

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable George M. McFaddin, Jr., Circuit Court Judge
Circuit Court Case No. 2016-CP-40-01699
Appellate Case No.: 2017-002433

RECEIVED
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SC Court of Appeals

Lallie Qualls.....Appellant,

v.

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

RESPONDENTS' REPLY IN SUPPORT OF MOTION TO STRIKE

Respondents, Burlington Coat Factory of South Carolina, LLC and Burlington Coat Factory Direct Corp., hereby file their reply in support of their Motion to Strike, and state the following in support thereof:

I. SUMMARY OF ARGUMENT

- 1) Appellant, in her return, concedes that the medical illustrations identified as #8 in her designation of matter, served on February 12, 2018, were not presented to the trial court or filed with the trial court. As such, these should be stricken from the record on appeal. (Appellant's Return P.2, FN. 2).
- 2) Appellant, in her return, concedes that the exhibits to Pamela Arsenault's 30(b)(6) deposition were not filed prior to hearing on the Motion for Summary Judgment.¹ (Appellant's Return

¹ Both parties acknowledge that Plaintiff's deposition transcript and Ms. Arsenault's 30(b)(6) deposition transcript were filed prior to the summary judgment hearing, and neither party disputes that the transcripts themselves were authentic or properly before the trial court.

P.3). Appellant was served with a copy of all materials filed with the court by the Defendant, and Appellant's failure to notice that Defendant did not file the exhibits to Ms. Arsenault's deposition does not justify their inclusion in the appellate court's record. Appellant had an independent duty to put forward any evidence that she intended to rely upon at the hearing.

- 3) There is nothing in the record tending to indicate that the exhibits to said deposition were ever filed, served, or moved into evidence at any time. The transcript from the hearing, p.2, indicates that no exhibits were entered into evidence. (Appellant's Return, Attachment 1, P. 2). The transcript indicates that appellant's counsel handed up two screen captures from the DVR video during the hearing, but never moved them into evidence. (Appellant's Return, Attachment 1, P. 11 Lns 12-24 & P. 14 Ln. 25- P. 15 Ln 5.) Appellant's counsel never handed up the complete deposition transcript with exhibits to the court.
- 4) As noted in Appellant's initial brief, p. 5, in a motion for summary judgment, the non-moving party must be entitled to the benefit of all inferences that can reasonably be drawn from the **evidence**. SCRCP 56(c) further provides, in relevant part, that the court is to consider "the pleadings, depositions, answers to interrogatories, and admissions **on file**, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (emphasis added).
- 5) As none of the exhibits were ever filed or entered into evidence, they were not properly before the court for purposes of summary judgment. They should therefore not be included in the record on appeal.

II. FACTUAL BACKGROUND AND ARGUMENT

- 6) On March 9, 2017, prior to any depositions taking place, Respondents filed and served their Motion for Summary Judgment, with attached memorandum of law, affidavit and exhibits.

Said motion was supported by the contemporaneously filed and served Affidavit of Pamela Arsenault, as well as a timeline of the incident, and the subject DVR footage. (Respondents' Exhibit 1).

- 7) The depositions of Plaintiff and Ms. Arsenault took place on March 15, 2017.
- 8) On May 19, 2017, Respondents filed and served both deposition transcripts via a notice of filing. Appellant was served with all of the actual filed materials, and the Notice of Filing specifically indicated "Copies of said filed materials have been served on Plaintiff via US Mail." (Respondents' Exhibit 2). Appellant, in her return, does not claim that the filed materials were not served.
- 9) On May 31, 2017, Appellant served her response to the motion for summary judgment. Appellant did not file any additional materials in support of her position. Notably, while Appellant directly cited to the DVR footage as an exhibit throughout this motion, and also cited to Deposition Testimony of Ms. Arsenault and of Plaintiff, Appellant never once cited directly to any exhibits attached to Ms. Arsenault's deposition.
- 10) The parties' hearing took place on June 6, 2017. At the commencement of said hearing, Counsel for respondents specifically noted that no additional evidence had been filed with 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 those depositions that I filed with the court that supported the defendant's position. (Appellant's Return, Attachment 1, P. 9 Lns 17-20.)

- 11) Appellant, in her return, grossly mischaracterizes the aforementioned portion of the hearing transcript and asserts that: "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).” (Appellant’s return, p. 6). To the contrary, Burlington’s counsel never once mentioned “exhibits” being on file.

12) There is nothing in the written record tending to indicate or suggest that Burlington’s counsel suggested that the exhibits had been filed, to either the Court or to opposing counsel.

13) Appellant, in her return, suggests that another copy of Ms. Arsenault’s deposition along with all attached exhibits was provided to the Court at the commencement of the hearing. This is false. Interestingly, the attached affidavit suggests that all exhibits were handed up at the commencement of the hearing, and that at the very end Appellant’s counsel handed up one extra copy of a document he had just provided. (Return, Attachment 5).

14) In fact, the transcript shows that Appellant’s counsel twice handed up photographs:

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. (Appellant’s Return, Attachment 1, P. 11 Lns. 21-24.)

[...]

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. (Appellant’s Return, Attachment 1, P. 11 Lns 12-24 & P. 14 Ln. 25- P. 15 Ln 5.)

15) Nowhere in the transcript does appellant’s counsel attempt to move any materials into evidence.

16) The Court’s summary judgment order specifically identifies the materials that were considered in the court’s ruling:

In considering Defendants’ Motion, the Court was presented with the following evidence:

1. Affidavit of Pamela Arsenault
2. Time Stamped DVR Footage of Incident (Exhibit A to Affidavit).

3. Screenshot Timeline from DVR Footage of 7/31/15 Incident (Exhibit B to Affidavit).
4. Defendants' Notice of Filing Depositions of Lallie Qualls and Pamela Arsenault.
5. Photographs handed up by Plaintiff's Counsel at the June 6, 2017 hearing.

(Respondents' Exhibit 3, Summary Judgment Order P. 11, FN 17)

- 17) After the entry of summary judgment, Appellant filed a Motion to Reconsider pursuant to Rule 59. In said motion, **Appellant did not claim that the Court's recitation of the evidence before it was incorrect.** (Appellant's Return, Attachment 6.) Moreover, once again, Appellant did not cite to any of the exhibits which appellant now claims are in the record on appeal. Rather, appellant only cited to the testimony concerning the exhibits. For example, Appellant made an argument concerning the incident report in page 5 of her motion to reconsider, but only cited to Ms. Arsenault's deposition testimony rather than the report itself. (Appellant's Return, Attachment 6, page 5, paragraph 2). This suggests that Appellant was fully aware that the exhibits were not before the court when it made its decision.
- 18) The exhibits designated by appellant were never filed with the court, were never presented to the court, and were never entered into evidence. They could not have been considered for purposes of summary judgment. They should be stricken from the record on appeal.

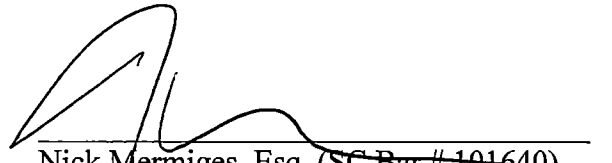
LEGAL ARGUMENT

- 19) Rule 209(b), SCACR, provides, in relevant part that: "[t]he 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), SCACR]."
- 20) Rule 210(c), SCACR provides, in relevant part: "the Record shall not, however, include matter which was not presented to the lower court or tribunal."

- 21) An appellant has the burden of providing a sufficient record on appeal. *See e.g. Bonaparte v. Floyd*, 291 S.C. 427, 444 (Ct. App. 1987) (appellant's failure to introduce evidence precluded consideration upon appeal); *Thomas v. Freeman*, 333 S.E. (2d) 76 (Ct. App. 1985) (issue dismissed without review because of appellant's failure to provide the court with a sufficient record for review); *Germain v. Nichol*, 278 S.C. 508, 299 S.E. (2d) 335 (1983) (appellants only proper exception not addressed and judgment of the lower court affirmed because appellant failed to furnish court with sufficient record for review).
- 22) In the instant case, it is admitted that the deposition exhibits were never filed or served by Appellant prior to the summary judgment hearing. The transcript from the hearing is completely devoid of any suggestion that the Court was suddenly provided with the deposition exhibits. Moreover, there is nothing in the record tending to indicate that counsel for appellant ever tried to enter anything into evidence at the hearing.
- 23) Had appellant's counsel attempted to introduce any new evidence at the hearing, same would have been met with an objection, as same would have been untimely. SCRCP 6(d) provides, in relevant part:
- (d) For Motions--Affidavits. A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, [...] When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences.
- 24) Note that SCRCP 56(C) likewise requires that "The adverse party may serve opposing affidavits not later than two days before the hearing." Submitting new evidence at the hearing would have been improper and untimely.

