter, OSHA Serious Accident Reporting Poster Emergency Response Guide, Drawstring Poster posted?	1			
Safety Program		4			

APPENDIX D

Burlington

EMPLOYEE INCIDENT REPORT

BLANK COPY ONLY

NOTE: All reports are to be submitted on the LPMS Incident Management System (on Burlington portal)

Incident Type: Employee Accident (WC)
Incident Date:
Day of Week:
Location Address:

EMPLOYEE #1 INFORMATION

Employee ID:
Last Name:
First Name:
Middle Initial:
Address:
City/State/Zip
Country:
Phone Number:
Date of Hire:
Termination Date:
Position:
Hourly wage:
Avg. Weekly Wage:
Hours worked weekly:
Email Address:
Job:
Org Department Number:

Date of Birth:
SSN:
Sex:
Employee Status:
Department:
Days worked weekly:
# of Dependents:

INJURY INFORMATION

Accident type:
Body part affected:
Injury Side of Body:
Type of injury/illness:

Accident location:
Accident location (Specific):
Employee first on scene:

FIRST AID

First aid given:
First aid performed:
Person giving first aid:

Medical attention Required (Y/N)
Medical treatment

TREATMENT INFORMATION

Medical treatment received:

Emergency Facility Name:

Address:

City:

State:

Zip:

Hospital/Overnight stay (Y/N):

Emergency Facility Name phone:

PHYSICIAN INFORMATION

Last name:

First name:

Phone number:

Approved provider:

Address:

City:

State:

Zip:

EMPLOYER INFORMATION

Supervisor:

Employer contact:

Person notified:

End of shift notified:

OFFSITE INFO

Accident on premises:

Accident location address (not on premises):

City:

State:

Zip:

SUPERVISOR INVESTIGATION

Safety rule violation:

Follow up training:

Safety equipment used:

Normal job duty:

Physician report form:

Health records release (HIPPA):

Post injury drug screen form:

ACCIDENT DETAILS

Date accident reported:

Time accident reported:

Accident Conditions:

Unsafe Acts:

Preventative recommendation:

Accident Description:

Injured Person Statement:

Contributing Factors:

Additional Contributing Factors:

Corrective Action:

OSHA / ACCIDENT DETAILS

OSHA recordable:
Injury classification:
Case outcome:

Date of death:
Other claims involved:

OSHA / LOST TIME FROM WORK

Lost time from work:
1st full day out of work:
Est. return to work:
Date returned to work:
Days away from work:
Salary continued:

Job transfer start:
Job transfer end:
Days on job transfer:
Time employee began work:
Paid for date of injury:

OSHA / ACCIDENT DESCRIPTION

What was employee doing just before the accident?

What happened?

What was the injury or illness?

What object or substance directly harmed the employee?

REPORT COMPLETED BY

Report completed by:
(Name: Last, First)

Title/Position:

E-mail address:
Phone number:

Investigator Signature:_____ Date Signed: ___/___/_____

LP Manager Signature: _____ Date Signed: ___/___/_____

NOTE: All reports are to be submitted on the LPMS Incident Management System (on Burlington portal)

APPENDIX E

Burlington

Store Safety Committee Meeting Agenda/Minutes

Date

Location:	Store #:	Store Manager:	
Team Members	*Department*	*Team Members*	*Department*
Minutes Taken By:			

Subject/Discussion Topics

1. Safety Theme
2. Injury / Incident Occurrences
3. Audit / Inspection Results
4. Safety Training
5. Safety / Maintenance Work Orders
6. Associate Suggestions / Safety Violations
7. Old Business / New Business

Next Month Meeting Schedule

- Third Wednesday of Every Month (For Example) – Next Meeting (Input Date)

Committee Meeting Minutes Distribution List:

- SVP, RHRM, RVP, Territory LP, RLPM, Store Management Team

APPENDIX F

Burlington

GENERAL WORKPLACE SAFETY RULES FOR BURLINGTON STORES, INC.

Safety Rules in the Workplace

Safety rules are designed to protect all associates from the most common deficiencies in the workplace. These rules apply to everyone and address areas such as personal protective equipment, appropriate clothing, expected behavior and emergency procedures. Managers and associates should periodically review established workplace safety rules and procedures to make sure they reflect present conditions. Rules and procedures will be written for new exposures when they are introduced into the workplace. The safety rules apply to all Burlington locations; however, additional safety rules for operational activities performed at our various sites may also apply. Please read the safety rules carefully and if you do not understand something, ask your supervisor for assistance. Burlington's safety rules are listed, but are not limited to, the following:

- Every incident resulting in an injury, illness, or a near miss—no matter how slight—must be reported to a supervisor or manager immediately!
- Retail Store Managers—Every incident resulting in an injury or illness, no matter how slight, must be reported within 24 hours – Reference LPMS Incident Reporting System on the Burlington Portal.
- Report all unsafe conditions to a supervisor or manager immediately.
- Associates must obey all warning signs and announcements within the workplace.
- Do not throw any objects. Horseplay on premises is not permitted at any time. This rule includes running in the workplace, jumping on pallets, platforms or elevated surfaces.
- Burlington only permits smoking in designated areas. No smoking is allowed indoors.
- Slips/Trips/Falls are common within the retail industry. All associates are required to pay extra attention to their working environment and correct hazardous conditions present in the workplace (i.e., wet floors, curled rugs, or other trip hazards).
- When walk-off mats are used at store entrances during wet weather, they must lie flat and not become tripping hazards. It is also important that the walk-off mats being used are the correct type.
- Housekeeping must be maintained at all times on the sales floor, in the stockroom and receiving areas. Pick up any item dropped or placed on the floor; especially where customers or associates walk. Keep floors clean and wipe up any spills immediately. Aisles must be kept clear!
- Do not block electrical panels, fire equipment, or emergency exits at any time with any material or product.
- Inspect all electrical cords, extension cords and plugs to ensure they are in good operational condition, and if not, throw them away. Ensure insulation is not split or frayed.
- Keep electrical cords out of walkways and do not run them through doorways or windows.

- Only qualified electricians should make electrical repairs to any Burlington equipment.
- When ascending and descending stairs, always use the handrails.
- Be sure to use only OSHA approved ladders.
- Inspect ladders prior to each use and ensure that they are in good operational condition. Remove a ladder from service if it has damaged parts (e.g., boots, rungs, and any other defect parts).
- DO NOT use step stools, chairs or boxes to access high shelves. Use only OSHA approved ladders or rolling safety stairs with handrails.
- Do not attempt to lift or push heavy objects.
    - Always ask for assistance!
    - Use proper lifting techniques; grasp the object firmly, bend with your knees, keep your back in a straight position and lift gradually, avoiding quick movements.
- Store light cartons high and heavy cartons low. Heavier cartons should be placed closest to the floor.
- Only use box cutters approved and distributed by Burlington. Do not use razor blades, knives and scissors for slitting cartons.
- Do not attempt to operate or make repairs to office equipment. All repairs must be entered into Service Channel.
- Do not overload electrical circuits with double or triple plugs. Do not "daisy chain" extension cords or power strips. If there is a need for additional electrical service, then request this through Service Channel.
- Use all chemicals with care and read all the labels and warnings thoroughly before using the substance.
    - Hazardous chemicals found in our workplace may include fluids and photocopier inks.
    - Do not discard chemicals into secondary containers or sink drains. They must be disposed of properly.
- Food and drink should only be consumed in designated areas of the store.
- Alcohol and drugs are not allowed on Burlington's premises. No associate will be allowed to work under the influence.
    - Failure to comply may result in immediate discharge.
    - Associates must notify their supervisor immediately if they are taking a prescription medication that could inhibit their ability to complete their work or that may create an unsafe condition.
- Any and all unsafe conditions or hazards should be reported to a manager or supervisor immediately!
- Proper clothing must be worn according to the work task being performed. Loose or baggy clothing should not be worn when working on or around conveyors.

General Safety Rules provide everyone with the opportunity to protect and improve the safety of all Burlington associates and customers.

Remember, if you do not know or understand the above rules — please ask!

Safety Tips

It All Begins With You. . .

Table of Contents

Rolling Racks	Sharp Objects
H-Racks/T-Stands/4-Ways	Shelving
Tears In Carpet/Uneven Floor Surfaces	Bags
Wet Floor	Boxes
Grid Racks	Body Mechanics - Back School

Safety is everyone's responsibility.

Rolling Racks:

Make certain the rolling rack is noticeable from top to bottom. Paint the rack in fluorescent colors. Try to have an employee no more than three feet from the rack when loading or unloading merchandise from the rack to the floor. If an employee is nearby, they can warn the customer. NEVER leave the rack unattended.

H-Racks / T-Stands / 4-Ways :

Make certain no clothing hides the legs or the base of the rack. If this occurs it is construed as a hidden hazard. Make certain the legs of the racks do not extend beyond the upper arms of the rack. DO NOT place racks too close to the main aisles.

Tears In Carpet / Uneven Floor Surfaces:

Make certain daily inspections are performed. If an area of the floor appears to be defected, rope off the area, or place a yellow caution sign in the area until repairs are made.

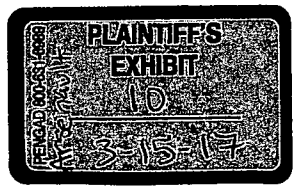
Wet Floor:

Make certain caution signs are posted, and if necessary, the area is roped off. Do not use shopping carts to block off the area, use yellow caution tape.

Grid Racks:

An inspection of these racks must be performed daily. The plastic ties that hold the grid often become worn and loose. DO NOT OVERLOAD MERCHANDISE ON THESE RACKS.

Sharp Objects:



Inspect all peg hooks, make certain that:

- There are no sharp or rough edges.
- There are no empty pegs.
- Racks have no exposed screws or sharp edges.
- All security sensors are properly affixed to the merchandise.

Pick up sensor pins on the floor or around the cash wrap.

Shelving:

Inspect all shelves to ensure that they are level and secure. Make certain the merchandise is properly displayed. DO NOT OVERLOAD MERCHANDISE ON THE SHELVES.

Bags:

To avoid a slip-and-fall accident, pick up any bags on the sales floor or around the cash wrap.

Boxes:

Make sure your department has a safe staging area. Do not leave boxes lying around, as they are a trip hazard.

Remember. . . SAFETY -

IT ALL BEGINS WITH YOU!

BODY MECHANICS

Back School

You hate to complain, but your back is giving you fits! While driving one day, a shooting pain crawled out of nowhere and headed straight up your spine. You are not alone! 75% of the United States population endures back pain at some time.

Anyone who wants to know how to avoid the pain, the cost and the misery associated with back problems needs to read this document. It is a wise investment in health, comfort and savings.

This document contains techniques for working on the job and in the home.

Contents

Do's & Don'ts When Your Back is Hurting
First Aid
Body Mechanics
General Rules for Exercise
Steps for Relaxation and Relief of Stress
Recreational Do's & Don'ts

The Spine - A Complex But Sturdy Structure:

It stands to reason that the more complex a structure, the more there is to go wrong with it. Although the spine is complex, it is also very sturdy and can last a lifetime if it is not too badly abused.

Your spine has two basic functions - the first is support and the second is protection of the spinal cord. The spine is made up of twenty-four bones or vertebrae with cushions or discs in between. If a person becomes a spine abuser, it is very critical to your well being, and it is very possible that one or several of the discs will bulge or herniate and cause major problems for the owner of the spine.

Using good body mechanics and staying physically fit no matter how young or old you are is going to protect you in every circumstance. That is why it is important to take care of your spine at work and at home. It is a twenty-four hour a day job that only you, the back owner, can control.

Do's & Don'ts When Your Back is Hurting

Sitting:

- Avoid sitting. If you must sit , get up and move around every 20 minutes.
- Use a back support and get your knees level or a little higher than your hips. A towel roll or a magazine roll will suffice as an inexpensive back support.
- Avoid leaning forward from the waist.
- When driving, move the seat forward so that your knees are level with your hips. Don't get so close to the steering wheel that you cannot turn it easily.

Bending:

Avoid bending from the waist when your back hurts. This increases the disc pressure. Kneeling to reach low levels is a good alternative when you are hurting. You can even kneel to make beds and get clothes out of the dryer.

Lying:

- Good firm support is desirable. The floor is too firm: a stagy mattress is too soft.
- When getting up, turn to one side, draw your knees up and drop your feet over the edge. At the same time, push yourself up with your arms and avoid bending forward at the waist.

Coughing and Sneezing:

- When your back is hurting, stand up if you can and bend your knees. Brace yourself against a wall before you cough or sneeze.
- If you are sitting and cannot stand, lean back in your chair. Always avoid leaning forward at the waist.

Recurrence:

- The next time you feel the warning signs of impending back pain:
  Use the first aid techniques - ice massage, anti-inflammatories and movement - to get rid of any back pain. Doing these exercises will help decrease the pain.
- If the first aid regimen does not help significantly in the first 72 hours, if you experience a different kind of pain than before, or experience leg pain, see your doctor and follow his advice.

First Aid
A-I-M - Anti-Inflammatories, Ice Massage, Movement

Anti-Inflammatories:

Aspirin or ibuprofen are anti-infammatories and should decrease the swelling present in the nerves and muscles. Aspirin substitutes do not have anti-inflammatory properties. Follow the instructions on the bottle for proper dosage. Should you experience stomach upset or ringing in your ears, discontinue taking the aspirin or ibuprofen. If you have a history of ulcers or have had surgery, DO NOT TAKE ANTI-INFLAMMATORIES.

Ice Massage:

- ***When to do it*** **-** When experiencing back spasms or any level of discomfort in your back, shoulders or neck.
- ***What it does*** **-** Breaks the pain-spasm cycle between the nerves by slowing down the nerves impulses, numbing the area and decreasing pain and swelling.
- ***How to do it*** **-** Freeze water in a paper or Styrofoam cup. Peel the bottom inch or two off the cup. Either lie on your stomach with a pillow under your stomach and have someone give you ice massage, or lie on your side and give it to yourself. Ice massage is also very effective for muscle spasms in your neck. Gently massage a 4" by 6" area in a circular motion over the muscle spasm or the area where you peel the pain. This is done on either side of your spine, but not directly on your bone.
- ***How long*** **-** For 5-7 minutes. No longer than 7 minutes, you don't want to get frost-bite!
- ***How often*** **-** Ice massage can be done every hour. The

more frequently ice massage is applied, the more likely the reduction of muscle spasm and discomfort.

- ***Ice Pack*** - If cups of frozen water are not available, a sealed bag filled with ice cubes can become an ice pack. Or, you can use a commercial ice pack. Place the ice pack on a thin shirt or towel over the area where you feel pain for 20 minutes. Then follow the recommended stretching.

Movement or Stretching:

- ***Knee-to-Chest Stretch:*** Immediately after the ice massage, lie on your back and bring your knees toward your chest. You can bring one knee up or both at the same time. Hold the position for at least a minute. This will help stretch the muscles back to their normal limits.
- ***Mountain and Sag Stretch*** : Start on your hands and knees. Make a mountain out of your back and then let it sag like an old horse. Do this stretch slowly and deliberately. Repeat 5-10 times. This will be effective following ice massage and as part of your regular stretch routine.

Body Mechanics

1. Standing:

With one foot forward and knees slightly bent, prop a foot up on a box or ledge. The diagonal stance works well at home while shaving or brushing teeth.

2. Sitting:

Get knees level or a little higher than your hips with good lower back support. Slouching will put a lot of pressure on your back.

3. Reaching:

Use the diagonal stance to pick up a light object. Or, get down on one knee to get to low levels.

4. Bending:

You can bend over half way to pick up a light object. Or, get down on one knee to get to low levels.

5. Pushing :

Pushing is easier on your back than pulling. Use your arms and legs to start the push.

6. Pulling :

Keep the handle next to your side. Do not twist your back while pulling.

7. Pushing and pulling with a partner requires communication. Use

your legs and arms to begin moving the object.

8. Carrying:

Two small objects may be easier to handle than one large object. Keep the load close at all times.

9. Lifting:

Lifting materials with your heels off the floor can cause you to lose your balance. The diagonal stance will provide the stability you need for lifting. Lift with your legs not your back. A hand on the bumper will help support your body. Use the diagonal stance to balance the load. A knee on the bumper will give you the leverage you need to get objects out of the trunk of a car.

10. Pivoting :

Move your shoulders, hips and feet at the same time. Keep the load in front of you.

11. Sleeping:

Sleeping on your back puts 55 lbs. of pressure on your back. Lying on your side with a pillow between your knees reduces the disc pressure to 40 lbs. Putting a couple of pillows under your knees will take most of the pressure off your back - only 25 lbs of pressure.

12. Resting:

This position works well while watching TV ? place pillows under your head and back, with a stool under the lower legs.

General Rules for Exercise

1. Do each exercise slowly.
2. Do each exercise 2 times a day.
3. Start with 5 repetitions of each exercise and work up to 10 repetitions.
4. If an exercise increases your pain after 5 repetitions, discontinue.
5. Exercise every day. For every day you do not exercise, you set yourself back four (4) days in strength.

Exercises:

- ***Modified sit-up*** **-** Strong abdominal muscles protect your back! Slowly raise your shoulders off the ground while keeping your chin tucked. Touch your fingertips to your knees and hold for a count of five.
- ***Hamstring stretch*** **-** The hamstring muscle runs from the hip down to the back of your knee. This exercise is designed to give your back and hip additional flexibility. This hamstring exercise can be done lying or standing.
- ***Lying hamstring stretch*** **-** Lie on your back with your knees bent so that your feet are flat on the floor. Raise your

legs slowly by clasping your hands around the back of the knee to support the lower thigh. Slowly straighten the knee and feel a stretch in the back of your leg. Hold for the count of three and relax.