- 25) Appellant provides no authority supporting her contention that Burlington had an obligation to file all evidence that Appellant might potentially rely upon. Appellant was served with the materials, and apparently failed to notice that the exhibits were not attached. There is no prohibition on filing a portion of a transcript in support of a motion for summary judgment. Appellant could have filed any materials she wanted the Court to consider prior to the hearing, but did not do so.
- 26) Appellant also asserts that Burlington will not “suffer prejudice” as a result of inclusion of new materials in the record on appeal. The question of “prejudice” is completely irrelevant and no authority is provided in support of this proposition. The parties are prohibited from including materials that were not before the trial court, regardless of the question of prejudice.
- 27) The hearing transcript clearly shows that the deposition exhibits were never before the court. While there were two screen shots of the underlying DVR footage handed up, they were never moved into evidence. The screen shots themselves were not clearly identified on the hearing transcript. Appellant’s counsel had the obligation to create a clear and intelligible record at the trial level, and failed to do so. This failure cannot be cured with an affidavit. Accordingly, this Court should grant respondent’s motion and strike the deposition exhibits from appellant’s designation of matter.

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Attorneys for Respondents

Columbia, South Carolina
April 30, 2018

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
Honorable George M. McFaddin, Jr., Circuit Court Judge

Circuit Court Case No. 2016-CP-40-01699
Appellate Case No.: 2017-002433

Lallie Qualls.....Appellant,

v.

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

TABLE OF CONENTS

The following materials are attached to Respondents' Reply:

- 1) Motion for Summary Judgment with Accompanying Memorandum and All Exhibits
- 2) Notice of Filing Deposition Transcripts
- 3) Order Granting Summary Judgment


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Attorneys for Respondents

Columbia, South Carolina
April 30, 2018

Exhibit 1

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Lalie Qualls)

Plaintiff,)

vs.)

Burlington Coat Factory of South Carolina, Et)
Al.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-01699

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Robert Goings, Bar No. _____ Address: POBOX 436 Columbia, SC 29202 Phone: 803 350 9230 Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Nick Mermiges, Esq, Bar No. 101640 Address: 1720 Main St #202, Columbia SC 29201 Phone: 8037241258 Fax 8037241201 E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Defendants' Motion for Summary Judgment Estimated Time Needed: 1 Hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff ☒ Defendant 3/9/17 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	Case No. 2016-CP-40-01699
Lallie Qualls	)	
Plaintiff,	)	DEFENDANTS' MOTION FOR
	)	SUMMARY JUDGMENT
-v-	)	
	)	
Burlington Coat Factory of South Carolina,	)	
LLC and Burlington Coat Factory Direct	)	
Corp.	)	
Defendant.		

TO: ROBERT GOINGS, ATTORNEY FOR THE PLAINTIFF.

Defendants Burlington Coat Factory of South Carolina LLC and Burlington Coat Factory Direct Corporation ("Burlington"), by and through the undersigned counsel of record, hereby move this Honorable Court for an Order of Summary Judgment, pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure.

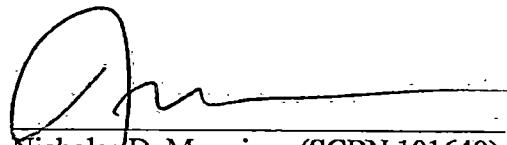
The basis for the Motion is that the Plaintiff Lallie Qualls has failed to present evidence of a genuine issue of material fact regarding Burlington's notice of an alleged hazardous condition in this case. Because the Plaintiff has failed to present any evidence of actual or constructive notice, the Defendants are entitled to Summary Judgment as a matter of law as to all claims.

In support of this motion, the Defendants will rely upon the attached memorandum of law, affidavit of the store manager at the time of the incident, DVR surveillance video footage, and a timeline summarizing said video footage. These materials are attached hereto as exhibits and expressly incorporated herein by reference. Defendants will further rely on any other Court documents, supplemental briefs, affidavits or deposition transcripts

which may be submitted prior to the hearing and which show that no genuine issue of material fact exists which would preclude the granting of Defendants' Motion.

The undersigned certifies that counsel has been notified that Defendants intend to file a Motion for Summary Judgment and that further consultation prior to the filing of this motion would serve no useful purpose.

RESPECTFULLY SUBMITTED, this 9 day of March, 2017.

A handwritten signature in black ink, appearing to read 'Nick Mermiges', is written over a horizontal line.

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) IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-01699

CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

Exhibit 1
Memorandum of Law

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
COUNTY OF RICHLAND	)	PLEAS
	)	
Lallie Qualls	)	Case No. 2016-CP-40-01699
Plaintiff,	)	
	)	MEMORANDUM IN SUPPORT OF
-v-	)	MOTION FOR SUMMARY
	)	JUDGMENT
Burlington Coat Factory of South	)	
Carolina, LLC and Burlington Coat	)	
Factory Direct Corp.	)	
	)	
Defendant.		

TO: ROBERT GOINGS, ATTORNEY FOR THE PLAINTIFF:

Defendants Burlington Coat Factory of South Carolina LLC and Burlington Coat Factory Direct Corporation ("Burlington"), pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, hereby submits the following Memorandum and authorities in support of their Motion for Summary Judgment. The undisputed facts and legal conclusions therefrom establish that there is no genuine issue of any material fact and Defendants are entitled to judgment as a matter of law.

The basis for the Motion is that the Plaintiff Lallie Qualls has failed to present evidence of a genuine issue of material fact regarding Burlington's notice of an alleged hazardous condition in this case. Because the Plaintiff has failed to present any evidence of actual or constructive notice, the Defendants are entitled to Summary Judgment as a matter of law.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of an alleged slip-and-fall accident that occurred in a Columbia, SC Burlington Coat Factory retail store on July 31, 2015 when the Plaintiff, Lallie Qualls,

fell in the checkout area near the front of the store. Mrs. Qualls claims that she slipped on a liquid substance and fell onto her left knee. This case is unlike most slip-and-fall cases in that in the present case, there is clear video coverage of the spill and the fall. Thus, the elapsed time between the spill and the fall can be calculated, and the video footage shows that the substance was placed on the floor for less than four minutes and thirty seconds before Plaintiff fell.

On March 16, 2016, Plaintiff filed her complaint in Richland County naming Defendants Burlington Coat Factory of South Carolina LLC and Burlington Coat Factory Direct Corporation as Defendants. Plaintiff claims that the Defendants had actual or constructive knowledge of the wet substance prior to the Plaintiff's fall and that the substance was "on the floor for a sufficient amount of time for Burlington to take reasonable action to clean up the substance or place warning signs in a location to prevent a patron from being harmed by the hazardous condition." (*See, generally*, Plaintiff's Complaint ¶7-¶11). Plaintiff claims that Burlington's conduct constituted negligence, and further claims that she is entitled to both actual and *punitive* damages. (Plaintiff's Complaint ¶19-¶20).

As set forth below, the evidence adduced in discovery fails to establish a genuine dispute of material fact regarding Burlington's notice of the spill, and the length of time that elapsed (4 minutes, 30 seconds) is insufficient as a matter of law to establish constructive notice. Accordingly, Defendants are entitled to judgment as a matter of law.

LEGAL STANDARD

Summary Judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Calvert v.

House Beautiful Paint and Decorating Ctr., Inc., 313 S.C. 494, 443 S.E.2d 398 (1994). In deciding whether Summary Judgment is proper, the court should construe all inferences arising from the evidence against the moving party. Id. Summary Judgment should be granted when plain, palpable and undisputed facts exist on which reasonable minds cannot differ. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993).

In the context of *slip and fall* cases sounding in negligence, South Carolina courts have specifically held that “[t]he mere fact that the substance was on the floor is insufficient standing alone to charge the storekeeper with negligence.” Calvert, 443 SE 2d at 399 (1994). In order to escape Summary Judgment, the Plaintiff must come forth with clear evidence that the foreign substance was created by a specific act of the Defendant, or alternatively, that the Defendant had actual or constructive knowledge of the foreign substance for a sufficient length of time. See e.g., Id. (affirming Summary Judgment where Plaintiff failed to produce affirmative evidence that any employee was aware of the foreign substance, or how long the substance had been on the floor); Simmons v. Winn-Dixie Greenville, Inc., 457 SE 2d 608 (1995) (same); Gillespie v. Wal Mart Stores, Inc., 394 SE 2d 24 (Ct. App 1990) (same; noting that mere proximity of store employee to the spill is not sufficient to escape Summary Judgment); Bessinger v. BiLo, Inc., 496 SE 2d 33 (Ct. App 1998) (same; noting that the substance had been on the floor for up to fourteen minutes without being discovered).

ANALYSIS

The issue in this case that can be resolved by Summary Judgment is whether Burlington had actual or constructive notice of the foreign substance on its floor before the Plaintiff fell. In South Carolina, a customer who seeks to recover for injuries sustained as

a result of a fall caused by a foreign substance on a storekeeper's floor must prove either that the substance was placed on the floor by the Defendant (i.e., that the Defendant created the danger) or that the storekeeper had actual or constructive notice of its presence on the floor and failed to remove it within a reasonable time. Gillespie, 394 S.E.2d at 25 (Ct. App. 1990) (citing Wimberley v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 165 S.E.2d 627 (1969)). Additionally, "South Carolina law is well settled that a storekeeper is not an insurer of his customers' safety but owes them a duty of ordinary care in keeping the aisles and passageways in a reasonably safe condition." Joye v. Great Atlantic Pac. Tea Co., 405 F.2d 464, 465 (4th Cir. 1968).

1) THE UNCONTRADICTED EVIDENCE ESTABLISHES THAT BURLINGTON WAS NOT AWARE OF THE SPILL PRIOR TO PLAINTIFF'S FALL

Time-stamped video of the incident was captured on Burlington's DVR system and Burlington specifically preserved the 30 minutes before and after the Plaintiff's fall.¹ Pamela Arsenault, the Burlington Store Manager, has submitted an affidavit which attaches the complete DVR footage preserved from this day, along with excerpts of the time stamped footage. The footage specifically reveals that at 25:35², while a family is checking out, their young child throws a cup onto the ground. 11 seconds later, at 25:44, an older child retrieves the cup from the floor. The video does not reveal a spill of any significant size or color. The older child takes the cup to throw it away at 26:11. The cashier, Taylor Simon, does not witness either the cup being thrown or the cup being picked up. The family

¹ See: Pamela Arsenault's Affidavit, Attachments A (DVR Video) and B (Timeline) the affidavit and its contents are incorporated herein in their entirety by reference.

² 25:35 of the DVR Video corresponds to 2:45:55 PM. The DVR footage includes a timestamp file showing the specific date and time when each event occurred.

completes their checkout at 28:57. The cashier leaves for her break, and walks past the spill without noticing it at 29:13. Another customer walks past the spill without noticing it or alerting anyone at 29:52. The Plaintiff falls at 30:00.³

In short, the time stamped DVR footage clearly reveals that (1) the spill was not created by a Burlington employee; (2) the spill occurred a mere four minutes and twenty five seconds before the Plaintiff's fall. Further, the tape is devoid of evidence tending to show that any Burlington customer or employee was aware of the spill before the Plaintiff's fall. Plaintiff has not come forth with any evidence which would tend to prove otherwise. The record clearly establishes the absence of actual knowledge of the spill on the part of Burlington. Accordingly, in order to escape Summary Judgment Plaintiff must come forward with evidence sufficient to establish that Burlington had constructive knowledge of the spill prior the Plaintiff's fall.

2) THE UNCONTRADICTED EVIDENCE ESTABLISHES THAT BURLINGTON DID NOT HAVE CONSTRUCTIVE KNOWLEDGE OF THE SPILL PRIOR TO THE PLAINTIFF'S FALL

a. THE MERE PROXIMITY OF A BURLINGTON EMPLOYEE DOES NOT CONSTITUTE CONSTRUCTIVE KNOWLEDGE AS A MATTER OF LAW

In Wintersteen v. Food Lion, Inc., 542 SE 2d 728 (2001), the South Carolina Supreme Court laid down the specific duty owed by a retailer to protect the safety of its patrons. In South Carolina, retailers cannot be held liable for a "negligent mode of operations" and do not have a "continuous duty to look out for the safety of patrons." *Id.* (citation omitted). Rather, where the retailer does not create the danger, it can only be held liable based on

³ 30:00 of the video corresponds to 2:50:20 P.M., per the timestamp file.

clear and affirmative proof of actual or constructive knowledge of the hazardous condition.

The *Wintersteen* court further elaborated by stating:

We find a very legitimate basis for adherence to our traditional slip and fall analysis. In such cases, although there may be a foreseeable risk that substances will wind up on the floor, there is no specific act of the defendant which causes the substance to arrive there, i.e., it generally arrives there through the handling of a third party. **To require shopkeepers to anticipate and prevent the acts of third parties is, in effect, to render them insurers of their customers' safety. This is simply not the law of this state.** *Id.* (citations omitted) (emphasis added).

In the instant case, the DVR footage reveals that cashier Taylor Simon was in the process of checking out a family when a young child threw a cup on the ground. The cup was retrieved by another child in the group and was discarded before Ms. Simon had completed her checkout. Multiple customers walked past the spill without notifying any employee of its presence. After completing the checkout, Ms. Simon walked past the alleged spill without stopping or otherwise indicating that she is aware of the spill. The Plaintiff fell less than one minute after Ms. Simon walked past said spill. (See, Generally, DVR Footage and Timeline).

The mere fact that Ms. Simon was in the vicinity of the spill is insufficient to establish liability on the part of Burlington. To hold otherwise would result in the imposition of a legal duty which the South Carolina Supreme Court has expressly rejected. Indeed, in Wal-Mart v. Gillespie, a slip and fall action where the Plaintiff was seeking to establish constructive knowledge, the South Carolina Supreme Court affirmed an order of Summary Judgment in favor of the retailer and expressly found that “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 Gillespie slipped upon it is not by itself enough evidence to charge [Defendant] with negligence.” 394 S.E.2d 24 (1990) (emphasis added). In order to escape Summary Judgment pursuant to *Gillespie*, the Plaintiff must affirmatively prove either that:

(1) Defendants' employee "actually knew the floor was wet" or (2) that the liquid "was on the floor for such a length of time as to infer that [the retailer] was negligent in not discovering and removing it." Id. Mere proximity of the employee is very clearly insufficient. See Also Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E. (2d) 695 (1969) (evidence held insufficient to prove constructive notice where the plaintiff, while shopping in a department store, slipped on a transparent plastic bag and fell to the floor and an employee was apparently in the immediate area at the time of the fall); Hunter v. Dixie Home Stores, 232 S.C. 139, 101 S.E. (2d) 262 (1957) (evidence held insufficient to charge a storekeeper with constructive notice of the presence on the floor of green beans that caused the plaintiff to slip and fall even though a store employee faced toward the area where the plaintiff fell and stood 10 or 12 feet away and another employee worked 20 or 30 feet from where she fell).

Plaintiff has failed to introduce any evidence which would show that Ms. Simon, or any other Burlington employee, had had actual knowledge of the alleged dangerous condition prior to the Plaintiff's fall. Indeed, there is very clear record evidence which shows that Burlington was not aware of any danger. As clearly laid out in Wintersteen and Gillespie, the mere proximity of a Burlington employee does not relieve the Plaintiff of this fundamental evidentiary burden.

b. THE UNCONTRADICTED EVIDENCE ESTABLISHES THAT THE ALLEGED HAZARDOUS CONDITION EXISTED FOR LESS THAN FOUR MINUTES AND THIRTY SECONDS, WHICH IS INSUFFICIENT TO ESTABLISH CONSTRUCTIVE KNOWLEDGE AS A MATTER OF LAW

A review of the time stamped DVR footage reveals that there was no more than 4:25 (four minutes and twenty five seconds) between the time the child threw the cup on

the ground and the Plaintiff's fall. The question is whether 4:25 is sufficient to establish that the liquid "was on the floor for such a length of time as to infer that [the retailer] was negligent in not discovering and removing it." Gillespie.