- ***Standing hamstring stretch*** - Stand with one leg propped on a table or the back of a chair. Bend the leg you are standing on until you feel a mild stretch under the thigh of the leg that is on the chair. Hold for a count of three. This may be more difficult, but will give you some variety.
- ***Sitting hamstring stretch*** - Sit on the floor with one leg bent and the other almost straight. Lean forward slowly over the bent leg until you feel a mild stretch under the other leg.
- ***Straight leg raise*** - Not only will this strengthen your legs, it will also strengthen your abdominal muscle. Lie on your back with one knee bent so that your foot is flat on the floor with the other leg straight. Slowly raise the straight leg eight inches off the floor. Hold for five seconds, then slowly lower your leg and relax. Do five repetitions and change legs.
- ***Leg lifts*** - Lie on your side with your bottom leg bent slightly under you. Place your top arm in front of you on the floor for support. Align your shoulder and hip. Slowly raise your upper leg until it is above shoulder height and lower slowly. Repeat five times. Turn over and repeat on the other side with the opposite leg.
- ***Extension stretching*** - This is particularly good if you have been sitting or in a bent over position for a long time. Simply stand, bend your knees slightly, place your hands on the back of your waist and stretch backward while looking at the ceiling. Hold for a count of five and then slowly stand up. Repeat often during the day.
- ***Low back stretch*** - This exercise is similar to the knee-to-chest stretch and will accomplish the same thing, but in a standing position. Don't try this unless you are confident of your balance. Slowly bring one knee toward your chest and grasp it with your hands. Hold for a count of three. Change feet. This allows the lower back muscles to stretch and will help them relax.
- ***Calf stretch*** - Calf stretches are excellent for fast walking/running activities, and very important for anyone who wears high heels! Lean against a table or a wall with your hand at a comfortable height. Place your feet in a diagonal stance. Bend your forward knee as you place your weight on the back leg and press your foot flat on the floor. You should feel your calf muscle stretch. Hold this position

for the count of five. Repeat five times.

Neck Stretches:

- Gently move your chin in a "yes" motion. Nod your head slowly, bringing your chin toward your chest. Repeat five times.
- Saying "no" will also stretch those stubborn, tight neck and shoulder muscles. Simply turn your head from side to side very simply until you can turn enough to put your chin in line with your shoulder. Repeat five times.
- Try "maybe." Tilt your head slowly from side to side. Your ear should be directly over your shoulder. Do this stretching to increase flexibility.

Shoulder Roll :

Shoulder rolls are also going to increase your flexibility. Roll your shoulders forward in a circle. Do the exercise for 10-15 seconds to begin. Start with little circles and progress to large circles. This should be done several times during the day to relax your shoulder muscles, as well as your neck muscles

Steps for Relaxation and Relief of Stress:

- Plan on 20 minutes of isolation. Get comfortable - take the phone off the hook, turn off the television or radio.
- Begin by focusing on a spot on the wall. Stare at this spot intensely. At the same time, put all other things out of your mind. Really concentrate on the spot.
- When you feel your eyes getting tired, allow them to close on their own. Do not force them. After your eyes close, begin to think about your breathing. Take deep breaths, cleaning all the tension in different parts of your body away. Start with the different parts of the arm and come back to the shoulders. Then go to the neck, jaws, eyes and the top of the head. Concentrate on breathing and relaxing.
- You may feel body warmth while practicing this technique; a relaxed state may raise your body temperature because of improved circulation.
- After you feel the blood freely circulating and the tension has left your body, slowly open your eyes. Try to maintain that relaxed state as you open your eyes and continue it throughout the day.
- Practice this relaxation technique at least once a day. Schedule this exercise as top priority. Results will be a happier, healthier you!

Recreational Do's & Don'ts

Remember :
Any time you suddenly increase your activity, you are going to get sore. Keep exercising, you will work the soreness out as you increase your strength and flexibility. Use ice if the soreness is too great!

Fast Walking:
Great exercise! Start with a short distance and gradually increase the distance every week. Make your goal 2 miles in 30 minutes. It may take 6-7 weeks to work up to that goal.

Listen to your back!

Cycling (Outdoor or Stationary):
Adjust the seat so you do not have to stretch your leg to reach the pedal. Raise the handle bars so you do not have to bend over so far. But, remember, your arms are supporting your trunk.

Listen to your back!

Tennis, Racquetball:
Before you begin these sports, it is recommended that you see your doctor first. Play with someone who will let you take it easy at first. Lob the ball for the first 3-4 weeks while you are getting into condition. Keep your knees bent when you serve. Stay on your toes, and keep your body weight on the balls of your feet. This will lead to pivoting. Always pivot, never twist. Warm up and cool down with stretching exercises.

Remember:
Competition adds stress to your muscles. Stay loose, stretch slowly to warm up. Tired muscles are more susceptible to injuries. Rest by walking around or if you can, lie down and put your feet up. TRY NOT TO SIT after a vigorous activity.

Listen to your back!

Bowling:
Bend your knees, do not twist. Add support with a hand on your knee.

Remember:
If you are right-handed, the right side does all the twisting. EQUALIZE the stress by warming up with the other hand holding the ball. You do not have to release the ball. Just swing it on the side of your body to even out the stress.

Listen to your back!

Baseball, Softball:

- Warm up and cool down with stretching exercise.
- Pivot on the balls of your feet when batting.
- Wear knee pads to catch grounders. You will be more likely to squat.

Listen to your back!

Use Good Body Mechanics

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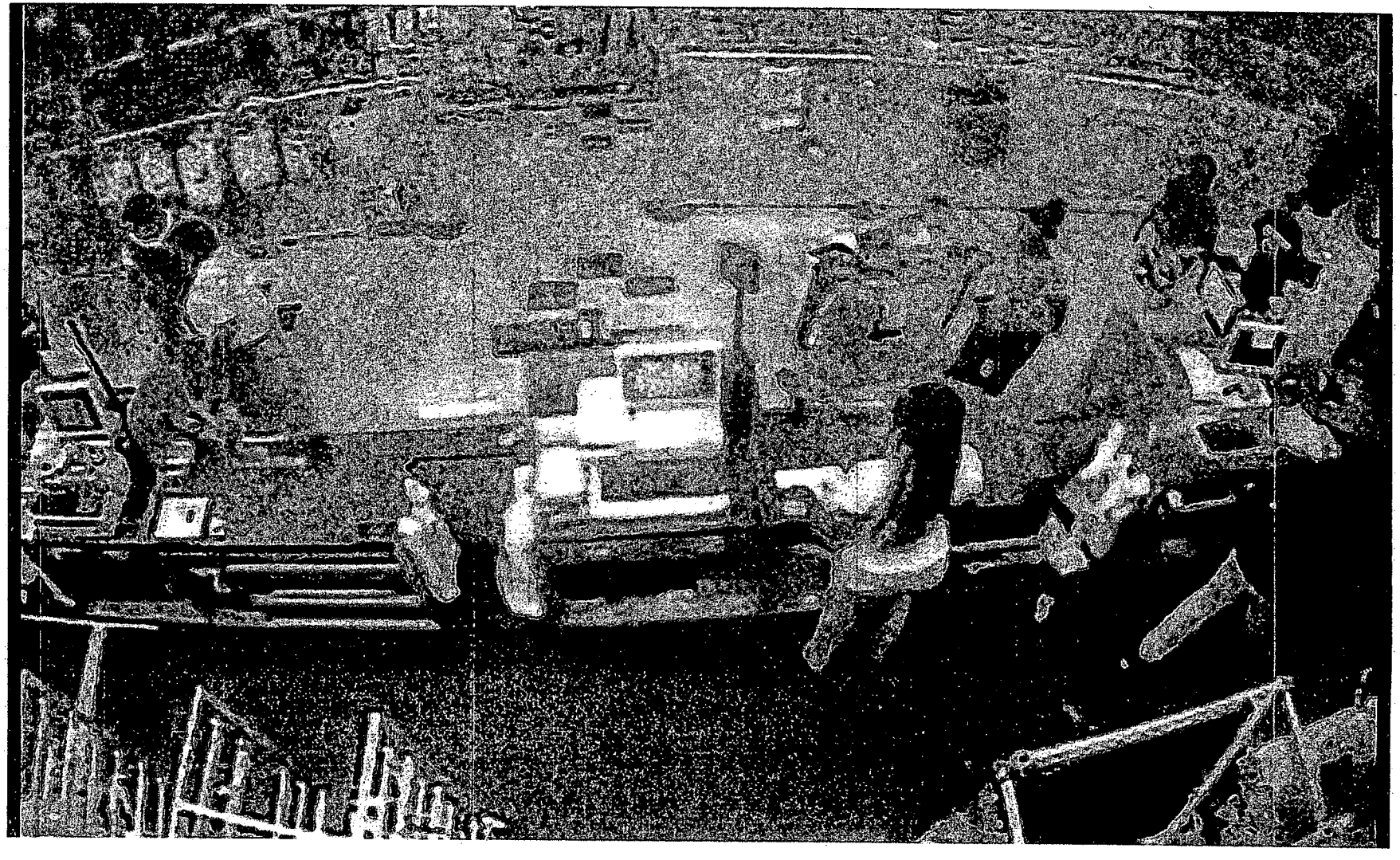

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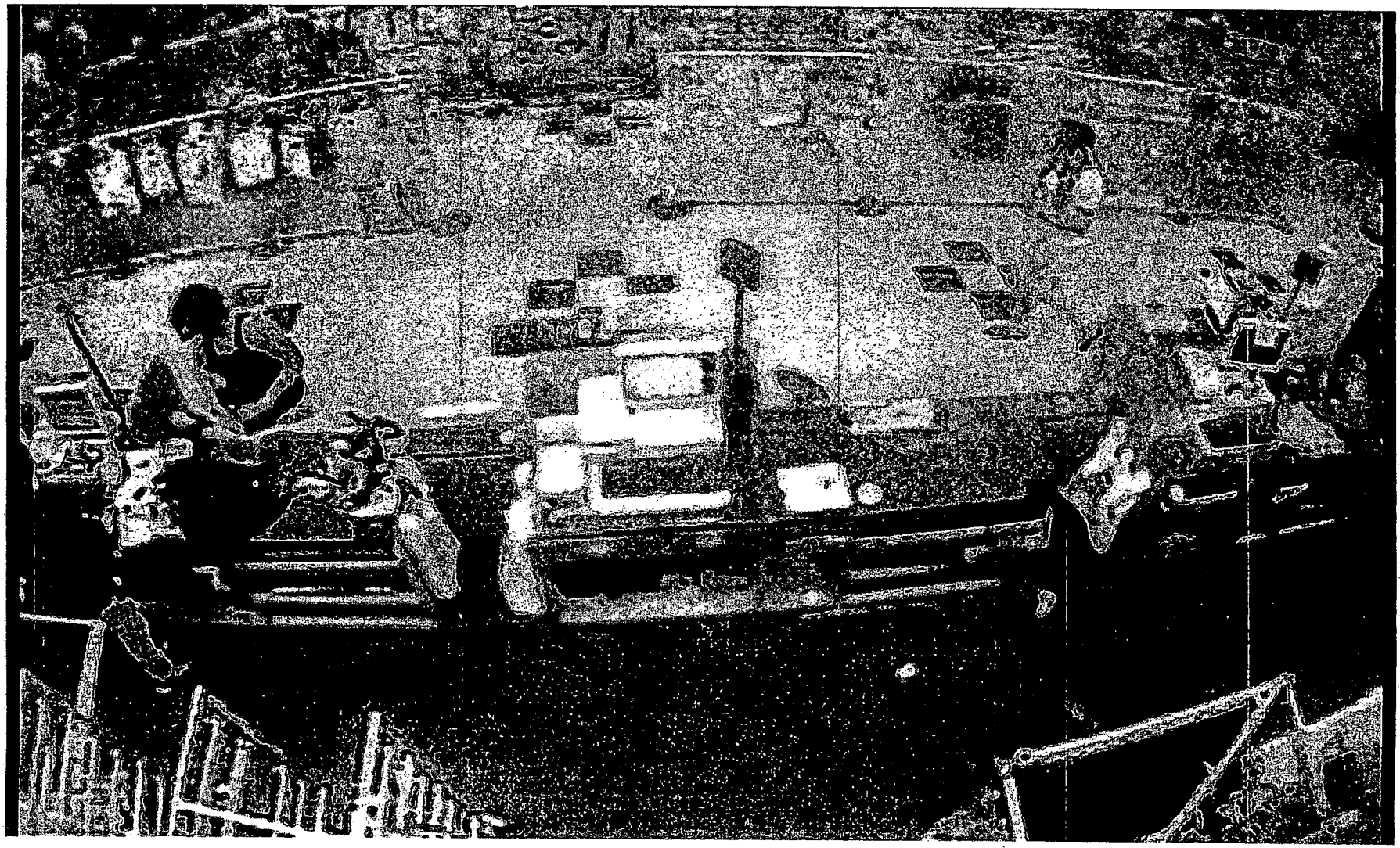

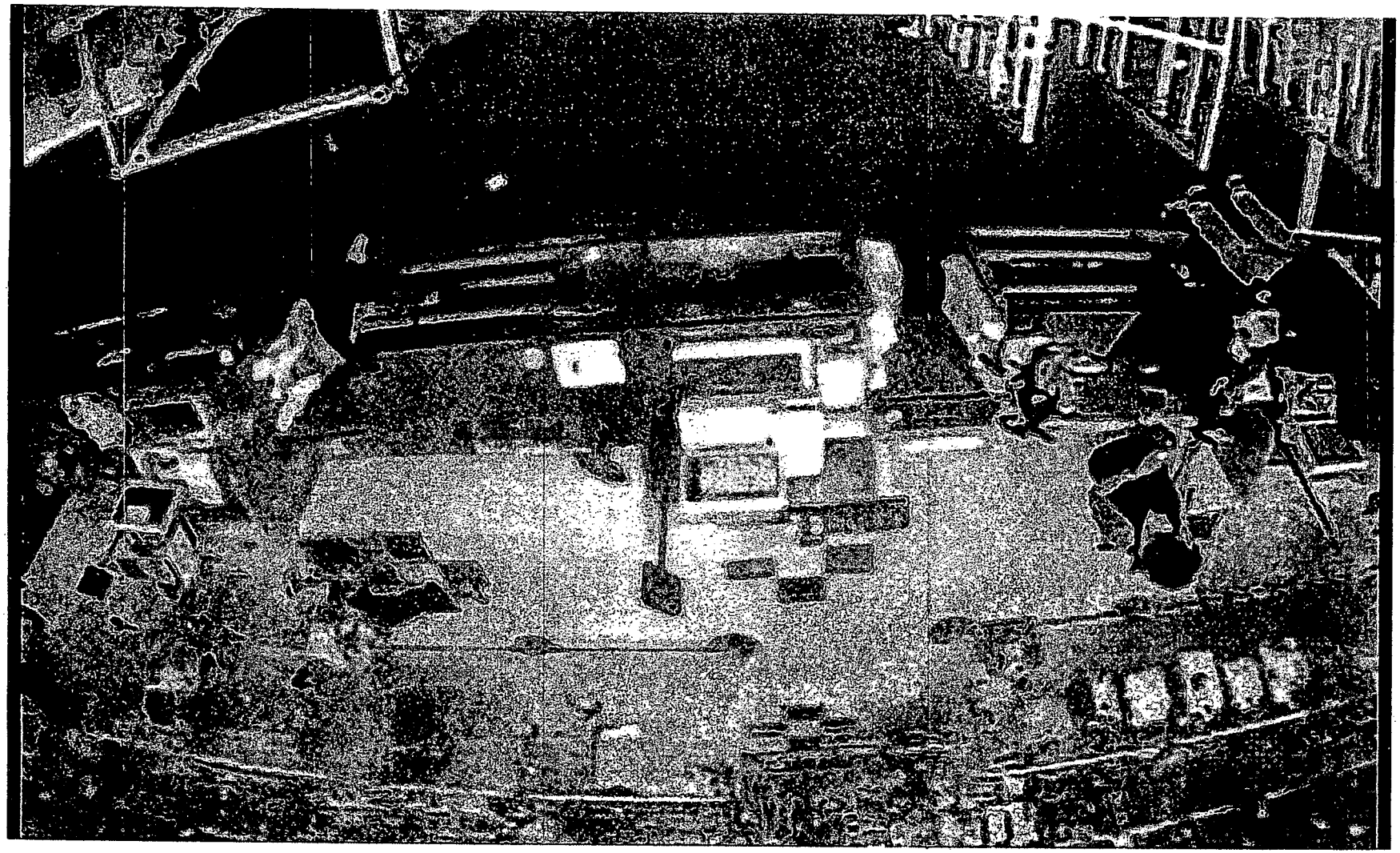

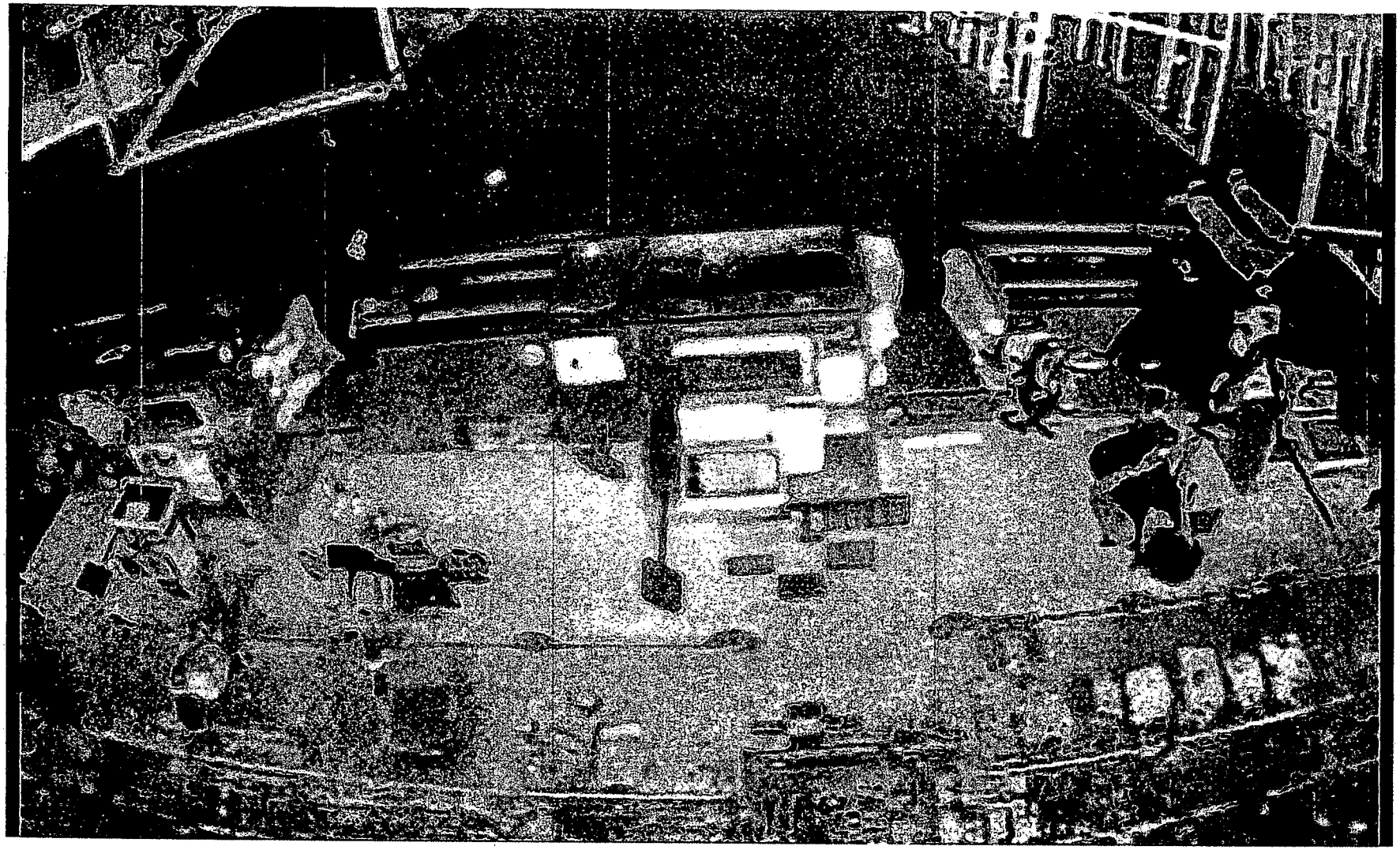

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
LALLIE QUALLS,)	C/A NO.: 2016-CP-40-1699
)	
PLAINTIFF,)	**DEPOSITION**
)	
VS.)	**OF**
)	
BURLINGTON COAT FACTORY OF SOUTH CAROLINA, LLC AND BURLINGTON COAT FACTORY DIRECT CORPORATION,)	**LALLIE QUALLS**
)	
DEFENDANTS.)	