In cases where there is no DVR footage showing the specific time of spill, Courts considering Summary Judgment calculate the length of time the spill was on the ground by drawing the most favorable inference possible: specifically, they infer that the spill could have occurred immediately after the last inspection of the area.⁴ In Bessinger v. Bi-Lo Inc., 492 S.E. 2d 33 (1998), the South Carolina Supreme Court affirmed an award of summary judgment where there was testimony that an inspection had occurred fourteen minutes before the accident. To reiterate: the South Carolina Supreme Court has held that **fourteen minutes is an insufficient length of time to establish constructive knowledge as a matter of law**. Likewise, in Wimberley v. Winn Dixie Greenville, Inc., 165 SE2d 627 (1969), the South Carolina Supreme Court vacated a trial Court verdict and held that a retailer could not be liable as a matter of law where the area was inspected every "10-15 minutes." There is no South Carolina opinion which would support Plaintiff's burden in this case: that constructive knowledge may be inferred where the substance is on the floor for less than five minutes. Hunter v. Dixie Home Stores, 101 S.E. 2d 262 (1957) (evidence that popcorn had been on the ground for "a few minutes" was insufficient to impose liability); Gilliland v. Pierce Motor Company, 111 S.E. 2d 521 (1959) (holding that store

⁴ An explicit example of this reasoning is illustrated in the Illinois case of Daleus v. Target Corp., 2012 WL 3835836 (N.D. Ill). In Daleus, the Court found that a store employee was in the area where the Plaintiff fell "ten minutes prior to the incident and that [the employee] did not see any liquid on the floor ... at that time." The Court went on to state that for purposes of summary judgment, the substance was "most likely on the floor for less than ten minutes." Id. at *2 and *3. The Court went on to find that ten minutes was insufficient to establish constructive knowledge as a matter of law, and granted the retailer's motion for summary judgment.

could not be liable as a matter of law where the foreign substance may have been on the floor for up to five (5) minutes).

Note, further, that the District of South Carolina, sitting in diversity and applying South Carolina law has granted Summary Judgment under similar circumstances. Norris v. Wal-Mart Stores East, L.P., Civil Action No. 1:12-02592-JMC (D-SC 2014) (granting Summary Judgment where video revealed that substance was on floor for 2:33); Massey v. Wal-Mart Stores East, LP, 2010 WL 3786056 (D. S.C. 2010) (granting summary judgment due to lack of constructive notice when video showed spill occurred less than three minutes before plaintiff's fall).

Numerous other jurisdictions have also held that Summary Judgment is appropriate where the substance is on the floor for such a brief time as this case. See e.g., Miller v. Wal-Mart Stores East, LP, 2011 WL 5023281 (D. Tenn. 2011) (granting summary judgment when grapes had been on floor for no more than five minutes and holding, “[a] period of only a few minutes is not time, as a matter of law, for Defendant to have discovered the alleged condition and to have repaired or warned of it.”); Daleus v. Target Corp., 2012 WL 3835836 (N.D. Ill) (holding that summary judgment is appropriate where the substance was on the floor for less than ten minutes, and noting that “no reasonable person could conclude that ten minutes was enough time to give [the retailer] constructive notice of the spilled substance”) (quoting Reid v. Kohl's Department Stores, Inc., 545 F.3d 479, 481 (7th Cir. 2008))).

Simply put, South Carolina law uniformly holds that Burlington did not have constructive knowledge of the spill in the case. Burlington is not liable for the Plaintiff's injuries and is entitled to Judgment as a matter of law.

3) THE UNCONTRADICTED EVIDENCE ESTABLISHES THAT PLAINTIFF IS NOT ENTITLED TO PUNITIVE DAMAGES AS A MATTER OF LAW

While Defendants are clearly entitled to Summary Judgment as to all counts due to the absence of any evidence of actual or constructive knowledge of the allegedly hazardous condition, Defendants would further note that the undisputed facts of this case do not support a claim for punitive damages. Should the Court find that a material fact does exist, Burlington would ask that the Court grant final summary judgment as to the Plaintiff's claim for punitive damages.

Under the settled rule prevailing in this state, punitive damages are awarded as punishment for a wrong, vindication of a private right, and when a plaintiff proves a willful, wanton, reckless, or malicious violation of his rights. See Magnolia North Prop. v. Heritage Comm., 397 S.C. 348, 264 (Ct. App. 2012) (citing Sample v. Gulf Ref. Co., 183 S.C. 399, 410, 191 S.E. 209, 214 (1937)). "The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408, 416 (2003). "[P]unitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." Id. at 419.

"We have held in many cases that exemplary damages should not be awarded for mere gross negligence, and that the element that distinguishes actionable negligence from willful tort is inadvertence." Rogers v. Florence Printing Co., 233 S.C. 567 (1958). "While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are

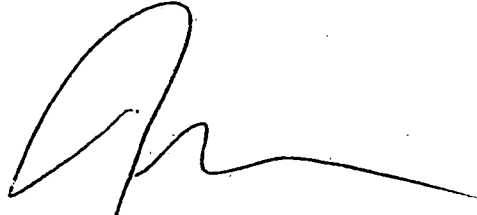
not awarded in this state for mere gross negligence." Solanki v. Wal-Mart Store No. 2806, 410 S.C. 229, 237 (Ct. App. 2014) (citing Bell v. Atl. Coast Line R. Co., 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943)). The test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights. Id. (internal citations omitted). It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor, and it has been variously referred to as "conscious failure to observe due care", as "conscious indifference to the rights of others" and as "gross disregard of the rights of the person injured". Id. (internal citations omitted). "[T]he common denominator of these expressions is the test before mentioned, viz.: that at the time of his act or omission to act the tort-feasor be conscious, or chargeable with consciousness, of his wrongdoing." Id.

The undisputed record evidence clearly establishes that the Plaintiff's injuries did not result from any deliberate wrongful act of the Defendants. Defendants did not create the danger and there is no evidence in the record which would tend to establish that they were even aware of the danger. Accordingly, should this Court find that Plaintiff is entitled to proceed to the Jury on the question of negligence, Defendants would ask that the Court grant partial Summary Judgment as to the question of punitive damages, as there is simply no evidence which would support such a claim.

CONCLUSION

For the foregoing reasons, Defendants are entitled to an order granting Summary Judgment as to all counts in Plaintiff's Complaint, as Defendants did not have either actual or constructive knowledge of the alleged dangerous condition prior to the Plaintiff's

injuries. In the alternative, Defendants are very clearly entitled to Summary Judgment as to Plaintiff's claims of punitive damages, due to the absence of any willful, wanton or intentional conduct of any kind.



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RESPECTFULLY SUBMITTED, this 9 day of March, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON
PLEAS

Lallie Qualls

Plaintiff,

Case No. 2016-CP-40-01699

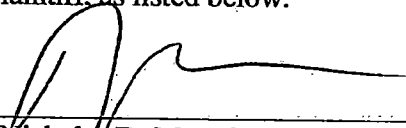
-v-

CERTIFICATE OF SERVICE

Burlington Coat Factory of South
Carolina, LLC and Burlington Coat
Factory Direct Corp.

Defendant.

I, Nick Mermiges, Esq. hereby certify that the foregoing was served via US Mail
on March 9, 2017 to the attorney for Plaintiff, as listed below.


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ATTORNEY FOR PLAINTIFF

Robert F. Goings, Esq.
PO Box 436
Columbia, SC 29202

Exhibit 2

Affidavit of Pam Arsenault with Attachments

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Lalie Qualls	)	
	)	Case No. 2016-CP-40-01699
Plaintiff	)	
-v-	)	
	)	AFFIDAVIT OF
Burlington Coat Factory of South	)	PAMELA ARSENAULT
Carolina, Et. Al.	)	
Defendants	)	
	)	

Personally appeared before me, Pamela Arsenault, who being duly sworn,
deposes and states as follows:

1. My name is Pam Arsenault. I am an employee of Burlington Coat Factory and I have personal knowledge of the circumstances surrounding the Plaintiff's lawsuit.
2. On July 31st, 2015, I was the Store Manager of the Burlington store located at 302 Bush River Road, Columbia, South Carolina.
3. I was working as manager at the time of the Plaintiff's incident, and I responded after the Plaintiff fell. I waited with the Plaintiff after her injury, and I conducted the investigation after the incident.
4. The Plaintiff Mrs. Qualls slipped and fell on liquid near the front register area of the store.
5. No employee of Burlington Coat Factory knew that the liquid had been spilled before Mrs. Qualls fell.
6. This liquid was spilled by a previous customer who did not notify anyone at the store of the spill.
7. The entire incident was captured on our DVR cameras, and I ensured that time-stamped footage of the incident was copied to disc and preserved.
8. I have attached a copy of this DVR footage to this affidavit and I affirm that it is the true and genuine footage captured from our DVR system. It accurately reflects the events of July 31st, 2015. (Exhibit A).

9. A review of the DVR footage confirms that the liquid was on the floor for less than five minutes. I have attached time-stamped screen captures showing the amount of time that elapsed. (Exhibit B).
10. This incident was not the result of any action or inaction on the part of a Burlington Employee.
11. I was store manager of this specific Burlington store for more than two years. During that time, there were no other falls on liquid in the customer checkout area.

FURTHER, AFFIANT SAYETH NOT

Pamela Arsenault

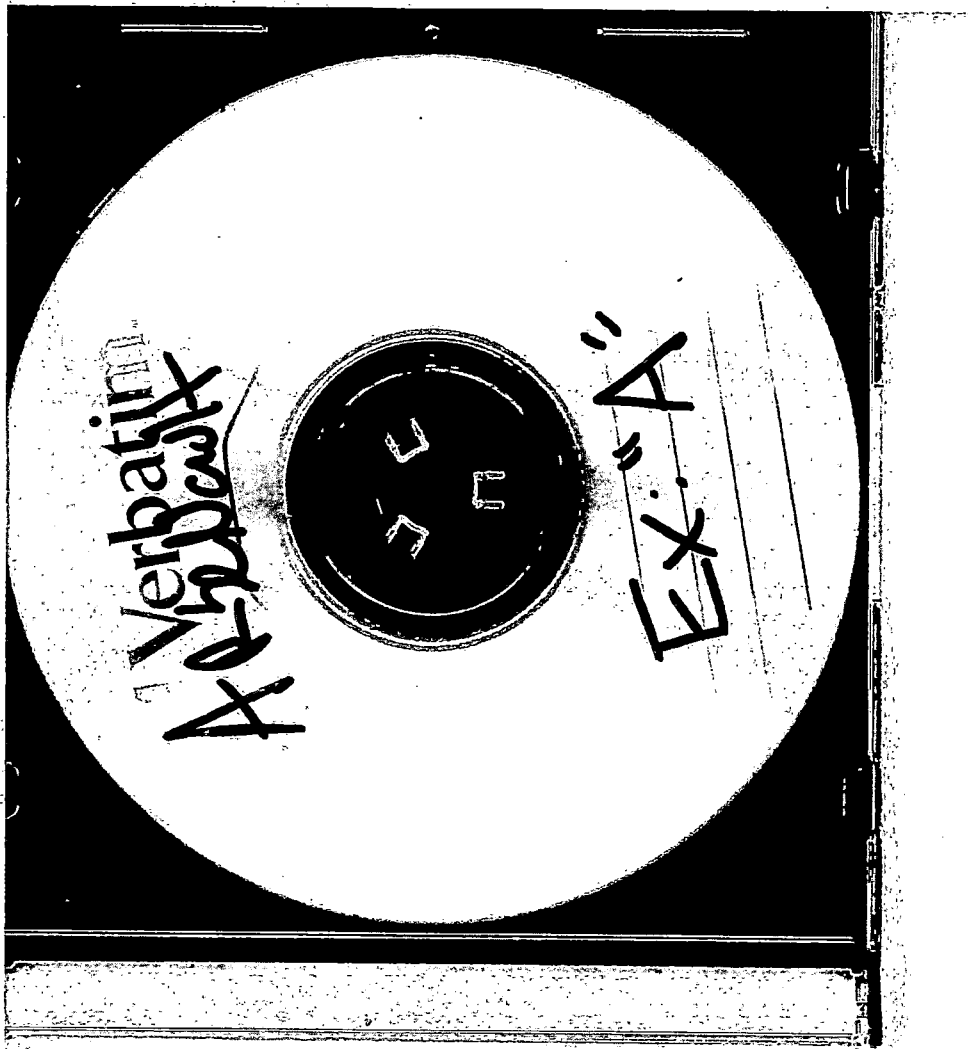
Pamela Arsenault

SWORN to before me this 2 day of March 2017.

[Signature]
Notary Public for South Carolina

My Commission expires

0-1-2026



physical CD file with the COA.

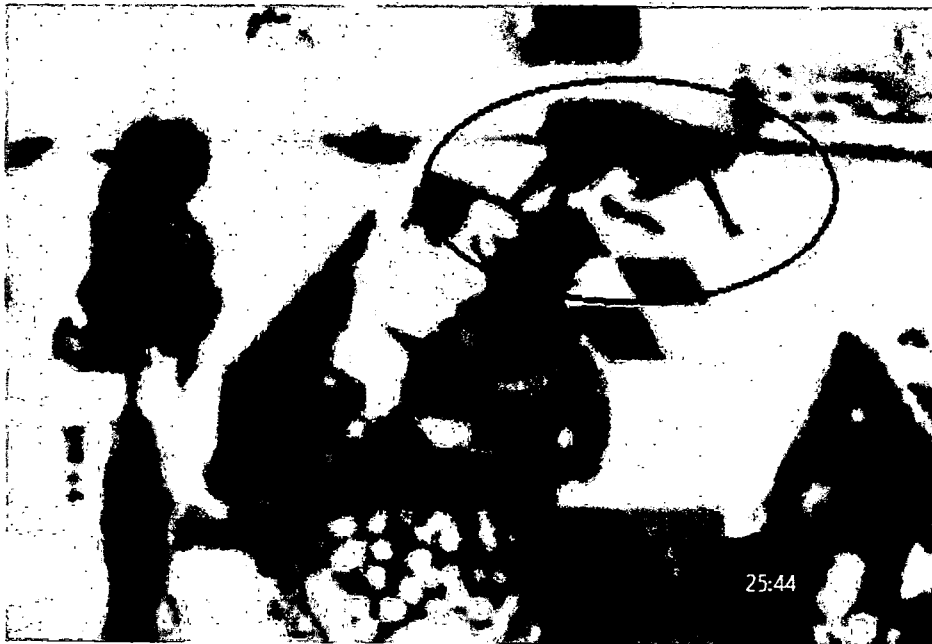
"Exhibit B"
Screenshot Timeline from DVR Footage of 7/31/15 Incident



*Cashier Taylor Simon checking out Family, child in cart throws cup at 25:35
(cup leaving child's hand in frame)*