DEPOSITION OF **LALLIE QUALLS**, TAKEN BEFORE WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 1:58 P.M., WEDNESDAY, THE 15TH OF MARCH, 2017, AT GOINGS LAW FIRM, LLC LOCATED AT 914 RICHLAND STREET, SUITE A-101, COLUMBIA, SOUTH CAROLINA.

COPY

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Realtime Voice Writing & Training
info@verbatiminc.com
(803) 787-7242

APPEARANCES

FOR THE PLAINTIFF
ROBERT F. GOINGS, ESQUIRE
GOINGS LAW FIRM, LLC
914 RICHLAND STREET, SUITE A-101
POST OFFICE BOX 436
COLUMBIA, SOUTH CAROLINA 29201

FOR THE DEFENDANT
NICHOLAS D. MERMIGES, ESQUIRE
LAW OFFICE OF NICK MERMIGES, LLC
1720 MAIN STREET #202
COLUMBIA, SOUTH CAROLINA 29201

REPORTED BY
WENDY SHANNON SULLIVAN
VERBATIM, INC.
POST OFFICE BOX 7123
COLUMBIA, SOUTH CAROLINA 29202

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EXHIBITS

THERE WERE NO EXHIBITS MARKED

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STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE QUESTIONS.

THIS DEPOSITION IS BEING TAKEN PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

- - - -

THE READING AND SIGNING OF THIS DEPOSITION IS **WAIVED** BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE PARTIES.

WHEREUPON, **LALLIE QUALLS**, BEING DULY SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS FOLLOWS:

EXAMINATION

BY MR. MERMIGES:

Q Can you state your name for the record?

A Lallie B. Qualls.

Q And Ms. Qualls, have you ever given a deposition before?

A No.

Q Everything -- I'm gonna explain how the deposition works for you.

A Mm-hmm.

Q Everything we say is being written down by the court reporter to my left, and in order for her to keep a clear record, we need to do a couple of things. The first thing is when I ask you a question, you need to try to verbally answer yes or no, if that's your answer; does that make sense?

A That makes sense.

Q So, you can't say, uh-huh or huh-uh, because even though I understand you, the fact that you're nodding your head, it's not going to be clear on that paper; does that make sense?

A That makes sense.

Q Also, I don't think it's going to be a problem, but we can't talk over each other; okay? Is that all right?

A That's fine.

Q Okay. And separate from that, if I ask you a question that you don't understand, please tell me so. Will you do that?

A I will.

Q If you answer my question, I'm going to assume that you understood it; okay?

A That's fine.

Q All right. What's your date of birth?

A 8-3-1951.

Q Where were you born?

A Ridgeway, South Carolina.
Q Is that where you live now?
A Yes.
Q In the same property?
A No.
Q Okay. What is your current address?
A 2020 Qualls Road, Ridgeway, South Carolina 29130.
Q What are the last four digits of your Social Security Number?
A 4993.
Q And you have a valid driver's license?
A Yes, I do.
Q Do you have that with you today?
A Yes.
Q Thank you. For the record, I'm reading Ms. Qualls driver's license number. It is 004731364. It's a South Carolina license and the address is listed as 2020 Qualls Road in Ridgeway. I'm gonna hand this back to you. Thank you. And am I correct that that license is valid and up to date?
A Yes.
Q Do you drive?
A Not much.
Q Does somebody else drive you?
A Yes.

Q Who drives you?
A My children or my son-in-law.
Q Do you own a particular vehicle?
A Yes.
Q What vehicle?
A A pick-up.
Q Is it a Ford or a Chevy?
A Well, it's not mine. Let me rephrase that. It's my husband's. That's what we've got.
Q That's fine.
A Okay.
Q Your husband has a pick-up?
A Yeah.
Q Is it a Ford or a Chevy or what?
A Silverado.
Q And what year?
A 2012.
Q And he drives that car; correct?
A Yes.
Q How long have you lived at 2020 Qualls Road?
A I got married in '70.
Q So you --
A '71. '71.
Q So you've lived there since you were married?
A Yes.

Q And you were married in 1971?
A Yes.
Q What's your husband's name?
A Eddie.
Q How do you spell that?
A E-D-D-I-E.
Q Eddie Qualls; right?
A That's correct.
Q Who else do you live with? I assume you live with your husband at 2020 Qualls Road; right?
A Yeah, just the two of us.
Q Just the two of y'all live there?
A Yes.
Q You don't have any family that lives there as well?
A No.
Q All right. Is 2020 Qualls Road on a piece of family land?
A Yes.
Q Do you have family that live nearby or next door?
A Yes.
Q And who is that?
A Mother-in-law, sisters and children.
Q So, then you have your sisters live there or sisters-in-law?
A I've got a sister live there, because my sister and I

married two brothers.

Q What's your sister's name?

A Hazeline.

Q Hazeline?

A Yes, H-A-Z-E-L-I-N-E.

Q And then you have how many children that live there?

A I have five.

Q Do they all still live on that land?

A No.

Q How many of them do?

A Two.

Q Okay. Why don't you just tell me the names of all five of your children, if you can?

A Sontil, S-O-N-T-I-L --

Q Mm-hmm.

A -- Rosebourgh, R-O-S-E-B-O-U-R-G-H.

Q Okay.

A Yatil, Y-A-T-I-L.

Q Mm-hmm.

A Craig, C-R-A-I-G.

Q Mm-hmm.

A Glendale Qualls.

Q Mm-hmm.

A Katrina Qualls, and Tiffany --

Q Mm-hmm.

A -- Douglas.
Q Okay. Who's the oldest?
A The twins, that's Sontil and Yatil.
Q Okay. What's their date of birth?
A 6-6-67.
Q And then Glendale?
A 1-10-71.
Q And then Katrina?
A 8-23-73.
Q And Tiffany?
A 6-17-76.
Q Okay. Which two live on that same piece of land?
A Glendale and Katrina.
Q Did Glendale drive you today?
A No.
Q Who drove you?
A Tyrone.
Q And who's that?
A Reames.
Q And how do you know him?
A He lives with my daughter.
Q Okay. Katrina or --
A Yes.
Q Okay. Is he Katrina's boyfriend?
A Yes.

Q Okay. What's the highest level of education that you've completed?
A Twelve.
Q Twelfth grade?
A Yeah.
Q You have a high school diploma?
A Yes.
Q Where'd you go to school?
A Fairfield.
Q How do you spell that?
A Fairfield, like, Fairfield County.
Q Fairfield. I see. Fairfield High.
A Yep. Winnsboro, South Carolina.
Q Okay.
A 29180.
Q Very good.
A Mm-hmm.
Q When was the last time you worked?
A Over five.
Q Okay. You're not -- and you were retired after 2005; is that correct?
A That is correct.
Q Okay.

MR. MERMIGES: So, Robert, I'm correct that there's no wage or earning capacity claim in this case;

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yes?

MR. GOINGS: We haven't made one yet, but we reserve the right to do if we have to.

MR. MERMIGES: Okay. Hasn't been planned; okay.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q You weren't planning on going back to work before this accident happened; were you?

A No, I was sick.

Q Where did you last work?

A Winchester in Blackwood, South Carolina.

Q Winchester, like, the gun manufacturer?

A Yes.

Q What did you do there?

A Handle small parts, it's called deburring.

Q Explain what that is to me.

A Deburring is when you're filing, getting the rough edges on the gun parts. We had to smooth it.

Q Did that job involve a lot of sitting? A lot of standing?

A It was sitting, a sit-down job.

Q Okay. And you just retired from that job; is that correct?

A That is correct.

Q Why did you retire?

A Started having medical problems.
Q What kind?
A With the breast cancer, rotator cuff on the right shoulder, and carpal tunnel surgery.
Q Okay. How long did you work at Winchester for?
A About five years.
Q Where did you work before that?
A Do you want my whole work history?
Q Sure.
A Okay. When I come out of school, I went to work for a company called Charn Manufacturing.
Q Okay.
A That was in Ridgeway, over there.
Q Mm-hmm.
A After there, I went to work for Rite Aid drug store.
Q Mm-hmm.
A After that, then I went to Winchester.
Q Okay. Have you ever filed a workers' compensation claim?
A Yes.
Q When was that?
A When I was working for Winchester.
Q And what was the claim?
A When I was going through the carpel tunnel.
Q So that -- obviously, that was with your hands; right?

A That is correct. Oh, yes.
Q Okay. Is that the only workers' compensation claim you ever filed?
A Yes.
Q Okay. And please do not take offense to this.
A Mm-hmm.
Q Okay? I have to ask everyone. Have you ever been convicted of a crime?
A No.
Q Okay. Have you ever testified before?
A No.
Q So you've never testified in court before?
A No.
Q And you've never had a lawyer ask you questions before?
A No.
Q Have you been involved in any other kind of legal claims or lawsuits besides this one?
A No.
Q Did you have a lawyer for your workers' comp claim?
A No, we just had a hearing.
Q Besides Mr. Goings, have you ever hired any other lawyer?
A Yes, it was Mark -- he's in Charleston. He's somewhere down around Charleston.
Q And what was that for?

A Mark -- I did ask him to come with me when I went for my hands.
Q Okay, so you did?
A Uh-huh.
Q You had a lawyer come with you for your workers' comp hearing?
A Yeah. Yes, I did. I just thought about him.
Q Other than this lawsuit and your workers' comp claim, have you ever filed anything -- any other kind of claim of any kind with any court?
A No.
Q Has your husband ever been involved in any kind of legal claim?
A No.
Q Back in July of 2015, before this incident occurred --
A Mm-hmm.
Q -- did you have any other health problems you were dealing with?
A It was regular thing that I take. A blood pressure pill.
Q Like what? What kind of regular things?
A Just maybe blood pressure and diabetes.
Q How long did you have high blood pressure for?
A Maybe the last ten years.
Q Okay. Did you see a doctor for that?

A Of course.
Q And what was the name --
A Yes.
Q What was the name of the doctor?
A I see Dr. Rodney Fitzgibbons.
Q Do you know his address?
A Blarney Drive, Columbia, South Carolina.
Q Sorry? Say that again.
A Blarney or Blainey. I don't know how they pronounce it.
Q Okay. Blarney Drive?
A Yes.
Q Okay.
A Columbia.
Q Okay. Did you see Dr. Fitzgibbons for your diabetes too?
A Yes, I do.
Q Do you see anybody else for your diabetes?
A No.
Q How long have you had that for?
A About 10 or 15 years.
Q Okay. Blood -- so did you have any other problems besides blood pressure and diabetes in July of 2015 before this accident happened?
A No.

Q Did you ever have any kind of trouble walking before this accident happened?
A No.
Q Did you ever have any problems with any dizziness before this accident happened?
A No.
Q Did you have trouble with your vision before the accident happened?
A No.
Q Did you have glasses at the time of the accident?
A Yes.
Q Do you know where you go for your glasses?
A The ones I'm wearing now were Walmart.
Q Sure. What about the ones that -- when you were in the Burlington store in July of 2015, were you wearing your glasses?
A Yes.
Q Did someone prescribe those glasses to you?
A Yes.
Q And who was that
A Columbia Eye Clinic.
Q Do you know where that's located, Columbia Eye Clinic?
A Yes. Columbia, South Carolina. I can't remember the street.

MR. GOINGS: It's on Calhoun Street, I believe.

THE WITNESS: Calhoun.

MR. MERMIGES: That's fine.

THE WITNESS: Calhoun is right.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q Was your prescription up to date at the time of the accident?

A Yes.

Q Have you had any trouble with your eyes before or after that?

A I've had glaucoma surgery since the accident.

Q Did the glaucoma affect your vision?

A Not at that time.

Q When did it start affecting your vision?

A Last year.

Q Okay. So tell me about July 31st, 2015. Do you remember how you started your day that day?

A Yes. My daughter came, picked me up, we went to lunch at Ruby Tuesday. We had lunch, pulled up to here to Burlington.

Q Where was the Ruby Tuesday?

A Ruby Tuesday is right by -- it's in the same plaza.

Q In the same plaza as the Burlington?

A Mm-hmm.

Q Who paid for lunch?

A She did.
Q Katrina did?
A Yes.
Q Did y'all have anything to drink then?
A No, I don't drink.
Q Just checking.
A Oh.
Q Were you on any medications that day?
A I take medication every day, but I don't take them until the afternoon.
Q That's fine. What medications do you take?
A I would take my blood pressure pill and my sugar pill.
Q Okay, so just blood pressure and diabetes?
A Pill. That's right.
Q Okay. So just to be clear, you weren't taking any kind of pain killers or anti-anxiety pills; were you?
A No.
Q Okay. Okay, so you had lunch at Ruby Tuesday and then you went to Burlington after that?
A Yes.
Q So, tell me what happened at the Burlington.
A We just went. Girl's day out, we went shopping. Walked around in the store. I picked up a dress. She had some things too. I can't remember what she picked up.

Q Was that your first time to that Burlington?
A I had been there a couple of years ago prior to that.
Q Okay.
A Mm-hmm.
Q So you bought a dress; is that right?
A I had a dress to buy.
Q Okay. Did you have some kind of bag with you?
A Just my purse.
Q Tell me what happened.
A Well, when I checked with her and asked, was she finished, she said she was finished and looked, and I said, well, we went on to the line. And you know, of course, they're serving the next person. A man was in front of me. He went. They said, sir, to the next. I started walking up the aisle and next thing I know, I'm on the floor, soaking wet. My clothes was drenched.
Q What part of your clothes were wet?
A My bottom of my pants and things because I was lying on the floor.
Q They were drenched?
A Yes.
Q There was water -- there was liquid all through them?
A Yes.
Q What part of your clothes specifically got drenched?
A My bottom pants.

Q Like your pant leg?
A Whole bottom and down the pant leg.
Q Okay, so your left bottom area of your pants?
A Yes.
Q And then all down the pant leg?
A Yes.
Q Is that correct?
A Yes.
Q Before you fell, what were you looking at? Do you remember?
A Looking for the checkout numbers. She told me to report -- I think she said number two, and you got to walk up the aisle.
Q You were called to register number 2, you think?
A I think. I don't know.
Q So you were trying to look for the register when you fell?
A Yes.
Q Were you able to see the floor in front of you?
A Well, I saw where I was walking, but I didn't see nothing at that time.
Q So, I didn't understand your answer. Were you able to see the floor in front of you?
A Yes. Where I was walking, yeah.
Q Was there anything that was obstructing your view from

the floor in front of you?
A I was carrying my purse and dress.
Q Were those in front of you or to your side?
A In front. I was walking.
Q I didn't understand. Were your purse and dress being held in front of you or were they to your side?
A No, I had them thrown over my arm.
Q So you had your arm held up in front of you and you had your purse and dress thrown over your arm?
A Mm-hmm.
Q So, show me how you had your arms positioned.
A Like this.
Q Okay. So you're showing me that your arms were basically up at your -- the middle of your chest level. Is that correct --
A Yes.
Q -- or not?
A That's correct.
Q And you're saying you had a dress folded over your arm up at chest level; is that right?
A That is correct.
Q And then was there a purse also up there too?
A No, the purse was on this arm.
Q The purse was on your shoulder?
A Mm-hmm.

Q Okay. Are you saying that that -- holding a dress that way blocked your view?

MR. GOINGS: Object to the form of the question. You can answer it, if you can. I can't --

THE WITNESS: I mean, yeah, I mean --

MR. GOINGS: No, no. Let me say this. I can't answer for you or tell you how to answer or anything like that. You just need to answer his questions.

THE WITNESS: Okay.

MR. GOINGS: I can object to a question; okay?

THE WITNESS: Okay.

MR. GOINGS: But you've still got to answer.

THE WITNESS: Okay. When he asked, I was --

MR. GOINGS: Okay. Now, we're back. Now try to answer the question.