Cup falls on the ground at approximately 25:37



Older sibling retrieves cup at 25:44



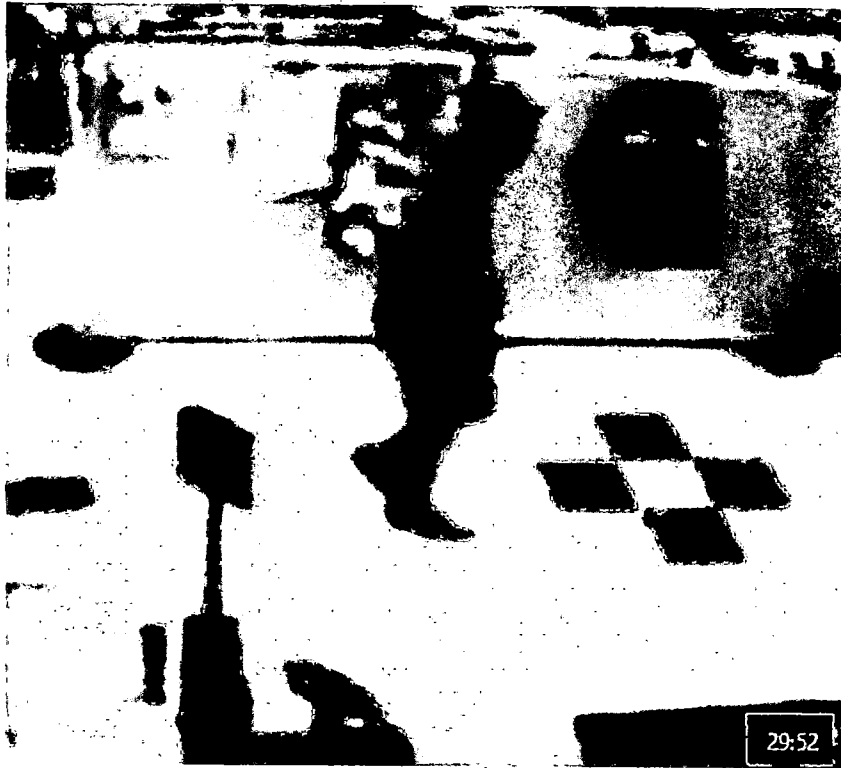
Taking cup to throw it away at 26:11



Family completes checkout at approximately 28:57



Ms. Simon walks by spill without noticing it at approximately 29:13



Customer walks past spill without noticing it at 29:52



Plaintiff slips at 30:00

Exhibit 2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Lallie Qualls

Plaintiff,

-v-

Burlington Coat Factory of South Carolina,
LLC and Burlington Coat Factory Direct
Corp.

Defendant.

) IN THE COURT OF COMMON PLEAS

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Case No. 2016-CP-40-01699

**DEFENDANTS' NOTICE OF FILING
DEPOSITIONS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Defendants Burlington Coat Factory of South Carolina LLC and Burlington Coat Factory Direct Corporation ("Burlington"), by and through the undersigned counsel of record, and in support of their Motion for Summary Judgment, hereby filed the following discovery materials:

- Deposition of Plaintiff
- Deposition of Defendants' Corporate Designee Pamela Arsenault

Copies of said filed materials have been served on Plaintiff via US Mail.

RESPECTFULLY SUBMITTED, this 19 day of May, 2017.


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) IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-01699

CERTIFICATE OF SERVICE

-v-

**Burlington Coat Factory of South Carolina,
LLC and Burlington Coat Factory Direct
Corp.**

Defendant.

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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) LALLIE QUALLS SOUTH CAROLINA, LLC AND) BURLINGTON COAT FACTORY DIRECT) CORPORATION,) 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. C O P Y	3 1 STIPULATIONS 2 IT IS STIPULATED BY AND BETWEEN COUNSEL FOR 3 THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED 4 UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE 5 QUESTIONS. 6 THIS DEPOSITION IS BEING TAKEN PURSUANT TO 7 THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE. 8 - - - - 9 THE READING AND SIGNING OF THIS DEPOSITION IS 10 WAIVED BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE 11 PARTIES. 12 WHEREUPON, LALLIE QUALLS, BEING DULY SWORN 13 AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND 14 NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS 15 FOLLOWS: 16 EXAMINATION 17 BY MR. MERMIGES: 18 Q Can you state your name for the record? 19 A Lallie B. Qualls. 20 Q And Ms. Qualls, have you ever given a deposition 21 before? 22 A No. 23 Q Everything -- I'm gonna explain how the deposition 24 works for you. 25 A Mm-hmm.
2 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 INDEX STIPULATIONS-----3 EXAMINATION BY MR. MERMIGES-----5 EXAMINATION BY MR. GOINGS-----57 FURTHER EXAMINATION BY MR. MERMIGES-----69 FURTHER EXAMINATION BY MR. GOINGS-----71 FURTHER EXAMINATION BY MR. MERMIGES-----72 CERTIFICATE-----74 EXHIBITS THERE WERE NO EXHIBITS MARKED *THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.	4 1 Q Everything we say is being written down by the court 2 reporter to my left, and in order for her to keep a 3 clear record, we need to do a couple of things. The 4 first thing is when I ask you a question, you need to 5 try to verbally answer yes or no, if that's your 6 answer; does that make sense? 7 A That makes sense. 8 Q So, you can't say, uh-huh or huh-uh, because even 9 though I understand you, the fact that you're nodding 10 your head, it's not going to be clear on that paper; 11 does that make sense? 12 A That makes sense. 13 Q Also, I don't think it's going to be a problem, but we 14 can't talk over each other; okay? Is that all right? 15 A That's fine. 16 Q Okay. And separate from that, if I ask you a question 17 that you don't understand, please tell me so. Will you 18 do that? 19 A I will. 20 Q If you answer my question, I'm going to assume that you 21 understood it; okay? 22 A That's fine. 23 Q All right. What's your date of birth? 24 A 8-3-1951. 25 Q Where were you born?

5 1 A Ridgeway, South Carolina. 2 Q Is that where you live now? 3 A Yes. 4 Q In the same property? 5 A No. 6 Q Okay. What is your current address? 7 A 2020 Qualls Road, Ridgeway, South Carolina 29130. 8 Q What are the last four digits of your Social Security 9 Number? 10 A 4993. 11 Q And you have a valid driver's license? 12 A Yes, I do. 13 Q Do you have that with you today? 14 A Yes. 15 Q Thank you. For the record, I'm reading Ms. Qualls 16 driver's license number. It is 004731364. It's a 17 South Carolina license and the address is listed as 18 2020 Qualls Road in Ridgeway. I'm gonna hand this back 19 to you. Thank you. And am I correct that that license 20 is valid and up to date? 21 A Yes. 22 Q Do you drive? 23 A Not much. 24 Q Does somebody else drive you? 25 A Yes.	7 1 Q And you were married in 1971? 2 A Yes. 3 Q What's your husband's name? 4 A Eddie. 5 Q How do you spell that? 6 A E-D-D-I-E. 7 Q Eddie Qualls; right? 8 A That's correct. 9 Q Who else do you live with? I assume you live with your 10 husband at 2020 Qualls Road; right? 11 A Yeah, just the two of us. 12 Q Just the two of y'all live there? 13 A Yes. 14 Q You don't have any family that lives there as well? 15 A No. 16 Q All right. Is 2020 Qualls Road on a piece of family 17 land? 18 A Yes. 19 Q Do you have family that live nearby or next door? 20 A Yes. 21 Q And who is that? 22 A Mother-in-law, sisters and children. 23 Q So, then you have your sisters live there or 24 sisters-in-law? 25 A I've got a sister live there, because my sister and I
6 1 Q Who drives you? 2 A My children or my son-in-law. 3 Q Do you own a particular vehicle? 4 A Yes. 5 Q What vehicle? 6 A A pick-up. 7 Q Is it a Ford or a Chevy? 8 A Well, it's not mine. Let me rephrase that. It's my 9 husband's. That's what we've got. 10 Q That's fine. 11 A Okay. 12 Q Your husband has a pick-up? 13 A Yeah. 14 Q Is it a Ford or a Chevy or what? 15 A Silverado. 16 Q And what year? 17 A 2012. 18 Q And he drives that car; correct? 19 A Yes. 20 Q How long have you lived at 2020 Qualls Road? 21 A I got married in '70. 22 Q So you -- 23 A '71. '71. 24 Q So you've lived there since you were married? 25 A Yes.	8 1 married two brothers. 2 Q What's your sister's name? 3 A Hazeline. 4 Q Hazeline? 5 A Yes, H-A-Z-E-L-I-N-E. 6 Q And then you have how many children that live there? 7 A I have five. 8 Q Do they all still live on that land? 9 A No. 10 Q How many of them do? 11 A Two. 12 Q Okay. Why don't you just tell me the names of all five 13 of your children, if you can? 14 A Sontil, S-O-N-T-I-L -- 15 Q Mm-hmm. 16 A -- Rosebough, R-O-S-E-B-O-U-R-G-H. 17 Q Okay. 18 A Yatil, Y-A-T-I-L. 19 Q Mm-hmm. 20 A Craig, C-R-A-I-G. 21 Q Mm-hmm. 22 A Glendale Qualls. 23 Q Mm-hmm. 24 A Katrina Qualls, and Tiffany -- 25 Q Mm-hmm.

9 1 A -Douglas. 2 Q Okay. Who's the oldest? 3 A The twins, that's Sontil and Yatil. 4 Q Okay. What's their date of birth? 5 A 6-6-67. 6 Q And then Glendale? 7 A 1-10-71. 8 Q And then Katrina? 9 A 8-23-73. 10 Q And Tiffany? 11 A 6-17-76. 12 Q Okay. Which two live on that same piece of land? 13 A Glendale and Katrina. 14 Q Did Glendale drive you today? 15 A No. 16 Q Who drove you? 17 A Tyrone. 18 Q And who's that? 19 A Reames. 20 Q And how do you know him? 21 A He lives with my daughter. 22 Q Okay. Katrina or -- 23 A Yes. 24 Q Okay. Is he Katrina's boyfriend? 25 A Yes.	11 1 yes? 2 MR. GOINGS: We haven't made one yet, but we 3 reserve the right to do if we have to. 4 MR. MERMIGES: Okay. Hasn't been planned; okay. 5 EXAMINATION CONTINUED 6 BY MR. MERMIGES: 7 Q You weren't planning on going back to work before this 8 accident happened; were you? 9 A No, I was sick. 10 Q Where did you last work? 11 A Winchester in Blackwood, South Carolina. 12 Q Winchester, like, the gun manufacturer? 13 A Yes. 14 Q What did you do there? 15 A Handle small parts, it's called deburring. 16 Q Explain what that is to me. 17 A Deburring is when you're filing, getting the rough 18 edges on the gun parts. We had to smooth it. 19 Q Did that job involve a lot of sitting? A lot of 20 standing? 21 A It was sitting, a sit-down job. 22 Q Okay. And you just retired from that job; is that 23 correct? 24 A That is correct. 25 Q Why did you retire?
10 1 Q Okay. What's the highest level of education that 2 you've completed? 3 A Twelve. 4 Q Twelfth grade? 5 A Yeah. 6 Q You have a high school diploma? 7 A Yes. 8 Q Where'd you go to school? 9 A Fairfield. 10 Q How do you spell that? 11 A Fairfield, like, Fairfield County. 12 Q Fairfield. I see. Fairfield High. 13 A Yep. Winnsboro, South Carolina. 14 Q Okay. 15 A 29180. 16 Q Very good. 17 A Mm-hmm. 18 Q When was the last time you worked? 19 A Over five. 20 Q Okay. You're not -- and you were retired after 2005; 21 is that correct? 22 A That is correct. 23 Q Okay. 24 MR. MERMIGES: So, Robert, I'm correct that 25 there's no wage or earning capacity claim in this case;	12 1 A Started having medical problems. 2 Q What kind? 3 A With the breast cancer, rotator cuff on the right 4 shoulder, and carpal tunnel surgery. 5 Q Okay. How long did you work at Winchester for? 6 A About five years. 7 Q Where did you work before that? 8 A Do you want my whole work history? 9 Q Sure. 10 A Okay. When I come out of school, I went to work for a 11 company called Charn Manufacturing. 12 Q Okay. 13 A That was in Ridgeway, over there. 14 Q Mm-hmm. 15 A After there, I went to work for Rite Aid drug store. 16 Q Mm-hmm. 17 A After that, then I went to Winchester. 18 Q Okay. Have you ever filed a workers' compensation 19 claim? 20 A Yes. 21 Q When was that? 22 A When I was working for Winchester. 23 Q And what was the claim? 24 A When I was going through the carpal tunnel. 25 Q So that -- obviously, that was with your hands; right?

13 1 A That is correct. Oh, yes. 2 Q Okay. Is that the only workers' compensation claim you 3 ever filed? 4 A Yes. 5 Q Okay. And please do not take offense to this. 6 A Mm-hmm. 7 Q Okay? I have to ask everyone. Have you ever been 8 convicted of a crime? 9 A No. 10 Q Okay. Have you ever testified before? 11 A No. 12 Q So you've never testified in court before? 13 A No. 14 Q And you've never had a lawyer ask you questions before? 15 A No. 16 Q Have you been involved in any other kind of legal 17 claims or lawsuits besides this one? 18 A No. 19 Q Did you have a lawyer for your workers' comp claim? 20 A No, we just had a hearing. 21 Q Besides Mr. Goings, have you ever hired any other 22 lawyer? 23 A Yes, it was Mark — he's in Charleston. He's somewhere 24 down around Charleston. 25 Q And what was that for?	15 1 A Of course. 2 Q And what was the name — 3 A Yes. 4 Q What was the name of the doctor? 5 A I see Dr. Rodney Fitzgibbons. 6 Q Do you know his address? 7 A Blarney Drive, Columbia, South Carolina. 8 Q Sorry? Say that again. 9 A Blarney or Blainey. I don't know how they pronounce 10 it. 11 Q Okay. Blarney Drive? 12 A Yes. 13 Q Okay. 14 A Columbia. 15 Q Okay. Did you see Dr. Fitzgibbons for your diabetes 16 too? 17 A Yes, I do. 18 Q Do you see anybody else for your diabetes? 19 A No. 20 Q How long have you had that for? 21 A About 10 or 15 years. 22 Q Okay. Blood — so did you have any other problems 23 besides blood pressure and diabetes in July of 2015 24 before this accident happened? 25 A No.
14 1 A Mark — I did ask him to come with me when I went for 2 my hands. 3 Q Okay, so you did? 4 A Uh-huh. 5 Q You had a lawyer come with you for your workers' comp 6 hearing? 7 A Yeah. Yes, I did. I just thought about him. 8 Q Other than this lawsuit and your workers' comp claim, 9 have you ever filed anything — any other kind of claim 10 of any kind with any court? 11 A No. 12 Q Has your husband ever been involved in any kind of 13 legal claim? 14 A No. 15 Q Back in July of 2015, before this incident occurred — 16 A Mm-hmm. 17 Q — did you have any other health problems you were 18 dealing with? 19 A It was regular thing that I take. A blood pressure 20 pill. 21 Q Like what? What kind of regular things? 22 A Just maybe blood pressure and diabetes. 23 Q How long did you have high blood pressure for? 24 A Maybe the last ten years. 25 Q Okay. Did you see a doctor for that?	16 1 Q Did you ever have any kind of trouble walking before 2 this accident happened? 3 A No. 4 Q Did you ever have any problems with any dizziness 5 before this accident happened? 6 A No. 7 Q Did you have trouble with your vision before the 8 accident happened? 9 A No. 10 Q Did you have glasses at the time of the accident? 11 A Yes. 12 Q Do you know where you go for your glasses? 13 A The ones I'm wearing now were Walmart. 14 Q Sure. What about the ones that — when you were in the 15 Burlington store in July of 2015, were you wearing your 16 glasses? 17 A Yes. 18 Q Did someone prescribe those glasses to you? 19 A Yes. 20 Q And who was that 21 A Columbia Eye Clinic. 22 Q Do you know where that's located, Columbia Eye Clinic? 23 A Yes. Columbia, South Carolina. I can't remember the 24 street. 25 MR. GOINGS: It's on Calhoun Street, I believe.