THE WITNESS: Okay.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q Did it block your view?

A No.

Q What kind of shoes were you wearing?

A Black sandals.

Q What were they made out of?

A Leather.

Q Do you still have those?

A I don't know if I do or not. I can't say.
Q Okay. Well, could you look and see if you still have them and if so, let your lawyer know?
A I will.
Q All right. Make sure if you do have them, not to throw them away; okay?
A Okay.
Q Thank you. And just to be clear, your prescription that you had was up to date for your eyes; is that right?
A That is correct, yes.
Q But you did not see anything on the ground before you fell?
A No.
Q Why not?
A I wasn't expecting anything to be on the floor.
Q But you were paying attention; weren't you?
A Yes, walking to the register.
Q So, do you have any idea -- strike that. What did you fall on? What did you slip on?
A All I know is it was wet. I don't know whether it's soda, water or what. Liquid is all I know.
Q Do you know whether it had a color?
A No.
Q Do you know where it came from?

A No.
Q Okay. And just to be clear, you said you slipped on a liquid; correct?
A Yes.
Q But you have no idea where the liquid came from; correct?
A No.
Q Is that -- am I correct or am I incorrect?
A You're correct. I don't know where it came from.
Q Do you have any idea how long it had been there for, before you fell?
A No, I do not.
Q Were there any footprints in the liquid before you fell?
A I don't know.
Q Did you see --
A Oh.
Q Did you see any kind of footprints in the liquid before you fell?
A No.
Q Did you see any kind of tracks, like someone pushed a cart through the liquid before you fell?
A No.
Q Do you know what color the liquid was?
A No.

Q Do you have any idea how much liquid was on the floor?
A No.
Q After you were on the ground, were you able to see the liquid at all?
A No, I was lying in it.
Q Where in the store did you fall?
A Right in front of the registers.
Q Do you remember what register number you fell in front of?
A It had to be close to that number 2 because that's where I was headed.
Q Were you talking to your daughter before you fell?
A No.
Q Was she with you?
A She was behind me. You had to wait one at a time before they called me.
Q So, she didn't walk with you?
A No.

MR. GOINGS: Keep your voice up so the court reporter can hear you.

THE WITNESS: Oh.

MR. GOINGS: Sometimes your voice trails at the end.

THE WITNESS: Okay.

MR. GOINGS: I just want to make sure she can hear

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you. Trying to help her out.

THE WITNESS: Okay.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q So just to be clear, you can't describe the size or the shape of the liquid on the ground to me in any way; is that correct?

A That's correct.

Q You don't know where it came from; right?

A No.

Q You didn't see anybody spill it?

A No.

Q You don't know how long it was there?

A No.

Q And remember that everything is written, so when you said, no, no, no, you're telling me you didn't know; correct?

A I don't -- I didn't know.

Q Just making sure. Okay.

A Mm-hmm.

Q What -- how would you describe the floor you fell on? What kind of material was it?

A It was cement or tile. I don't know.

Q You don't remember if it was cement or tile?

A Huh-uh.

Q Was it the kind of floor that you would expect to see in a clothing store?
A I guess.
Q It's normal type of flooring you'd see in a store; correct?
A Yes.
Q Do you believe that any of the Burlington Coat Factory employees spilled the liquid on the ground?
A I don't know who spilled it.
Q Obviously, you weren't able to see it on the ground before you fell; right?
A No, I didn't, no.
Q Do you think that any of the Burlington Coat Factory employees knew that the liquid had been spilled before you fell?

MR. GOINGS: Object to the form of the question. You can answer.

THE WITNESS: Do I think any of them seen it? Well, one young lady walked around right in front of me before I was getting to register 2. One lady. I don't know if she'd seen it or not.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q You don't know if she saw it or not; correct?
A No, but she walked by it too.

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Q So, you said -- what did the young lady look like?
A She was taller than I was.
Q How old was she?
A Maybe 18 to 20.
Q And it was, obviously, a young lady; is that correct?
A That's all I know, a young lady.
Q And was she white or black?
A Black.
Q And she was an employee?
A Yes, I guess. She went behind the counter.
Q And you said that she walked past the --
A Passed me when I was coming up; yeah.
Q Did she do anything that made you think that she knew about the spill?
A No.
Q She just walked by it?
A Yes.
Q Do you believe she did or didn't know about the spill?
A I can't say. I can't say.
Q Was the spill easy to see?
A No.
Q If it was easy to see, you would've avoided it; right?
A Yes.
Q Did anybody that worked for Burlington Coat Factory tell you that they knew about the spill?

A No.
Q And you didn't see anybody else slip in the spill before you?
A No.
Q When you fell, tell me how it happened.
A Walking to the register, next thing I know, I was on the floor, crying, saying, "my leg, my leg."
Q Do you remember what slipped?
A No, it happened so fast.
Q Okay. You don't remember whether it was your right foot or your left foot that slipped?
A No, I don't.
Q The shoes that you had, what kind of bottom did they have? Did they have a smooth bottom?
A Yes.
Q And they were leather?
A Yes.
Q Not rubber?
A Leather.
Q When you fell on the ground, tell me what hurt.
A My leg. My left leg. That's all I kept saying. My leg.
Q And did anybody respond to you, to your fall?
A Oh, I think she said she was the manager. She came, and my daughter came.

Q Did your daughter see you fall?
A No, she was behind me. Yeah, she was behind me.
Q So, she found out when you started, probably, screaming; right?
A Well, I -- yes. I didn't scream, scream, but I was saying, "my leg."
Q I understand. But your daughter didn't find out until you --
A Yeah. I'm lying on the floor and people started walking by looking at me down there.
Q How long were you on the floor before the manager came? A long time or short time?
A Short time. She -- short time.
Q Did the manager come right over?
A She did.
Q Did she help you?
A She just kneeled down and said she was sorry this had happened.
Q Was she polite or impolite?
A She was polite.
Q Did she -- well, tell me what happened next.
A That's all she said, and my daughter asked had anybody called for help, and they said they had.
Q Okay. And then did she wait with you, the manager?
A She walked off, but she came back.

Q Was she with you most of the time until the ambulance came?
A No. She came, she left and come back. Not the whole time.
Q She wasn't with you the whole time?
A No.
Q Was she with you most of the time or not?
A Most, most.
Q Did you talk to the manager?
A Well, we didn't have a conversation. She just kneeled down and said she was sorry it happened. That's all.
Q Did you tell her what happened?
A No, she didn't ask.
Q Before you fell, did the floor look like it was dirty?
A I couldn't tell.
Q So, you didn't notice that the floor was dirty before you fell?
A Dirty or clean; no.
Q Did you see any mud on the floor before you fell?
A No.
Q Did you see any dirt on the floor?
A No.
Q Did the floor look like it had been mopped recently?
A No. Couldn't tell.
Q Did it look dry?

A The floor was dry.
Q How long do you think it took for the ambulance to arrive?
A Five to seven minutes, maybe.
Q And during that time, your left leg was hurting; right?
A That's correct. Very bad.
Q Were you taken to the hospital?
A Yes.
Q What hospital?
A Richland.
Q The emergency room?
A Yes.
Q And what did they tell you?
A Told me I had a bad patella break and we was waiting on an orthopedic doctor to come look. One came, he looked, he left out, said he was already scheduled for surgery. Another one came.
Q So, you're talking about, when you say "my orthopedic doctor", you mean the orthopedic doctor that was on duty in the ER?
A I didn't say "my". I said "a" orthopedic doctor came.
Q I'm just making sure --
A Oh.
Q -- you didn't --
A Yeah.

Q -- already have one.
A No.
Q That's all.
A No, no, no.
Q Okay.
A Uh-uh.
Q So, there was one orthopedic doctor that came and looked?
A Came and looked, and he said he couldn't take that on because he was already scheduled for surgery.
Q But then a second doctor came; is that right?
A And then the second one come; yes.
Q And is that the person you wound up using as your doctor?
A I don't know, because that was on a Friday night, and they finally came back and told me they couldn't do nothing that Friday night. They was going to cast it, send me home and I had to be back Monday morning for the surgery.
Q Okay. And you had a fractured patella?
A Yes.
Q Did they take x-rays?
A Yes.
Q Do you know if they did an MRI or a CT scan?
A Yes.

Q Do you know which one?
A Both.
Q Both an MRI and a CT scan?
A Yes.
Q And it was your left patella?
A That is correct; yes.
Q And that was -- the patella break was the full extent of your injuries; is that right?
A Yes.
Q You didn't hurt any other part of your body besides your knee cap?
A That's --
Q The patella?
A That's correct. Yes.
Q Thank you.
A Mm-hmm.
Q So they put you in a cast on Friday; correct?
A Temporary cast.
Q I understand.
A Mm-hmm.
Q Did they give you pain medication?
A Yes.
Q And they told you to come back on Monday?
A Come back Monday morning.
Q And that was for surgery?

A Yes.
Q So, that would've been on, maybe August 3rd?
A Yes. Monday.
Q And what hospital did you come back to on Monday?
A Richland.
Q Where's that located?
A Columbia, South Carolina.
Q Is that the one that's downtown or not?
A Downtown.
Q On Taylor Street?
A No, that's Baptist. Richland is by I-77.
Q Okay.
A Mm-hmm.
Q Richland Hospital by I-77?
A Yes.
Q Okay. Then you came there on the following Monday for surgery?
A Yes.
Q Do you know what kind of surgery?
A They told me -- all I know is they was going to try to repair and I went in that morning -- I think I come out around 1:00, maybe.
Q You were finished with the surgery at 1:00?
A Between 1:00 and 2:00.
Q Okay. Do you remember the name of the surgery they

performed on you?
A No. It was a doctor named Dr. Hess.
Q Mm-hmm.
A And he told us that he put a screw and wires to try to repair, but he didn't think it would take.
Q Okay. Even -- so right after even the first surgery was done, he was worried that --
A It wouldn't take. Too much damage had been done.
Q Did he explain why that was?
A It was just broken in too many places.
Q Okay. Is that the only surgery you'd ever gotten?
A No.
Q Was that the only surgery on your knee that you've --
A Oh.
Q -- ever gotten?
A Yeah.
Q Yes?
A Yes, mm-hmm.
Q Have you ever gotten any other kind of surgery before?
A Yes.
Q For what?
A A mastectomy.
Q Okay. Anything besides that?
A Rotator cuff, right shoulder.
Q Anything else?

A Those two.
Q Before this accident happened, you didn't have any problems with your left knee; did you?
A No.
Q Okay. After the surgery -- you said Dr. Hess performed your surgery?
A Yes.
Q Did you follow up with him?
A Yes.
Q How many -- how long after the surgery did you go see Dr. Hess?
A Can't remember how many times.
Q So, how -- I'm not asking how many times. I'm saying, how long after the surgery, when was the first time you saw him to follow up?
A The first of August -- maybe the second week in August.
Q Okay.
A Or the middle of August.
Q So, like, ten days later?
A Yeah, ten days to two weeks.
Q And did he take x-rays then?
A Yes.
Q Now, after the surgery, were you given some kind of a knee brace?
A Yes.

Q Was that the day you got the surgery, they gave you a knee brace?
A Yes. Went home with the cast and a knee brace.
Q Okay.
A And a walker.
Q Now, did you use the knee brace?
A Yes.
Q Did you have any problems with the knee brace?
A No.
Q You didn't have any issues with the knee brace fitting?
A The second one. Not the first one.
Q Go ahead.
A The first one was too long, it was ruining my ankle. He had to change that one out. It was ruining my ankle. I told him, you know, I wasn't gonna wear it if it ruined my ankle and make it sore because I was a diabetic.
Q Mm-hmm.
A So he changed it.
Q Did he give you a second knee brace?
A Yes.
Q And did you wear that one or not?
A Yes.
Q So, are you telling me that you wore the knee brace the whole time while you were recovering or not?

A Not the whole time; no. The first one, yes, but --
Q But the second one you didn't wear?
A Not at -- you know, not 24/7.
Q Why was that?
A I would put it on in the daytime and take it off at night.
Q Did it fit right or not?
A Yes.
Q Was Dr. Hess the person that you would follow up with to check on how the surgery had gone?
A Yes.
Q Did you have any other doctors besides Dr. Hess?
A Not working on me anymore.
Q Okay. Did you -- what other -- did you get any other kind of treatment for your knee after the surgery?
A Yes.
Q What'd you get?
A Therapy.
Q How long did you do that for?
A Six to eight weeks.
Q So, did you do it for six weeks or eight weeks or --
A Six to eight weeks. I don't remember.
Q Okay. You did it for --
A Six to eight weeks. That's it.
Q And how many times a week did you go?

A Mondays, Wednesdays and Fridays. Three times.
Q Okay. Did you go to your therapy appointments that were scheduled?
A Yes.
Q Okay. Did the therapy help or not?
A No.
Q Didn't help at all?
A No.
Q And what did Dr. Hess say about the surgery? Did it work or not?
A No.
Q Is there a specific term he used? Do you remember?
A He just said it wasn't a success.
Q Okay. Did -- is there any other kind of surgery that he thinks that you need to get?
A If I want to go back and get the screw and wire taken out. I told him I had to think about that.
Q When did he tell that to you?
A Maybe on my last visit, and I asked him about it.
Q Mm-hmm.
A What about it being left in there.
Q What'd he say?
A He wouldn't -- you know, wouldn't recommend me to do it right now, and give it some more time.
Q So, at your last appointment with him, you said he

would not recommend that you have the screw and wire taken out right now?

A Right now. Right, wait a little.

Q Is that the only other surgery that you've ever discussed with any of your doctors for the knee?

A That's it. Mm-hmm, yes.

Q When was your last meeting with Dr. Hess?

A 2016. I don't know what month it was. I can't remember.

Q Do you know if it was in the first half or second half of 2016?

A Maybe mid-2016.

Q Mid-2016?

A Yes, sir.

Q And then your physical therapy, when did that start?

A It started a week after the surgery, so it was the second week in August.

Q Okay. And it lasted six to eight weeks?

A Six to eight weeks.

Q Have you gotten any other physical therapy since then?

A No.

Q Have you gotten any other medical treatment for your knee at all?

A No.

Q So last time you had any kind of visit with the doctor

about your knee was in mid-2016?
A Yes.
Q Okay, and that was Dr. Hess?
A Yes.
Q And you haven't had any physical therapy since the fall of 2015; right?
A Yes.
Q Do you have any medical treatment planned for your knee in the future?
A Yes, if I get this screw and wire taken out.
Q Have you spoken with the doctor to try and do that?
A No.
Q Do you have any kind of specific timeframe where you want to try to do that?
A No, not with what I went through, no. I'm not in a hurry.
Q Do you have health insurance?
A Yes.
Q What kind of insurance do you have?
A I have Medicare and I still have my husband's insurance, Blue Cross Blue Shield of North Carolina.
Q Of North Carolina?
A Yes.
Q Does your husband work in North Carolina?
A No.

Q How is it that he has North Carolina insurance?
A That's what the job gave him.
Q Is he still working at that job?
A Yes.
Q What does he do for a living?
A It's textile.
Q Textiles?
A Textile, mm-hmm. It's a mill.
Q Okay. Do you have any idea how much your medical bills are?
A No, I don't.
Q Were your medical bills paid for by your insurance?
A Most of them.
Q Do you know whether they were paid for by Medicare or Blue Cross?
A Blue Cross. I just got Medicare when I turned 65.
Q Mm-hmm.
A August last year.
Q Okay. So, the last time you saw a doctor for your knee was about a year ago or less than a year ago?
A It's less than that. Not quite a year yet.
Q Okay.
A Less.
Q Almost a year ago?
A Almost.

Q Okay. And you have no appointments scheduled now; is that right?
A No.
Q And you're not taking any pain medication?
A Only, like, a Tylenol. Not no strong meds like I was on.
Q Okay. So, how often do you take Tylenol or Advil or a medication like that?
A Only as needed.
Q Okay, and how often do you need it?
A Maybe every other day. I don't take it every day.
Q And when you take it, do you take just two pills or do you take more than that?
A Two, two, two.
Q Two pills every other day?
A Yeah.
Q I'm listening.
A Mm-hmm. I was on Aleve, but my regular doctor told me don't use that.
Q Okay. When was the last time you had a stronger, like, a prescribed pain medicine?
A A couple weeks -- I mean, two weeks ago.
Q Two weeks ago?
A Mm-hmm.
Q Okay. Who prescribed that for you?

A My medical doctor.
Q Your primary care doctor?
A Yes.
Q Was it for pain in your knee?
A Yes.
Q What were you prescribed?
A I'm thinking of the name.
Q Was it like a Vicodin or a Percocet?
A Percocet.
Q Do you know how much he prescribed?
A 500 milligrams.
Q How many pills did he give you?
A Just 30.
Q 30?
A 30.
Q How often -- when was the last time before this most recent prescription that you were prescribed Percocet?
A Dr. Hess gave me a supply.
Q So this -- the last time you got any kind of pain medicine like Percocet was from Dr. Hess?
A No, the last prescription I got was from my primary doctor.
Q And that was a month or so ago?
A Yeah.
Q Before that?

A Oh, no. I still had pills from Dr. Hess.
Q Okay.
A Mm-hmm.
Q So you don't take them that often?
A No.
Q Okay. And just to be clear, in the past, have you ever had any vertigo or any kind of blackouts?
A No.
Q Okay. And you've never fallen down before this?
A No.
Q You have not; is that correct?
A No.
Q Okay. So, obviously, I know that you fractured your knee cap, your patella. Has that affected your life? And if so, tell me how.
A Yes, yes, yes, yes. I can't do a lot of things I used to do.
Q Like what?
A I can't walk anymore.
Q You can't walk at all?
A I mean, I can walk with this, but I'm talking, I used to walk.
Q I understand.
A Mm-hmm.
Q Now you have to use a cane; is that right?

A Yes.
Q Okay. Do you always use the cane?
A Yes.
Q So you can't get around without a cane now; is that correct?
A That's correct.
Q How else has the injury affected your life specifically?
A I can't dance.
Q How often would you dance before the accident happened?
A We used to like to do line dances.
Q When?
A We have a festival in Ridgeway called Pig on the Ridge, and we would do some line dancing from here, just have fun.
Q Mm-hmm.
A I miss it.
Q You can't line dance anymore?
A No.
Q Is there anything else you can't do?
A Well, there's a lot. I can't get out there and play with my grandchildren anymore.
Q How often did you used to play with your grandchildren?
A Well I had seven, so a lot.
Q What did you used to do?

A Well, we like to play ball, throw Frisbee.
Q Is there anything else that you could do before the accident that you can't do now? I'm asking you to think of examples for me.
A I need a scooter. Like during fair time, I can't go to the fair anymore because I can't walk, and I don't have $5,000 for a scooter.
Q Have you tried to get Medicare to buy you a scooter?
A No, I haven't tried. They don't pay for a lot of stuff like they used to. I haven't tried since I had Medicaid.
Q Okay. So you need -- so you feel that you need a scooter to get around; is that correct?
A Long walks. Yeah, long places, like say from my house to maybe my daughter's house or --
Q Mm-hmm.
A -- something like that.
Q Okay. But for now, you use a cane; is that right?
A Yes.
Q Okay. How often does your knee hurt?
A Every day. Every day.
Q After the accident happened, so June, July, August of 2015, did your knee hurt more or less than it does now?
A Excruciating pain.
Q So immediate -- so after the accident, you were in

excruciating pain?
A Yes, yes.
Q And was that every day?
A Every day. Every night.
Q So on a scale of one to ten, with one being, you know, little or no pain and ten being very, you know, the worst pain, what number would you give to the pain you had after the accident?
A Ten.
Q Ten out of ten?
A Ten.
Q Was that all day long?
A All the time.
Q And how long did that last for?
A It just about calming down maybe this year. Over a year, excruciating every day.
Q Okay. So, for over -- for a full year, every single day, you had ten out of ten pain?
A That's correct.
Q Okay. And then it started to get better over time; is that right?
A Not better. It calmed down a little bit. I could tolerate it a little more.
Q Okay.
A It still hurts every day now.

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Q It still hurts every day now?
A Every day.
Q Does it hurt all day long?
A Yes, I can feel that all the time.
Q Are there things that you do to make it worse?
A No.
Q It's just a constant pain?
A It's a constant pain.
Q Okay. Is there anything that you can do to make the pain better?
A No.
Q So now, after the time has passed, how would you rate the level of pain that you feel?
A Eight.
Q So you're saying that you have eight out of ten pain every single day, all the time?
A Every day, all the time.
Q Okay. Is there a reason why you don't take more pain medication for it?
A I'm trying to have a lining in my stomach.
Q I understand. So, having a scooter, would that help you with your pain or not?
A Well, it would help me with walking a long ways.
Q Mm-hmm. Have any of your doctors told you not to walk?
A No.

Q Have any of your doctors told you, you need to get more physical therapy or not?
A No.
Q Since the accident happened, have you been involved in any kind of falls?
A No.
Q And you told me also that you'd never fallen before that either; is that right?
A No.
Q You hadn't -- had you ever fallen before this accident happened?
A No.
Q Have you been involved in any kind of car accidents before the accident happened?
A No.
Q Okay. Did you go to any other doctors in connection to this case besides your surgeon and the physical therapy doctor?
A No.
Q Did your lawyer send you to any doctors?
A No, just one place to get an evaluation.
Q Okay, your lawyer sent you there?
A Yes.
Q When they did the evaluation, how did that work?
A I didn't get the results.

Q Did you physically go in there?
A Yes.
Q Did you bring your medical records with you?
A When I went? I didn't have to bring my medical records. I just went.
Q Okay. Did they do an exam on you?
A Yes, yes.
Q What did they do?
A She shaked it, made some measurements.
Q Mm-hmm. Did she give you, like, a physical?
A Not a complete physical, no. Just worked on this leg.
Q Okay. After you fell, do you remember giving a recorded statement to Burlington?
A No.
Q You don't remember calling up and speaking with someone who worked at the claims department for Burlington?
A I've never called them. They called me.
Q Okay. When did they call you?
A Maybe a week or so after it happened.
Q Okay. Did -- and you spoke with them; is that right?
A That is correct.
Q And they told you that they were recording your statement; is that correct?
A Yes.
Q When you answered the questions that they asked, were

you truthful?

A Yes.

Q Did you tell them everything you knew to the best of your recollection?

MR. GOINGS: Object to the form of the question. You can answer.

MR. MERMIGES: You can answer.

THE WITNESS: She didn't ask me anything about that anyway. She was saying that if I didn't get an attorney, they would take care of me. She didn't discuss the accident.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q She didn't ask you what happened?

A I don't remember. But I did not call her. She called me.

Q But I -- well, just to be clear, though, you are saying you gave a recorded statement; correct?

A Yeah. Probably, if she said she was recording when she called me.

Q And nobody forced you to do that; did they?

A No.

Q And when you made that statement, you were telling the truth; is that right?

A Yes.

Q Okay. Let me take a look through my notes; okay? I'm getting close to being done; all right?
A Mm-hmm.
Q Just to be clear, after you fell, did any Burlington employee say anything to you to make you think that they knew that there was liquid on the floor before you fell?
A No.
Q Do you think that Burlington could've done anything to prevent you from falling?
A Yes. If one of them little yellow signs would've been down there saying, caution to water, I would've knew to be careful then, but nothing was down there.
Q I understand that.
A Mm-hmm.
Q Would you agree that if Burlington -- if none of the Burlington employees knew that there was liquid on the floor, they wouldn't have been able to put up a sign like that?

MR. GOINGS: Object to the form of the question.

MR. MERMIGES: You can answer. Do you want me to ask the question again?

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. MERMIGES:

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Q Do you agree that if none of the Burlington employees knew that there was liquid on the floor, that they wouldn't have been able to put up a sign like that?

MR. GOINGS: Object to the form of the question.

THE WITNESS: You need to answer my question.

THE WITNESS: Say it a different way.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q Do you agree that if none of the Burlington employees knew that there was liquid on the floor, that they wouldn't have been able to put up a sign, a yellow sign?

MR. GOINGS: Object to the form of the question. You can answer.

THE WITNESS: Okay. You're saying, do I think if any of the Burlington people knew it was there, they would've put up a sign or --

MR. MERMIGES: You need to answer my question to the best of your knowledge. Go ahead and answer.

MR. GOINGS: It doesn't seem like she understands your question.

THE WITNESS: That's what I'm saying.

MR. MERMIGES: Okay. I'll ask you again.

THE WITNESS: Yeah, say it --

MR. MERMIGES: Okay.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q Do you agree that if nobody at Burlington knew that there was liquid on the floor --

A Mm-hmm.

Q -- if they didn't know that, then would you agree that they wouldn't have known to put up a sign?

A I don't know. I don't know.

Q Okay. If Burlington didn't know -- if nobody -- if none of the employees at Burlington knew that there was liquid on the ground, what could they have done differently?

MR. GOINGS: Object to the form of the question. You can answer.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q If none of the Burlington employees knew that there was liquid on the ground before you fell, what could they have done differently?

MR. GOINGS: Same objection.

THE WITNESS: I don't know. I don't.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q Why did you wind up getting your glaucoma surgery? Was it because you had pain?

A No, but I went to the -- for my year eye exam and my eye doctor told me I needed to be checked for it.
Q Okay. Had your vision gotten worse or not?
A No.
Q Okay.
A I had headaches. I was getting headaches a lot.
Q Okay. I have no further questions for you. Thank you.

MR. GOINGS: I've got a couple follow-up questions. Before I do that, let's take a five minute break. You can use the restroom, refresh yourself and I've got a couple more questions.

THE WITNESS: Yes, I need it.

OFF THE RECORD

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Ms. Qualls, I've got just some follow-up questions. Did you ask to see the video of the surveillance footage with your fall?
A When -- I didn't ever go back to the store, so I guess when I come here and obtained you, I told you, please see if you could get to see what had happened.
Q Was I able to get it for you?
A Yes, you called and told me you had.
Q Okay. Was that -- I had to file a lawsuit to get it, though; right?

A That's correct.
Q Okay. Did Burlington ever voluntarily show you the video?
A Huh-uh.
Q Is that a yes or a no?
A No.
Q Okay.
A Oh, I'm sorry.
Q Now, when you filed the lawsuit, you alleged that Burlington Coat Factory knew or should have known of the wet substance on the floor; correct?
A I thought they knew.
Q Okay.
A Uh-huh.
Q And you've now seen the video; haven't you?
A Yes.
Q Did you see on that video, a store clerk walked straight past the location where the substance was on the floor that caused you to fall?
A Yes.

MR. MERMIGES: Form, just leading, but go ahead.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Did you see the store employee look in the direction of where the substance was on the floor?

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A Yes.

MR. MERMIGES: Form.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay.

A Mm-hmm.

Q And is it your contention that that store employee should have seen it, and if she didn't see it, she should have not been playing on her phone so she could see it?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. Now, you said you didn't see it; right?

A I did not.

Q And you had all the merchandise --

A Mm-hmm.

Q -- with your dress that you're buying in your arms; right?

A That's correct.

Q Okay.

A Mm-hmm.

Q Okay. Were you looking towards the ground or were you looking towards the register where you were walking?

A I was walking --

MR. MERMIGES: Form.

THE WITNESS: -- to get to my register.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. You didn't see a toddler put a wet substance on the floor; did you?

A No.

Q Okay. You didn't see how the spill occurred on the day of the fall; did you?

A No.

Q You've now seen it, what happened, based on the video; haven't you?

A On the video. I saw the video.

Q Okay. And that spill occurred right in front of store employees running the cash register; right?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. You testified when he asked you, that you didn't know what the employees saw or didn't see?

A Mm-hmm.

Q But is it your testimony in this case that the store employees should have seen that substance on the floor?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. And --

A It was right in front of the camera.

Q Okay. And then it was -- and then a store employee actually walked right beside it?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Before you fell?

A Yeah, mm-hmm.

Q Okay. Did anybody warn you --

A No.

Q -- of the condition?

A No, everybody was just, like I said, going to a register, walking on and off.

Q Okay. You said you thought that Burlington should have put a yellow caution cone up; correct?

A Yes, that little yellow thing, yes. I would've been looking then, I bet.

Q Okay. So you're saying the store employee that walked past the spill should have stopped and put out a cone

and warned customers instead of kept walking; is that what you're saying?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. I'm just trying to understand what you're saying.

A I know, because now if I go in a restaurant and I see them, I'm scared to death.

Q Okay.

A Yes.

Q You didn't know there was something on the floor; did you?

A No.

Q Okay. And you didn't expect to fall; did you?

A No.

Q Okay. Now, you heard this about your eyes. Did you have bad eyes at the time of this fall?

A No, no, no.

Q Okay.

A No, no.

Q All right.

A No.

Q You weren't going treating with a doctor for bad eyes?

A Not then, no.
Q Okay.
A No, uh-uh.
Q Is it your allegations in this case that Burlington should have properly cleaned up the floor or warned of the condition?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Is it your allegations in this case that Burlington either knew it was there or should have known it was there on the floor and failed to take reasonable and adequate steps to clean it up?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. You've saw the -- you've seen some of these still shots from the surveillance footage; haven't you?
A Yes.
Q And I'll just tell you that they were marked as Exhibit 11 to Burlington's deposition.
A Mm-hmm.
Q And I want to show you on Photograph 3 of Exhibit 11 --

A Mm-hmm.
Q -- this person that's behind the counter in Photograph 1, is now walking in front of the counter, isn't she, in Photograph 3?
A Mm-hmm.

MR. MERMIGES: Form.

THE WITNESS: Mm-hmm.

MR. GOINGS: Is that a yes?

THE WITNESS: Yes.

MR. GOINGS: Okay.

THE WITNESS: I'm sorry.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q And isn't it true that you fell in the location where the four black squares are, close to where she's walking?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. And her head is pointed towards the four black squares; correct?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

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BY MR. GOINGS:

Q And I'll show you another picture. Picture 4. Her head is facing in the location where the spill was; isn't it?

A Yes.

Q And then Photograph 5, her head is also looking in that same direction; correct?

A Yes.

MR. MERMIGES: Form.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. And is it your testimony that she should have seen the spill when she walked past where it had occurred or --

A Yes.

Q All right. But she didn't, did she?

MR. MERMIGES: Form.

THE WITNESS: No.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q And what happened was shown on Photograph 6, 7 and 8. You fell; correct?

A And that's me.

Q And that's you; correct?

A Yes.

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Q Okay. Is it your testimony that Burlington had a chance to warn or clean up this location where the spill occurred, but they failed to do so?

MR. MERMIGES: Form.

THE WITNESS: Yes.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q Okay. And these cash registers are just a couple feet from where the spill occurred?

A Yeah. I was laying right there.

Q And these photographs show store employees behind the counter; correct?

A Mm-hmm.

Q Is that a yes?

A Yes, yes.

Q And is that in visual distance from where the spill occurred?

A Yes.

Q Okay.

A I remember this young lady hollering if I've still got the dress.

Q Who said that?

A The lady right down there where I was headed.

Q Oh, what'd she say?

A You still gonna get your dress? I said --

MR. MERMIGES: Hold on. What number was she pointing at for that?

THE WITNESS: That's where I was headed.

MR. MERMIGES: I thought she was pointing at this one.

MR. GOINGS: Same person.

MR. MERMIGES: Okay.

THE WITNESS: Yeah.

MR. MERMIGES: Six.

THE WITNESS: They could see me.

MR. MERMIGES: The young lady? The customer? I'm sorry.

MR. GOINGS: I saw that she was pointing to the actual photograph --

THE WITNESS: I was going out, coming out here --

MR. GOINGS: Let me finish.

THE WITNESS: Mm-hmm.

MR. GOINGS: Photograph 7 and then she pointed at this person behind the register. It was about the time if you asked if she was pointing at -- it was, I showed you the same person in Exhibit 8.

MR. MERMIGES: Okay.

MR. GOINGS: On Photograph 8.

THE WITNESS: Mm-hmm.

MR. GOINGS: All right.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q So, someone asked you if you still wanted your dress?
A Yeah.
Q Okay. Did you get your dress?
A No, I didn't get it.
Q Have you been back into Burlington since?
A No, huh-uh.
Q Are you requesting to be fairly compensated for your medical bills and your pain and suffering?
A Yes, please. Yes.
Q Now, to be clear, you hadn't paid for your dress or your store merchandise by the time the fall occurred; correct?
A No.
Q Okay.
A No.
Q And four or five minutes before you fell, you were not even standing in the cash register location; were you?

MR. MERMIGES: Form.

THE WITNESS: No, huh-uh. I hadn't gotten up there yet. About five minutes. I told you, when me and my daughter got up there, there was one gentleman in front of us, and after the gentleman got called, I was next. My daughter was behind me waiting on the

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next one to call her.

EXAMINATION CONTINUED

BY MR. GOINGS:

Q To the best of your ability, have you tried to give truthful and accurate testimony here today?

A Yes, I have.

Q Okay. Thank you very much, ma'am.

A Yes.

FURTHER EXAMINATION

BY MR. MERMIGES:

Q I've got a few more questions. Before you testified today, you had the chance to watch the entire video; isn't that right?

A I have seen portions of it.

Q So, you haven't actually watched the entire video with your lawyer?

A I've seen portions of it.

Q What parts have you seen?

A Where I'm going down.

Q Anything else?

A No. I wanted to see the fall. I wanted to know what happened.

Q Your -- you testified through your lawyer that this young lady, Ms. Simon -- her name is Ms. Simon, just so you know.

A Mm-hmm.
Q The cashier, that she was playing on her phone; is that right?
A I said she was looking at something.
Q Okay. Well, your lawyer asked you if she was playing on her phone and you said yes; didn't you?

MR. GOINGS: Object to the form of the question.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q Didn't you answer his question "yes" when he said she was playing on her phone?

MR. GOINGS: Object to the form of the question.

THE WITNESS: What did I say? I said she was looking at her phone. I can't swear it was a phone. She was looking at something.

MR. MERMIGES: Okay.

THE WITNESS: She walked by.

EXAMINATION CONTINUED

BY MR. MERMIGES:

Q She was looking at something in her hand?
A Yes.
Q And you remember that from the actual accident or from the video?
A When she walked by me, I'm coming up through there, right after she come from around that counter.

Q And she was looking at something in her hand?
A Something in her hand. I can't swear on a stack of Bibles it was a phone.
Q Okay. Nothing further.

FURTHER EXAMINATION

BY MR. GOINGS:

Q Just one clarification. It's my understanding that I didn't ask, nor did you answer in the affirmative that she had a phone. I indicated that it was told by Burlington that they believe she had a phone; is that correct?
A I didn't -- yeah.
Q Okay. Did you see her during the fall?
A No, I didn't.
Q Okay.
A I think she was just walking by, so she was so noticeable by the long braids.
Q Okay. You just know you recall an employee with long braids?
A Braids walking by me, looking down.
Q Okay.
A That's it.
Q And sitting here today, you don't have the video in front of you. You don't know how long it was when she walked by the location of the spill verses how long it

took for you to actually walk past the spill; correct?

A No, I can't.

Q Okay. If you had the video, that could help you out, but sitting here today, you don't have the video; do you?

A No, I don't.

Q Okay.

A Huh-uh.

Q But you do remember a store clerk in the area of the cash registers with long braids; correct?

A Yes. All I remember, she coming from behind the counter walking by.

Q Okay, all right. Thank you. No further questions.

FURTHER EXAMINATION

BY MR. MERMIGES:

Q Just to be clear --

A Mm-hmm.

Q -- you said that you remember her walking by you looking down, and you held up your hands in front of your face?

A I said, she had her hands up and --

Q And was looking down at her hands?

A Yeah, that's right. I can't say it was a phone. I can't say.

Q You're not certain it was a phone?

A No, I'm not.
Q But she was looking at something in her hands?
A Yes.
Q Nothing further.
(WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS CONCLUDED AT 3:34 P.M.)
(DEPONENT HAS WAIVED READING AND SIGNING.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING DEPOSITION OF **LALLIE QUALLS**;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THAT BY VIRTUE THEREOF I WAS DULY AUTHORIZED TO ADMINISTER AN OATH;

THAT THE WITNESS WAS BY ME FIRST DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, CONCERNING THE MATTER IN CONTROVERSY AFORESAID;

THE FOREGOING TRANSCRIPT OF 73 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 27TH DAY OF MARCH, 2017.

_____
WENDY SHANNON SULLIVAN

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES FEBRUARY 4, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Lallie Qualls,	)	CIVIL ACTION №.: 2016-CP-40-1699
Plaintiff,	)	
vs.	)	
Burlington Coat Factory of South Carolina, LLC and Burlington Coat Factory Direct Corporation,	)	**PLAINTIFF'S MEMORANDUM IN OPPSOITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
Defendants.	)	

Plaintiff Lallie Qualls ("Ms. Qualls" or "Plaintiff"), by and through her undersigned attorneys, hereby submits this Memorandum in Opposition to Defendant's Motion for Summary Judgment. For the reasons set forth herein, a genuine issue of material fact exists for a jury.

FACTS

On July 31, 2015, Plaintiff Lallie Qualls went shopping with her daughter at Burlington Coat Factory in Columbia, South Carolina. (Deposition of Plaintiff, Lallie Qualls, taken March 15, 2017, hereinafter "Pl. Depo.," p. 17). Ms. Qualls made a selection and went to the front of the store to check out, where she waited in a queue for instruction on which register she should use. (Pl. Depo. 19). She was carrying her purse and the dress she intended to purchase in front of her. (Pl. Depo. 21). While walking to Register Two, Ms. Qualls slipped on liquid on the floor, severely injuring her left knee.[1] (Pl. Dep. 24-25, 29). There was no caution sign or other warning of the hazard in the checkout area. (Pl. Depo. 54). The manager on duty, Ms. Pamela Arsenault, was nearby and went to Ms. Qualls, kneeling beside her and apologizing for what happened. (Pl. Depo. 20). When Ms. Arsenault reached Ms. Qualls, she noticed that there was liquid on the

[1] Ms. Qualls fractured her patella, which required surgery a few days after her fall. (Pl. Dep. 32-35).

floor. (30(b)(6) Deposition of Pamela Robin Arsenault, taken March 15, 2017, hereinafter "Arsenault Depo.," p. 65).

Defendants' surveillance camera captured Ms. Qualls' fall and the events leading up to it. (*See* Exhibit 2 to Defendants' Memorandum in Support of its Motion for Summary Judgment, hereinafter "Def. Ex. 2"). While Ms. Qualls was shopping, Taylor Simon, a Burlington Coat Factory employee, was working at the register. She was assisting two adult women who had two children with them: a young boy sitting in the shopping cart and another boy several years older. While Ms. Simon was ringing up the women's purchases, the child sitting in the cart just across the counter from Ms. Simon threw a drinking cup several feet. (Arsenault Depo. p. 60; Def. Ex. 2). It hit the ground on a black tile and caused a dark liquid, such as cola, to spill. (Arsenault Depo. p. 60). Defendants' 30(b)(6) designee, Pamela Arsenalt, testified that the spill was about ten feet from at least two employees working the registers. (Arsenault Depo. p. 92-93; *see also* Pl. Depo. p. 60, 66). A moment later, the young man in the group picked up the cup, but did not clean up the spill. Between the time the spill occurred and the time Ms. Qualls fell, at least three customers noticed the spill when passing by and conspicuously altered their paths or took exaggerated steps to avoid the spill. (Def. Ex. 2).

When Ms. Simon finished assisting the aforementioned customers, she walked out from behind the registers and past the spill on the way to take her break – she was within a few inches of the spill. (Arsenault Depo. p. 87). The video shows Ms. Simon looking down and away from the camera, towards the spill. (Pl. Depo. 58-59, 64; Arsenault Depo. p. 86). Ms. Arsenault, as the Company's 30(b)(6) designee, admitted that Ms. Simon looked down while walking by the spill, but surmised that she did not see the spill because she was distracted by her personal cell phone. (Arsenault Depo. p. 87-89, 102). She further admitted that it would not be appropriate

for Ms. Simon to be utilizing her personal cell phone at the time shown in the video and that Ms. Simon had the opportunity to observe the spill if she was looking. (Arsenault Depo. p. 85-87). In addition, the incident report Ms. Arsenault completed immediately following Ms. Qualls' fall noted, "noticeable spill, heavy traffic area." (Arsenault Depo. p. 96). Burlington's own policies state that "[i]t is a responsibility of all Burlington Coat Factory employees to actively participate in efforts to improve the safety of our stores." (Arsenault Depo. p. 24). However, Ms. Simon did nothing to warn customers of the hazard created by the spill or to cure it.[2] (Arsenault Depo. p. 87).

SUMMARY JUDGMENT STANDARD

Under Rule 56(c), SCRCP, summary judgment is proper only when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct. App. 2000). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Evening Post Publ. Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 81-82, 708 S.E.2d 745, 748 (2011) (internal quotation marks omitted). "In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment." *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 270, 781 S.E.2d 903, 910 (2016). "Generally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause." *Folkens v. Hunt*, 290 S.C. 194, 199, 348 S.E.2d 839, 842

[2] "If an associate observes a potentially unsafe or hazardous condition, . . . they should take immediate action to try to warn any potential customers of that condition or take action to remedy it immediately." (Arsenault Depo. p. 41).

(Ct. App. 1986). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005). Where reasonably minds can differ, summary judgment is inappropriate. *Id.*

ARGUMENT

"To establish a cause of action for negligence, a plaintiff must prove the following three elements: (1) a duty owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach." *Shaw v. City of Charleston*, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002). In a premises liability case, the plaintiff may establish a breach by showing "either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." *Pringle v. SLR, Inc. of Summerton*, 382 S.C 397, 675 S.E.2d 783.[3]

In this case, Defendants argue that there is no evidence of Defendants' actual or constructive notice of the hazardous condition that caused Ms. Qualls to fall. However, as explained below, there is at least a scintilla of evidence that Defendant had the requisite notice, and therefore, summary judgment is inappropriate. In addition, there is evidence of Defendants' willful, wanton, reckless behavior sufficient to prevent summary judgment as to punitive damages.

I. There is Evidence of Actual and Constructive Notice

If a duty exists, the jury then determines whether the defendant breached the duty, resulting in damages." *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 272-

[3] Defendant has not argued that Plaintiff failed to set forth evidence of duty, causation, or damages. This Motion only requires the Court to consider the evidence of breach.

74, 781 S.E.2d 903, 912 (2016) (finding "at least a scintilla of evidence in the record to indicate an issue of material fact" as to breach and holding "the trial court erred in granting Petitioners' motion for summary judgment"). In this case, Plaintiff may meet her burden by putting forth evidence showing "either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." *Pringle v. SLR. Inc. of Summerton*, 382 S.C 397, 675 S.E.2d 783 (Ct. App. 2009). Summary judgment would be inappropriate here because there is evidence that at least one Burlington employee had actual, or at the very least, constructive notice of the spill and failed to remedy the hazard.

(a) Actual Notice

In this case, there was liquid on the floor because a child sitting in a shopping cart threw a drink cup onto the floor while his mother (or the adult female he accompanied) was checking out. The spill occurred in a high traffic area in close proximity to at least two store employees. (Arsenault Depo. p. 92). The cart was just across the counter from a Burlington Coat Factory employee, Taylor Simon, and the cup landed and spilled approximately ten (10) feet from the registers where there were at least two Burlington Coat Factory employees. (Arsenault Depo. p. 92-93). Nearly five minutes later, the surveillance video shows the employee, Ms. Simon, leaving the area behind the registers, and walking right past the spot where the liquid has spilled, looking down towards where the drink was spilled as she walks. It is undisputed that "*that a store employee literally walked within inches of the spill that was on the floor.*" (Arsenault Depo. p. 87). In fact, Defendant's 30(b)(6) designee admits that Ms. Simon is looking down towards the spill on the floor as she walks by, but instead of stopping to clean it up, she continues to walk past it. (Arsenault Depo. p. 83, 87; Def. Ex. 2). Further, Defendant's 30(b)(6)

designee admits that Ms. Simon "had the opportunity to observe [the spill] on the floor." (Arsenault Depo. p. 87). A jury could find from these facts that Ms. Simon, and therefore Burlington Coat Factory, had actual notice of the spill and failed to clean it up.

(b) Constructive Notice

Even if the jury does not find actual notice, it may reasonably find that there was constructive notice. Where, as here, there is a motion for summary judgment based on the alleged lack of notice, "[t]he pivotal question . . . is whether there [i]s evidence from which the jury might reasonably infer that the defendant, by the exercise of reasonable diligence, *should have known* of the hazard on the floor which caused the injury to the plaintiff. In determining this question, it is elementary that all of the evidence and the inferences reasonably deducible therefrom have to be viewed in the light most favorable to the plaintiff." *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 123, 165 S.E.2d 627, 630 (1969) (emphasis added).

Defendants have argued that Ms. Simon did not have notice of the spill because she did not see the child just a few feet away from her throw a cup several feet away and onto the floor, and when she walked by the spill, she did not see it because she was looking at her phone and distracted. However, the facts in this case show that the Burlington's employee would have seen the spill through the exercise of reasonable diligence. Burlington has a store policy that requires employees to stop immediately and take prompt action if they see a substance on the floor that could be a slip or trip hazard. (Arsenault Depo. p. 45, 51, 89). This spill was noticeable to store employees, but one employee, Ms. Simon, failed to use reasonable care in stopping immediately to remedy the danger on the floor. To be sure, the 30(b)(6) designee admitted that Ms. Simon "had the opportunity to observe the spill." (Arsenault Depo. p. 87).

The 30(b)(6) designee admitted that anybody "that would've walked by [the spill] would have noticed it." (Arsenault Depo. p. 97). Prior to Ms. Qualls falling, "a store employee literally walked within inches of the spill that was on the floor" but never stopped. (Arsenault Depo. p. 87). The 30(b)(6) designee testified that if the store employee, Ms. Simon, had been paying attention when she walked past the spill, that she should have seen it. (Arsenault Depo. p. 87, 97). She further testified, however, that Ms. Simon was "distracted because she was on her phone or playing with her phone when she walked past the spill on the floor." (Arsenault Depo. p. 102). The 30(b)(6) designee believes that Ms. Simon being on her personal cell phone "possibly" prevented her from observing the spill. (Arsenault Depo. p. 89). When directly asked "Do you believe that she was distracted because she was on her phone or playing with her phone when she walked past the spill on the floor?" her response was "Yes." Instead of walking through the store distracted while playing on her phone, Ms. Simon should have been paying attention. (*Id.*). The 30(b)(6) designee agreed that Defendants' employees generally should be watchful for potential hazards, and Ms. Simon should not have been using a personal cell phone outside the break room. Ms. Simon or another Burlington employee had the opportunity, through exercising reasonable diligence, to see the spill on the floor and to warn customers to avoid the hazard until it could be remedied.

Importantly, at least three customers passed by the spill before Ms. Qualls fell and changed their course or took abnormally large steps to avoid it. This, in addition to 30(b)(6) designee testimony, tells us that the spill was visible when a person was looking at the floor. Additionally, this spill occurred in a very high traffic area, making it reasonable to monitor it more closely than back corners of the store. Based on this evidence, a reasonable jury could find

that, through the exercise of reasonable diligence, Burlington should have known of the hazard. Thus, summary judgment is inappropriate.

II. There is Evidence Defendant's Acts Were Grossly Negligent or Reckless.

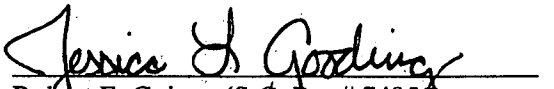
The determination of whether punitive damages should be submitted to the jury is most proper for the trial court after hearing the evidence during the trial proceeding. The right to punitive damages should not be determined at summary judgment.

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence that defendant's misconduct was grossly negligent or with reckless disregard for the plaintiff's rights. S.C. Code Ann. §15-33-135 (2013); *Taylor v. Medenica*, 324 S.C. 200, 223, 479 S.E.2d 35, 46 (1996). A conscious failure to exercise due care constitutes willfulness. *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness. *Mishoe v. QHG of Lake City, Inc.*, 336 S.C. 195, 621 S.E.2d 363 (Ct. App. 2005); quoting, *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. *Welch*, 342 S.C. at 301, 536 S.E.2d at 419. The surveillance video in this case shows Ms. Simon walking by the spill and looking down, but she does nothing to warn customers of the spill or clean up the mess. If a jury finds that Ms. Simon saw the spill but chose to ignore it, an award of punitive damages would be appropriate. Therefore, punitive damages should be submitted to the jury.

CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests the Court to deny Defendant's Motion for Summary Judgment and allow this case to proceed to a trial before a jury.

Respectfully submitted,

By: 

Robert F. Goings (S.C. Bar # 74855)
Jessica L. Gooding (S.C. Bar #101210)
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Email: rgoings@goingslawfirm.com
Phone: (803) 350-9230
Fax: (877) 789-6340

May 31, 2017

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the following named individual(s) were served with a copy of the following indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:
Nicholas D. Mermiges, Esquire
Law Office of Nick Mermiges, LLC
1720 Main St. #202
Columbia, SC 29201
Attorney for Defendants

PLEADINGS/DOCUMENTS:

- **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Jessica L Gooding

Columbia, South Carolina
May 31, 2017

State of South Carolina County of Richland Lallie Qualls, Plaintiff, vs. Burlington Coat Factory of South Carolina, LLC, et al., Defendant.	In the Court Of Common Pleas Case No.: 2016-CP-40-01699 Transcript of Record

June 6, 2017

Columbia, South Carolina

BEFORE:

The Honorable George M. McFadden, Junior, Judge

APPEARANCES:

Robert F. Goings, Esquire
Attorney for the Plaintiff

Nicholas Daniel Mermiges, Esquire
Attorney for the Defendants

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MOTIONS 3

Certificate of Reporter

EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
NONE			

Thereupon, the following proceedings were had,

THE COURT: So, what do we have folks?

MR. MERMIGES: Motion for summary judgment, Your Honor. There are two other motions on your calendar but both of those are moot. The only issue is a motion for summary judgment.

THE COURT: All right, sir. Yours or his?

MR. MERMIGES: I do have a copy of my motion if the Court --

THE COURT: If you don't mind, I'll have one.

MR. MERMIGES: And I also have reply as well.

MR. GOINGS: And I have a memo in opposition. I think these were all e-mailed last week.

THE COURT: Could have been. Could have been. But it's nice to have them. All right. I'm ready.

MR. MERMIGES: Your Honor, this is, I think, a pretty interesting case based on the reading of South Carolina law and the facts of this case. This is a case where this is a slip and fall accident that happened at my client Burlington Coat Factory's store. Happened back on July 31st of 2015. What is interesting about this case is that the entire incident was caught on videotape, Your Honor. I did file a copy of the videotape with the Court attached to my summary judgment. I do have the excerpt cued up. Since we do have an hour set aside,

it's only going to take about six minutes. Later on I will ask the Court's permission to show the videotape to illustrate my point.

Essentially, Your Honor, the plaintiff in this case fell on some kind of liquid. The videotape clearly shows that this liquid was spilled by a customer. Was not spilled by a Burlington employee. That's because obviously South Carolina law when it comes to slip and falls in a retail establishment, I'm talking about the law laid out by Wintersteen versus Food Lion, the Supreme Court case in 2001, in order to hold the retailer liable you need to prove one of three things. You either need to prove that the retailer actually created the danger so that would be if an employee was stocking a shelf and dropped something and it busted open and they didn't do anything about it. If you're not going to prove that, then generally you have got to prove that the retailer through its employees actually knew about this spill or the dangerous condition and failed to remedy.

Now, there is a very narrow but third option which is essentially you can prove constructive knowledge which that the liquid was on the ground or the substance was on the ground for so long, for so long that the retailer should have known, should have know that it was there and that third area, the constructive notice requirement is

extremely narrow in South Carolina. There are specific things the plaintiff tried to prove to satisfy it that just do not satisfy it.

So, for example, in the Gillespie versus Walmart case which is cited in my brief, the Court specifically held that even if an employee is in the vicinity of the spill, even if the spill is within the employee's zone of vision, that's not adequate to escape summary judgment. That doesn't create a material issue of fact with respect to constructive knowledge. There are multiple other cases that hold that the mere fact that an employee is near where something spilled is not sufficient to create constructive knowledge.

The question then the Court may have is if the employer or the retailer didn't create the danger and if they didn't know about it or failed to remedy it, what is accepted as proof? What is accepted as proof that's adequate to create constructive knowledge of a slip and fall on a retailer's premises? The answer to that is that it has to be on the ground for a significant length of time. It has to be on the ground and remain undiscovered for a significant length of time.

And as I have illustrated in my motion there are multiple South Carolina courts saying if a liquid is on the ground for a mere few minutes, that's not sufficient

to escape summary judgment or establish liability. There are also cases where the facts of the case are that the liquid couldn't have been on the ground for any more than 10 to 12 minutes and that is considered not sufficient to escape summary judgment liability.

In this case, Your Honor, as I said, we have a very clear video. The video which is attached to the file as I stated shows that a young child threw a cup on the ground at a Burlington store causing a small spill. It was not noticed by the cashier. The young child's brother, presumably some member of the family went and picked up the cup and threw it away without telling anybody about the spill. The spill remained on the ground undetected. Several customers walked past the spill. None of the customers notified anybody at Burlington about the spill. The cashier finished checking out the family and she walked and took her break and didn't notice the spill either. She may have looked down at her phone. The plaintiff has claimed that she was distracted looking at her phone but she certainly had no knowledge. She didn't see the spill. And specifically I will note that the plaintiff in her deposition specifically states she didn't see the spill but she should have seen it.

Ultimately from the time that the liquid was spilled

to the time that the plaintiff fell was about four and a half minutes. It was less than five minutes, Your Honor. This is all on video. So just to be abundantly clear, the video establishes that Burlington did not create this condition. Burlington was not aware of the condition and I would note specifically that the plaintiff under oath stated that Burlington wasn't aware of the condition and that the plaintiff fell around four and a half minutes after the condition was created without Burlington knowing anything about it.

The law in South Carolina is very clear. Four and a half minutes is not sufficient to create constructive knowledge. Burlington should not be liable as a matter of law. That is the crux of the case. There are one or two other small issues.

As I said, during her deposition the plaintiff alleged that the employee was negligent by looking at her phone. The store manager was deposed. Both of those deposition transcripts are in the file. The store manager specifically testified this employee went on break. Okay? She finished checking out this family and she went on break and you see her on the video walk past the spill. She may have looked down at her phone. There is no policy against looking down at your phone when you're going on break. There is not a duty under the

Wintersteen case to continually inspect the premises.

Other states have what's known as a negligent mode of operations theory. In South Carolina we do not subscribe to a negligent mode of operations theory. There has got to be specific evidence that it was on the ground for so long that constructive knowledge can be imputed.

And then the final issue based on what I'm telling you, Your Honor, it's clear to my mind that as a matter of law this is not something that should proceed to a jury. The plaintiff has not come forth with any admissible evidence tending to show actual knowledge or even constructive knowledge. However, on top of just claiming negligence the plaintiff is also claiming entitlement to punitive damages. Punitive damages against Burlington in a simple slip and fall case.

In order to have a valid claim for punitive damages, Your Honor, there has to be a specific showing of wantonness and willfulness, knowing disregard. South Carolina case law specifically says that mere gross negligence, mere gross negligence is not sufficient to impose punitive damages as a matter of law.

The facts of the case as I said, this is not a he said/she said case. The plaintiff at her deposition had already looked at the videotape and she stated under oath

when asked, do you think, or excuse me, stated under oath essentially agreeing with her attorney who led her in the questioning, do you think that Ms. Simon, the employee, should have seen the spill but she didn't because she was looking at her phone? And the plaintiff says yes. She should have seen it but she didn't because she was looking at her phone. The point that I need to make about that one fact one more time is that under the Gillespie case, Walmart v. Gillespie, near proximity to a spill does not create an inference that warrants constructive knowledge.

At the end of the day ultimately, as I said, I do have the relevant excerpt of the video cued up for Your Honor. I also have a timeline attached to my motion for summary judgment. And if the Court would like to review the video, I would be happy to play it for the Court.

The only other matter that I would note is that the plaintiff's return doesn't include any new evidence. It only includes these depositions that I filed with the Court that supported the defendant's position. The plaintiff doesn't cite to any case law whatsoever that shows that where a retailer, where a substance is on the floor for less than five minutes and a retailer doesn't have actual knowledge of that substance being on the floor, that it is appropriate to impose liability. And

the reason for that is because case law is completely uniform in the opposite direction which is that less than five minutes as a matter of law is not enough to impose liability and certainly, certainly the facts of this case do not warrant punitive damages.

I don't know if the Court would like to review the video now. I do have it cued up for about ten seconds before this four and a half minute window or if the Court would like to wait and hear argument from the other side.

THE COURT: Let me hear from him and then I'll tell you whether or not I need to see the actual video. Sir.

MR. GOINGS: Thank you, Your Honor. My name is Robert Goings and I represent the plaintiff Ms. Lallie Qualls. May it please the Court.

THE COURT: Yes, sir.

MR. GOINGS: Well, Your Honor, here's the rest of the story as they would have it. Ms. Qualls was shopping at a Burlington location. When her number was called to come to the register to pay for the clothes that were in her arms, she he walked towards the register and you can see on the video a very violent fall. Violent, violent fall. She ended up having basically reconstructive surgery on her knee. She is an elderly lady just as sweet as she can be. And I'm glad this thing was caught

on video because the video actually shows the genuine issue of material fact in this case.

The defense says that the law requires a significant amount of time on the ground for so long of a period. That is not what the law says. The law doesn't say that at all. The law says, and this is a jury instruction I'm sure you have given to juries a number of times, for constructive notice in a slip and fall case, quote, "the pivotal question is whether there is evidence from which a jury might reasonably infer that the defendant by the exercise of reasonable diligence should have known of the hazard on the floor that caused the injury to the plaintiff and in determining this question it's elementary that all the evidence and the inferences reasonably deduced therefrom have to be viewed in a light most favorable to the plaintiff."

Now, this is what the facts show. This is clear. The spill occurred approximately five minutes before the fall occurred, okay? High traffic area. There were three or four employees in the vicinity of the spill. About four minutes after the spill a store employee, and you can see her on the video and I can hand this up, this is a still shot image, Your Honor, of the video, this is Ms. Simon right here and she's a store employee. That's Ms. Simon, the store employee and she is walking within

inches, inches of the spill. You cannot see the spill on the video but the evidence is and the 30(b)(6) witness of Burlington admitted that she was walking within quote "inches of the spill" and that she had the quote "she had the opportunity to observe the spill on the floor." But do you know why she didn't see the spill on the floor? Because she was playing with her cell phone. That's why. She walked past the spill, looked in the direction of the spill but was too busy playing on her cell phone and continued to walk past the spill so Ms. Lallie Qualls, 68 years old, a minute later instead of doing what the employee should have done which was stop, observed the spill, put a cone up, called for help, do what the store policy requires her to do, she didn't do it. She kept walking and then Ms. Qualls false and has this massive injury.

To be sure the 30(b)(6) designee said that Ms. Simon quote "had the opportunity to observe the spill." That's on page 87 and that she admits that the store has a policy for employees to immediately stop and take prompt action if they see any substance on the floor that could be a slip hazard. She says that quote "any anybody that would have walked past the spill would have noticed it. A store employee literally walked within inches of the spill that was on the floor but never stopped."

She says, well, she didn't see it and then I followed up with that and she said, well, the reason she didn't see it is because she quote "was distracted because she was on her phone or playing with her phone when she walked past the spill on the floor."

Now, here is the question that if there is any question there is a genuine issue of material fact. I said, ma'am, do you believe that she was distracted because she was on her phone or playing with her phone at the time when she walked past the spill on the floor? Answer: Yes. So we all know that we can get distracted playing on our phones while driving. You can get distracted playing on your phone walking, too, and that's what happened.

Quite frankly there is more than a mere scintilla of evidence in this case for a jury. The cases that were cited about a length of period of time, they didn't have a security camera. They didn't have evidence of a store employee literally walking beside the spill within inches. There is no bright line test that says a spill on the floor has to be there at least one hour before anybody should do anything about it. In fact, the law says that people should take reasonable care to clean up a spill immediately upon seeing it. In fact, that's the store policy at Burlington and we all know that policies

are admissible to determine what the standard of care is.

With all due respect, Ms. Lallie Qualls is entitled to her day in court. And as it relates to punitive damages, that's a question just for the jury to determine when he or she hears the evidence to determine maybe on a directed verdict if punitive damages is proper. But I'll say this: If a jury determines that the store employee was on her phone walking past this spill and she wasn't being distracted and she could have seen the spill, then arguably a jury could award punitive damages.

This is a case of negligence. Opposing counsel said that quote "mere gross negligence does not establish punitive damages." Well, that's just not the law in South Carolina. We all know that gross negligence is the standard for punitive damages. But I think a trial judge hearing the evidence is probably the best to weigh those factors, Your Honor. Thank you.

THE COURT: All right. Gentlemen, I'm going to take this under consideration. I did hear what you said earlier and I appreciate having heard from you today. You both gave me very good argument. Let me further digest this visually and mentally and get you an order out. Thank you so much.

MR. MERMIGES: Thank you, Judge.

MR. GOINGS: Judge, I meant to hand this up to you

and this is just one more still shot. You can see on the video of Ms. Qualls actually falling. This is actually an exhibit to the deposition that's in the file but instead of having to dig it out, you can at least see where the fall occurred.

THE COURT: Mr. Mermiges, I thought you were doing only family court work.

MR. MERMIGES: No, Your Honor. I actually have done a lot of defense work for probably five or six years.

THE COURT: Well, you might be wise to stay away from family court.

WHEREUPON, THE HEARING WAS CONCLUDED.

CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 6th day of June, 2017.

I FURTHER CERTIFY that the forgoing 15 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 12th day of December, 2017.

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

STATE OF SOUTH CAROLINA)
)
RICHLAND COUNTY)

AFFIDAVIT OF ROBERT F. GOINGS

Personally appeared before, Robert F. Goings, who, after being duly sworn, states as follows:

1. I am counsel of record for Lallie Qualls, Appellant/Plaintiff in *Lallie Qualls v. Burlington Coat Factory of South Carolina, LLC and Burlington Coat Factory Direction Corporation*, App. Case No. 2017-002433. I am competent to make this affidavit, which is based on personal knowledge and information I believe to be true to the best of my recollection.

2. On June 6, 2017, I appeared before the Honorable George M. McFaddin, Jr., on behalf of Lallie Qualls, on Respondent/Defendant Burlington's motion for summary judgment.

3. At the beginning of the hearing, I approached the bench and gave Judge McFaddin a file of documents in opposition to Burlington's motion for summary judgment. I provided him with another copy of Ms. Qualls's memorandum in opposition to summary judgment and the entire Rule 30(b)(6) deposition transcript of Pamela Robinson Arsenault. To the best of my recollection, the deposition transcript of Ms. Arsenault contained all eleven (11) exhibits that were marked during her deposition.

4. Towards the end of the hearing, as I reapproached the bench, I said "Judge, I meant to hand this up to you and this is ***just one more still shot***. You can see on the video of Ms. Qualls actually falling. ***This is actually an exhibit to the deposition that's in the file but instead of having to dig it out***, you can at least see where the fall occurred." (Attachment 1, hearing transcript pp. 14-15). I separately handed Judge McFaddin a still shot of the fall, which was an exhibit to the deposition, so that he did not have to search for it in the file of documents that I previously handed to him.

5. To the best of my knowledge, Ms. Arsenault's deposition transcript—with all 11 exhibits—was handed up and presented to Judge McFaddin for his consideration in ruling on Burlington's motion for summary judgment.

6. Counsel for Burlington represented to me that he had filed the deposition transcript of Ms. Arsenault; therefore, I did not refile the transcript because the Richland County Clerk of Court's office discourages duplicate filings. Counsel for Burlington did not tell me he omitted the exhibits of her deposition from the filing.

Robert F. Goings, Esq.

Sworn to before me this 23rd day of April, 2018

Notary Public for South Carolina
My commission expires: 9-8-2020

State of South Carolina)) County of Richland)	In the Court Of Common Pleas Case No.: 2016-CP-40-01699
Lallie Qualls,)) Plaintiff,) vs.)) Burlington Coat Factory) of South Carolina, LLC,) et al.,)) Defendant.)	Transcript of Record

June 6, 2017

Columbia, South Carolina

BEFORE:

The Honorable George M. McFadden, Junior, Judge

APPEARANCES:

Robert F. Goings, Esquire
Attorney for the Plaintiff

Nicholas Daniel Mermiges, Esquire
Attorney for the Defendants

ATTACHMENT 1

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
NONE			

Thereupon, the following proceedings were had,

THE COURT: So, what do we have folks?

MR. MERMIGES: Motion for summary judgment, Your Honor. There are two other motions on your calendar but both of those are moot. The only issue is a motion for summary judgment.

THE COURT: All right, sir. Yours or his?

MR. MERMIGES: I do have a copy of my motion if the Court --

THE COURT: If you don't mind, I'll have one.

MR. MERMIGES: And I also have reply as well.

MR. GOINGS: And I have a memo in opposition. I think these were all e-mailed last week.

THE COURT: Could have been. Could have been. But it's nice to have them. All right. I'm ready.

MR. MERMIGES: Your Honor, this is, I think, a pretty interesting case based on the reading of South Carolina law and the facts of this case. This is a case where this is a slip and fall accident that happened at my client Burlington Coat Factory's store. Happened back on July 31st of 2015. What is interesting about this case is that the entire incident was caught on videotape, Your Honor. I did file a copy of the videotape with the Court attached to my summary judgment. I do have the excerpt cued up. Since we do have an hour set aside,

it's only going to take about six minutes. Later on I will ask the Court's permission to show the videotape to illustrate my point.

Essentially, Your Honor, the plaintiff in this case fell on some kind of liquid. The videotape clearly shows that this liquid was spilled by a customer. Was not spilled by a Burlington employee. That's because obviously South Carolina law when it comes to slip and falls in a retail establishment, I'm talking about the law laid out by Wintersteen versus Food Lion, the Supreme Court case in 2001, in order to hold the retailer liable you need to prove one of three things. You either need to prove that the retailer actually created the danger so that would be if an employee was stocking a shelf and dropped something and it busted open and they didn't do anything about it. If you're not going to prove that, then generally you have got to prove that the retailer through its employees actually knew about this spill or the dangerous condition and failed to remedy.

Now, there is a very narrow but third option which is essentially you can prove constructive knowledge which that the liquid was on the ground or the substance was on the ground for so long, for so long that the retailer should have known, should have know that it was there and that third area, the constructive notice requirement is

extremely narrow in South Carolina. There are specific things the plaintiff tried to prove to satisfy it that just do not satisfy it.

So, for example, in the Gillespie versus Walmart case which is cited in my brief, the Court specifically held that even if an employee is in the vicinity of the spill, even if the spill is within the employee's zone of vision, that's not adequate to escape summary judgment. That doesn't create a material issue of fact with respect to constructive knowledge. There are multiple other cases that hold that the mere fact that an employee is near where something spilled is not sufficient to create constructive knowledge.

The question then the Court may have is if the employer or the retailer didn't create the danger and if they didn't know about it or failed to remedy it, what is accepted as proof? What is accepted as proof that's adequate to create constructive knowledge of a slip and fall on a retailer's premises? The answer to that is that it has to be on the ground for a significant length of time. It has to be on the ground and remain undiscovered for a significant length of time.

And as I have illustrated in my motion there are multiple South Carolina courts saying if a liquid is on the ground for a mere few minutes, that's not sufficient

to escape summary judgment or establish liability. There are also cases where the facts of the case are that the liquid couldn't have been on the ground for any more than 10 to 12 minutes and that is considered not sufficient to escape summary judgment liability.

In this case, Your Honor, as I said, we have a very clear video. The video which is attached to the file as I stated shows that a young child threw a cup on the ground at a Burlington store causing a small spill. It was not noticed by the cashier. The young child's brother, presumably some member of the family went and picked up the cup and threw it away without telling anybody about the spill. The spill remained on the ground undetected. Several customers walked past the spill. None of the customers notified anybody at Burlington about the spill. The cashier finished checking out the family and she walked and took her break and didn't notice the spill either. She may have looked down at her phone. The plaintiff has claimed that she was distracted looking at her phone but she certainly had no knowledge. She didn't see the spill. And specifically I will note that the plaintiff in her deposition specifically states she didn't see the spill but she should have seen it.

Ultimately from the time that the liquid was spilled

to the time that the plaintiff fell was about four and a half minutes. It was less than five minutes, Your Honor. This is all on video. So just to be abundantly clear, the video establishes that Burlington did not create this condition. Burlington was not aware of the condition and I would note specifically that the plaintiff under oath stated that Burlington wasn't aware of the condition and that the plaintiff fell around four and a half minutes after the condition was created without Burlington knowing anything about it.

The law in South Carolina is very clear. Four and a half minutes is not sufficient to create constructive knowledge. Burlington should not be liable as a matter of law. That is the crux of the case. There are one or two other small issues.

As I said, during her deposition the plaintiff alleged that the employee was negligent by looking at her phone. The store manager was deposed. Both of those deposition transcripts are in the file. The store manager specifically testified this employee went on break. Okay? She finished checking out this family and she went on break and you see her on the video walk past the spill. She may have looked down at her phone. There is no policy against looking down at your phone when you're going on break. There is not a duty under the

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And then the final issue based on what I'm telling you, Your Honor, it's clear to my mind that as a matter of law this is not something that should proceed to a jury. The plaintiff has not come forth with any admissible evidence tending to show actual knowledge or even constructive knowledge. However, on top of just claiming negligence the plaintiff is also claiming entitlement to punitive damages. Punitive damages against Burlington in a simple slip and fall case.

In order to have a valid claim for punitive damages, Your Honor, there has to be a specific showing of wantonness and willfulness, knowing disregard. South Carolina case law specifically says that mere gross negligence, mere gross negligence is not sufficient to impose punitive damages as a matter of law.

The facts of the case as I said, this is not a he said/she said case. The plaintiff at her deposition had already looked at the videotape and she stated under oath

when asked, do you think, or excuse me, stated under oath essentially agreeing with her attorney who led her in the questioning, do you think that Ms. Simon, the employee, should have seen the spill but she didn't because she was looking at her phone? And the plaintiff says yes. She should have seen it but she didn't because she was looking at her phone. The point that I need to make about that one fact one more time is that under the Gillespie case, Walmart v. Gillespie, near proximity to a spill does not create an inference that warrants constructive knowledge.

At the end of the day ultimately, as I said, I do have the relevant excerpt of the video cued up for Your Honor. I also have a timeline attached to my motion for summary judgment. And if the Court would like to review the video, I would be happy to play it for the Court.

The only other matter that I would note is that the plaintiff's return doesn't include any new evidence. It only includes these depositions that I filed with the Court that supported the defendant's position. The plaintiff doesn't cite to any case law whatsoever that shows that where a retailer, where a substance is on the floor for less than five minutes and a retailer doesn't have actual knowledge of that substance being on the floor, that it is appropriate to impose liability. And

the reason for that is because case law is completely uniform in the opposite direction which is that less than five minutes as a matter of law is not enough to impose liability and certainly, certainly the facts of this case do not warrant punitive damages.

I don't know if the Court would like to review the video now. I do have it cued up for about ten seconds before this four and a half minute window or if the Court would like to wait and hear argument from the other side.

THE COURT: Let me hear from him and then I'll tell you whether or not I need to see the actual video. Sir.

MR. GOINGS: Thank you, Your Honor. My name is Robert Goings and I represent the plaintiff Ms. Lallie Qualls. May it please the Court.

THE COURT: Yes, sir.

MR. GOINGS: Well, Your Honor, here's the rest of the story as they would have it. Ms. Qualls was shopping at a Burlington location. When her number was called to come to the register to pay for the clothes that were in her arms, she he walked towards the register and you can see on the video a very violent fall. Violent, violent fall. She ended up having basically reconstructive surgery on her knee. She is an elderly lady just as sweet as she can be. And I'm glad this thing was caught

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Now, this is what the facts show. This is clear. The spill occurred approximately five minutes before the fall occurred, okay? High traffic area. There were three or four employees in the vicinity of the spill. About four minutes after the spill a store employee, and you can see her on the video and I can hand this up, this is a still shot image, Your Honor, of the video, this is Ms. Simon right here and she's a store employee. That's Ms. Simon, the store employee and she is walking within

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I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 12th day of December, 2017.

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Lallie Qualls,	)	CIVIL ACTION №.: 2016-CP-40-1699
	)	
Plaintiff,	)	
	)	
vs.	)	**PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT**
	)	
Burlington Coat Factory of South Carolina, LLC and Burlington Coat Factory Direct Corporation,	)	
	)	
Defendants.	)	

2017 SEP -8 PM 3:20

Plaintiff Lallie Qualls, by and through her undersigned counsel, hereby respectfully moves for reconsideration of the Order Granting Defendant's Motion for Summary Judgment that was received on August 29, 2017. This Court's Order denies Plaintiff the right to a jury trial on the merits in spite of the numerous issues of material fact in the action. Simply put, there was disputed evidence that Defendant should have known of the hazard on the floor which caused the injury to the Plaintiff. Therefore, pursuant to South Carolina Civil Procedure Rule 59(e), Plaintiff hereby timely files this Motion and respectfully request this Court reconsider its Order on the following grounds:

1. The Court did not apply the appropriate summary judgment standard.

Under Rule 56(c), SCRCP, summary judgment is proper only when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct. App. 2000). "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795,

799 (Ct.App.1999). "In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment." *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 270, 781 S.E.2d 903, 910 (2016) (emphasis added); *Zurich Am. Ins. Co. v. Tolbert*, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010) ("Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence."). *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009) (denying summary judgment because the plaintiff's testimony regarding his recollection of a conversation was at least a mere scintilla of evidence, even though statements made therein were subject to multiple interpretations).

Respectfully, the Court failed to apply the mere scintilla standard in the present case. The Court's Order is void of the phrase "mere scintilla." The section pertaining to the summary judgment standard discusses genuine questions of material facts, but it fails to note the low burden the non-moving party must carry to show such a genuine question. (Order, p. 4). Further, although it references evidence set forth by Plaintiff, it finds that "the evidence of record does not support" liability on the part of Defendants. (Order, p. 9-10). The determination of whether the evidence rises to the level necessary to hold Defendants liable is for the jury to make. The Court's role is to determine whether there is any evidence at all to support Plaintiff's theory. Because the Court did not apply the proper standard, it should reconsider and reverse its decision to grant Defendants' Motion for Summary Judgment.

2. The Court failed to take all inferences in light most favorable to Plaintiff.

When determining whether any genuine issues of fact exist under Rule 56(c), "the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Evening Post Publ. Co. v. Berkeley County Sch.*

Dist., 392 S.C. 76, 81-82, 708 S.E.2d 745, 748 (2011) (internal quotation marks omitted). "[E]ven where there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted." *Hill v. York County Sheriff's Dep't*, 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct. App. 1993). If reasonable minds may differ on how a fact is to be interpreted, summary judgment is inappropriate. *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005).

In deciding the Motion for Summary Judgment for this case, the Court did not view all facts in the light most favorable to Plaintiff. For example, in footnote 19, the Court states,

> The surveillance footage does not clearly show whether Ms. Simon is looking at a phone. Viewed in the light most favorable to the Plaintiff, the video footage and record evidence can be interpreted to show that Ms. Simon briefly looks at a phone in her pocket after going on break, likely to check the time. It is undisputed that Ms. Simon was off-duty when this occurred. The mere fact Ms. Simon, while off duty, failed to detect a spill which could have been in her field of vision, is not sufficient to escape summary judgment.

(Order, p. 12 n.19). Plaintiff submits that in the light most favorable to her, the video shows Ms. Simon walking past the spill and looking down at it, giving her actual notice of the spill. As the Court points out, it is not clear from the video that Ms. Simon has a phone at all. It is, however, clear from the video that Ms. Simon looks down as she walks past the place where Plaintiff fell.[1] In fact, the 30(b)(6) deponent, Ms. Arsenault's, testified that she knew Ms. Simon was distracted because she was looking down at her phone.[2] A reasonable jury could certainly dismiss Ms. Arsenault's explanation based on the lack of visual evidence of a phone in the video, which may

[1] That a substance was spilled on the floor where Plaintiff fell is not disputed. (Arsenault Depo. p. 65, 96) (noting a "noticeable spill" where Plaintiff fell); (Pl. Dep. 24-25, 29) (testifying that she slipped on a liquid).

[2] Pamela Arsenault served as Defendant's sole 30(b)(6) witness. She admitted in her deposition that she had not spoken with Ms. Simon regarding what, if anything, was in her hand on the video. (Arsenault Depo. p. 85).

well lead them to infer that she was in fact looking at the floor where the spill was located.[3] Defendant's 30(b)(6) deponent testified that Ms. Simon was "distracted because she was on her phone or playing with her phone when she walked past the spill on the floor." (Arsenault Depo. p. 102). When directly asked "Do you believe that she was distracted because she was on her phone or playing with her phone when she walked past the spill on the floor?" her response was "Yes." Instead of walking through the store distracted while playing on her phone, Ms. Simon should have been paying attention. Because there is at least a mere scintilla of fact that Ms. Simons failed to see the visible spill on the phone due to her being distracted by playing on her phone, summary judgment is not proper. Additionally, there is no evidence in the record that Ms. Simon was checking the time for purposes of a break as the court suggests. It's not proper for the court to make this unjustified conclusion of fact. At the very least, this is an argument most properly argued to a jury, not summarily on by court. Ms. Arsenault testified that, by policy, "[i]t is a responsibility of all Burlington Coat Factory employees to actively participate in efforts to improve the safety of our stores." (Arsenault Depo. p. 24). This responsibility is not qualified by distinguishing between the responsibilities of employees who are on their way to the break room and those not taking breaks. Thus, in the light most favorable to Plaintiff, the surveillance video shows that Defendant had actual notice of the spill that caused Plaintiff to fall, or at the very least if reasonable diligence was used, Defendant's employee should have recognized the spill and took corrective action.

[3] Plaintiff submitted the alternative argument that a jury could find that Ms. Simon was most probably checking her phone, but that she should not have been, and that her failure to pay diligent attention caused her to miss the spill. Plaintiff argues that this would give Defendants' constructive notice of the spill. However, Plaintiffs' primary theory of liability is that Ms. Simon, and therefore Defendants, had actual notice of the spill.

In addition, the Court gives a recitation of the facts beginning on page seven of its Order that is heavily in Defendants' favor.[4] The Court asserts that "Ms. Simon did not witness the child throwing the cup, [sic] because her view was blocked as she was checking out the child's family." There is no evidence in the record that Ms. Simon's view was blocked. To the contrary, it appears from the video that Ms. Simon could easily see the child in the cart who threw the cup, and therefore could have seen him throw the cup. This is not an instance where a child standing right in front of the counter spilled a drink below counter level. In this case, the child tossed the cup, which sailed several feet through the air, and landed about ten feet away from the counter. (Arsenault Depo. p. 92-93; *see also* Pl. Depo. p. 60, 66). Thus, to infer that Ms. Simon's view of the spill was blocked is far from considering these facts in the light most favorable to Plaintiff.

Further, the Order concludes that an older child removed the cup from the floor, "leaving no visible evidence that a spill had occurred." This conclusion is decisively inaccurate. Defendants' own witness testified that she noticed the spill as soon as she reached Plaintiff and noted the spill as "noticeable" in her report. (Arsenault Depo. p. 65, 96). Similarly, the Court concludes that "there is no policy against employees using their cell phones." (Order, p. 8). However, Ms. Arsenault admits that employees are ***not*** supposed to be on their phones while working, and that Ms. Simon is technically still working at the point she's seen on the surveillance video. (Arsenault Depo. p. 84-85). Thus, in the light most favorable to Plaintiff, it was inappropriate for Ms. Simon to check her phone at that time, and Ms. Arsenault's testimony

[4] To the extent these facts are intended to be a summary of Defendants' arguments, which is not clear from the Order, there remains a concern that the facts were not considered in the light most favorable to Plaintiff. The summary of Plaintiff's opposition to Defendants' Motion, which begins on page eight, is significantly shorter and given in less detail. In addition, the Court does not explain how it reconciles the two arguments to be sure that all facts are being considered in the light most favorable to Plaintiff.

that there is no written company policy that employees may not have personal cell phones is irrelevant for the purpose of this motion. Common sense alone says that employees should not be walking around the store playing on their phone— this is something that a jury would easily understand. Nevertheless, the Court went out of its way to construe the facts in the light most favorable to the Defendant, not the Plaintiff.

As illustrated, the Court continually failed to consider the facts of this case in the light most favorable to Plaintiff in deciding this motion. Therefore, Plaintiff respectfully requests that the Court reconsider and reverse its decision on same.

3. The Court errantly determined there is no evidence of that the spill was visible before Plaintiff fell.

On page ten of its Order, the Court holds, "there is no record evidence tending to show that the spill was visible before the Plaintiff fell." As a primary matter, Plaintiff fails to see how Plaintiff's fall affected the visibility of the spill, as there is no evidence tending to show that it became more visible. However, more importantly, this holding dismisses the three customers shown on the surveillance video who noticeably changed their gait or path when walking past the spill. The Court notes this fact when summarizing Plaintiff's argument (p. 9) but fails to address it in the analysis portion of the Order. Additionally, Defendant's witness testified that anyone "paying attention" would have noticed the spill. (Arsenault Depo. p. 96-97). She also admitted that Ms. Simon "had the opportunity to observe the spill" because she "walked within inches of the spill." (*Id.* at p. 86-87). Thus, there is at least a "mere scintilla" of evidence that the spill was noticeable prior to Plaintiff's fall, and the Court's failure to recognize same clearly prejudiced Plaintiff's right to a trial of the disputed issues in this case.

4. The Court mischaracterizes Plaintiff's argument and misapplies the law.

The Court, citing to case law, holds that Defendant is entitled to summary judgment in this case because (1) the substance in which Plaintiff slipped was not on the floor for a sufficient amount of time to show constructive notice and (2) Plaintiff cannot show notice through mere proximity. However, the authorities cited are not applicable in this case because Plaintiff is not attempting to prove notice merely by showing that the substance was on the floor for a long time or that there were employees in near proximity to the spill.

Where, as here, there is a motion for summary judgment based on the alleged lack of notice, "[t]he pivotal question . . . is whether there [i]s evidence from which the jury might reasonably infer that the defendant, by the exercise of reasonable diligence, *should have known of the hazard on the floor which caused the injury to the plaintiff.* In determining this question, it is elementary that all of the evidence and the inferences reasonably deducible therefrom have to be viewed in the light most favorable to the plaintiff." *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 123, 165 S.E.2d 627, 630 (1969) (emphasis added).

In taking the evidence in the light most favorable to the Plaintiff, the facts show that the Burlington's employee would have seen the spill through the exercise of reasonable diligence. Burlington has a store policy that requires employees to stop immediately and take prompt action if they see a substance on the floor that could be a slip or trip hazard. (Arsenault Depo. p. 45, 51, 89). This spill was noticeable to store employees, but one employee, Ms. Simon, failed to use reasonable care in stopping immediately to remedy the danger on the floor. To be sure, the 30(b)(6) designee admitted that Ms. Simon "had the opportunity to observe the spill." (Arsenault Depo. p. 87).

The 30(b)(6) designee admitted that anybody "that would've walked by [the spill] would have noticed it." (Arsenault Depo. p. 97). Prior to Ms. Qualls falling, "a store employee literally walked within inches of the spill that was on the floor" but never stopped. (Arsenault Depo. p. 87). The 30(b)(6) designee testified that if the store employee, Ms. Simon, had been paying attention when she walked past the spill, that she should have seen it. (Arsenault Depo. p. 87, 97). She further agreed that Ms. Simon was "distracted because she was on her phone or playing with her phone when she walked past the spill on the floor." (Arsenault Depo. p. 102).

The Court cites to several cases finding no constructive notice where the evidence indicated that the foreign substance was not present on the floor for very long: *Bessinger v. Bi Lo*, 496 S.E2d 33, 34 (1998) (awarding summary judgment where there was testimony that an inspection had occurred fourteen minutes before the accident); *Wimberley v. Winn Dixie Greenville*, Inc.,165 SE2d 627 (1969) (holding that a retailer was not liable for a fall where the area was inspected every "10-15 minutes"); *See also, Hunter*, 101 S.E. 2d 262 (evidence that popcorn had been on the ground for "a few minutes" was insufficient to impose liability);[5] *Gilliland v. Pierce Motor Company*, 111 S.E. 2d 521 (S.C. 1959) (holding that store was not liable where the foreign substance may have been on the floor for up to five (5) minutes). However, none of these cases included any evidence of constructive knowledge outside the length of time the foreign substances had been on the floor. Although the law allows a plaintiff to show constructive notice of a foreign substance is by showing that the substance was on the floor for an unreasonable amount of time, it does not hold that the only way a party may prove constructive notice. The law only requires, at this stage, that Plaintiff set forth a scintilla of

[5] *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957) seems to have been miscited here, as the case deals with green beans on the floor, not popcorn, and the court did not conclude that the beans had been on the floor for "a few minutes."

evidence "from which the jury might reasonably infer that the defendant, by the exercise of reasonable diligence, *should have known* of the hazard on the floor which caused the injury to the plaintiff." *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 123, 165 S.E.2d 627, 630 (1969) (emphasis added). In this case, the length of time for a substance to be on the floor before liability can be imposed is irrelevant when there is evidence of a store employee that walks within inches of the spill and does nothing to clean it up. The law does not, and should not, impose a timeframe which is too short or too long for a substance from being on the floor. To hold otherwise would permit an employee to walk past and do nothing to a noticeable spill after it was on the floor for only several minutes because the law says it must be on the floor for a certain period of time before anyone has to act reasonable. Rather the law is, and always should be, that a business should take reasonable efforts to prevent an injury once a person notices a hazardous condition or has the opportunity to notice a hazardous condition.

The Court also cites to authorities for the proposition that mere proximity cannot show notice, but these cases are factually distinguishable. In *Gillespie v. Wal-Mart*, 302 S.C. 90, 394 S.E.2d 24 (1990), the court held "the mere fact that water was on the floor of the store and was within the field of vision of a nearby store employee at the time [the plaintiff] slipped upon it is not *by itself* enough evidence to charge [the store] with negligence." *Id.* at 91, 394 S.E.2d at 25 (emphasis added). However, the plaintiff in that case presented no evidence that the employee had been able to see the cause of the spill, that the employee looked down at the spill, or that the employee walked right next to the spill. The sole allegation was that the employee could have seen the water "if she had been looking." Similarly, in *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957), the plaintiff argued that the store had actual notice of green beans on the floor because an employee standing about twelve feet from the spill was looking in that

general direction just before the plaintiff slipped on the beans. *Id.* at 142, 101 S.E.2d at 264. The plaintiff did not present evidence that the beans were in a high traffic area, that an employee should have seen the spill occur, that an employee or other customers walked by the spill, or that anyone looked down at the beans while passing. The court, noting the lack of evidence other than the employee looking down the aisle where the fall occurred, found that the store did not have actual notice. *Id.* at 144, 101 S.E.2d at 265.

In this case, Plaintiff does not seek to hold Defendants liable merely because there were employees in near proximity when she fell or because the substance was on the floor for approximately five minutes before she fell. Rather, Plaintiff asserts that Defendant should have known of the spill because of the conspicuous way in which the spill occurred – a cup being thrown in front of *at least* two employees.[6] Reasonable diligence would require any employee who saw a cup thrown to check on whether there was any liquid in the cup that could have spilled. The employees also had the opportunity to notice other customers moving around the spill, as the spill location was within their line of sight form the time it was spilled until Plaintiff fell.[7] In addition, the surveillance video shows an employee walking right next to the spill and looking down towards the admittedly "noticeable" spill as she passed. Even assuming she did not see the spill, according to Defendant's witness, the employee *could have seen* the spill if she had been looking and paying attention, and by exercise of reasonable diligence, she should have been doing just that. Given the high traffic area and employees' obligation to promote a safe environment, Ms. Simon had the opportunity to observe the spill and take corrective action.

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[6] Two employees are visible on the video, but there are registers not shown on the video, and there may have been employees manning those stations as well.

[7] Ms. Simon left the area just before Plaintiff fell, but the other employee on the vide was still at the register.

5. **Summary Judgment should be Denied for the Reasons Set forth in the Memorandum in Opposition of Summary Judgment and as Argued at the Hearing.**

This court should reconsider the motion for summary judgment and find that a genuine issue of material fact exists of actual and/or constructive notice based on the arguments presented in Plaintiff's Memorandum in Opposition of Summary Judgment and as argued at the hearing. Plaintiff incorporates those arguments as if fully set forth herein.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests this Court reconsider its Order Granting Defendant's Motion for Summary Judgment and allow this action to proceed to a jury trial.

Respectfully submitted,

By: _____

Robert F. Goings (S.C. Bar # 74855)
Jessica L. Gooding (S.C. Bar #101210)
Goings Law Firm, LLC
1510 Calhoun Street
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Email: rgoings@goingslawfirm.com
jgooding@goingslawfirm.com
Phone: (803) 350-9230
Fax: (877) 789-6340

September 5, 2017

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the following named individual(s) were served with a copy of the following indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below and by electronic mail:

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PERSONS SERVED:
The Honorable George M. McFaddin, Jr.
215 N. Harvin Street
Sumter, SC 29150

Nicholas D. Mermiges, Esquire
Law Office of Nick Mermiges, LLC
1720 Main St. #202
Columbia, SC 29201
Attorney for Defendants

PLEADINGS/DOCUMENTS:

- **PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT**

Leslie C. Clamp
Columbia, South Carolina
September 5, 2017