17 1 THE WITNESS: Calhoun. 2 MR. MERMIGES: That's fine. 3 THE WITNESS: Calhoun is right. 4 EXAMINATION CONTINUED 5 BY MR. MERMIGES: 6 Q Was your prescription up to date at the time of the 7 accident? 8 A Yes. 9 Q Have you had any trouble with your eyes before or after 10 that? 11 A I've had glaucoma surgery since the accident. 12 Q Did the glaucoma affect your vision? 13 A Not at that time. 14 Q When did it start affecting your vision? 15 A Last year. 16 Q Okay. So tell me about July 31st, 2015. Do you 17 remember how you started your day that day? 18 A Yes. My daughter came, picked me up, we went to lunch 19 at Ruby Tuesday. We had lunch, pulled up to here to 20 Burlington. 21 Q Where was the Ruby Tuesday? 22 A Ruby Tuesday is right by -- it's in the same plaza. 23 Q In the same plaza as the Burlington? 24 A Mm-hmm. 25 Q Who paid for lunch?	19 1 Q Was that your first time to that Burlington? 2 A I had been there a couple of years ago prior to that. 3 Q Okay. 4 A Mm-hmm. 5 Q So you bought a dress; is that right? 6 A I had a dress to buy. 7 Q Okay. Did you have some kind of bag with you? 8 A Just my purse. 9 Q Tell me what happened. 10 A Well, when I checked with her and asked, was she 11 finished, she said she was finished and looked, and I 12 said, well, we went on to the line. And you know, of 13 course, they're serving the next person. A man was in 14 front of me. He went. They said, sir, to the next. I 15 started walking up the aisle and next thing I know, I'm 16 on the floor, soaking wet. My clothes were drenched. 17 Q What part of your clothes were wet? 18 A My bottom of my pants and things because I was lying on 19 the floor. 20 Q They were drenched? 21 A Yes. 22 Q There was water -- there was liquid all through them? 23 A Yes. 24 Q What part of your clothes specifically got drenched? 25 A My bottom pants.
18 1 A She did. 2 Q Katrina did? 3 A Yes. 4 Q Did y'all have anything to drink then? 5 A No, I don't drink. 6 Q Just checking. 7 A Oh. 8 Q Were you on any medications that day? 9 A I take medication every day, but I don't take them 10 until the afternoon. 11 Q That's fine. What medications do you take? 12 A I would take my blood pressure pill and my sugar pill. 13 Q Okay, so just blood pressure and diabetes? 14 A Pill. That's right. 15 Q Okay. So just to be clear, you weren't taking any kind 16 of pain killers or anti-anxiety pills; were you? 17 A No. 18 Q Okay. Okay, so you had lunch at Ruby Tuesday and then 19 you went to Burlington after that? 20 A Yes. 21 Q So, tell me what happened at the Burlington. 22 A We just went. Girl's day out, we went shopping. 23 Walked around in the store. I picked up a dress. She 24 had some things too. I can't remember what she picked 25 up.	20 1 Q Like your pant leg? 2 A Whole bottom and down the pant leg. 3 Q Okay, so your left bottom area of your pants? 4 A Yes. 5 Q And then all down the pant leg? 6 A Yes. 7 Q Is that correct? 8 A Yes. 9 Q Before you fell, what were you looking at? Do you 10 remember? 11 A Looking for the checkout numbers. She told me to 12 report -- I think she said number two, and you got to 13 walk up the aisle. 14 Q You were called to register number 2, you think? 15 A I think. I don't know. 16 Q So you were trying to look for the register when you 17 fell? 18 A Yes. 19 Q Were you able to see the floor in front of you? 20 A Well, I saw where I was walking, but I didn't see 21 nothing at that time. 22 Q So, I didn't understand your answer. Were you able to 23 see the floor in front of you? 24 A Yes. Where I was walking, yeah. 25 Q Was there anything that was obstructing your view from

21 1 the floor in front of you? 2 A I was carrying my purse and dress. 3 Q Were those in front of you or to your side? 4 A In front. I was walking. 5 Q I didn't understand. Were your purse and dress being 6 held in front of you or were they to your side? 7 A No, I had them thrown over my arm. 8 Q So you had your arm held up in front of you and you had 9 your purse and dress thrown over your arm? 10 A Mm-hmm. 11 Q So, show me how you had your arms positioned. 12 A Like this. 13 Q Okay. So you're showing me that your arms were 14 basically up at your -- the middle of your chest level. 15 Is that correct -- 16 A Yes. 17 Q -- or not? 18 A That's correct. 19 Q And you're saying you had a dress folded over your arm 20 up at chest level; is that right? 21 A That is correct. 22 Q And then was there a purse also up there too? 23 A No, the purse was on this arm. 24 Q The purse was on your shoulder? 25 A Mm-hmm.	23 1 A I don't know if I do or not. I can't say. 2 Q Okay. Well, could you look and see if you still have 3 them and if so, let your lawyer know? 4 A I will. 5 Q All right. Make sure if you do have them, not to throw 6 them away; okay? 7 A Okay. 8 Q Thank you. And just to be clear, your prescription 9 that you had was up to date for your eyes; is that 10 right? 11 A That is correct, yes. 12 Q But you did not see anything on the ground before you 13 fell? 14 A No. 15 Q Why not? 16 A I wasn't expecting anything to be on the floor. 17 Q But you were paying attention; weren't you? 18 A Yes, walking to the register. 19 Q So, do you have any idea -- strike that. What did you 20 fall on? What did you slip on? 21 A All I know is it was wet. I don't know whether it's 22 soda, water or what. Liquid is all I know. 23 Q Do you know whether it had a color? 24 A No. 25 Q Do you know where it came from?
22 1 Q Okay. Are you saying that that -- holding a dress that 2 way blocked your view? 3 MR. GOINGS: Object to the form of the question. 4 You can answer it, if you can. I can't -- 5 THE WITNESS: I mean, yeah, I mean -- 6 MR. GOINGS: No, no. Let me say this. I can't 7 answer for you or tell you how to answer or anything 8 like that. You just need to answer his questions. 9 THE WITNESS: Okay. 10 MR. GOINGS: I can object to a question; okay? 11 THE WITNESS: Okay. 12 MR. GOINGS: But you've still got to answer. 13 THE WITNESS: Okay. When he asked, I was -- 14 MR. GOINGS: Okay. Now, we're back. Now try to 15 answer the question. 16 THE WITNESS: Okay. 17 EXAMINATION CONTINUED 18 BY MR. MERMIGES: 19 Q Did it block your view? 20 A No. 21 Q What kind of shoes were you wearing? 22 A Black sandals. 23 Q What were they made out of? 24 A Leather. 25 Q Do you still have those?	24 1 A No. 2 Q Okay. And just to be clear; you said you slipped on a 3 liquid; correct? 4 A Yes. 5 Q But you have no idea where the liquid came from; 6 correct? 7 A No. 8 Q Is that -- am I correct or am I incorrect? 9 A You're correct. I don't know where it came from. 10 Q Do you have any idea how long it had been there for, 11 before you fell? 12 A No, I do not. 13 Q Were there any footprints in the liquid before you 14 fell? 15 A I don't know. 16 Q Did you see -- 17 A Oh. 18 Q Did you see any kind of footprints in the liquid before 19 you fell? 20 A No. 21 Q Did you see any kind of tracks, like someone pushed a 22 cart through the liquid before you fell? 23 A No. 24 Q Do you know what color the liquid was? 25 A No.

25 1 Q Do you have any idea how much liquid was on the floor? 2 A No. 3 Q After you were on the ground, were you able to see the 4 liquid at all? 5 A No, I was lying in it. 6 Q Where in the store did you fall? 7 A Right in front of the registers. 8 Q Do you remember what register number you fell in front 9 of? 10 A It had to be close to that number 2 because that's 11 where I was headed. 12 Q Were you talking to your daughter before you fell? 13 A No. 14 Q Was she with you? 15 A She was behind me. You had to wait one at a time 16 before they called me. 17 Q So, she didn't walk with you? 18 A No. 19 MR. GOINGS: Keep your voice up so the court 20 reporter can hear you. 21 THE WITNESS: Oh. 22 MR. GOINGS: Sometimes your voice trails at the 23 end. 24 THE WITNESS: Okay. 25 MR. GOINGS: I just want to make sure she can hear	27 1 Q Was it the kind of floor that you would expect to see 2 in a clothing store? 3 A I guess. 4 Q It's normal type of flooring you'd see in a store; 5 correct? 6 A Yes. 7 Q Do you believe that any of the Burlington Coat Factory 8 employees spilled the liquid on the ground? 9 A I don't know who spilled it. 10 Q Obviously, you weren't able to see it on the ground 11 before you fell; right? 12 A No, I didn't, no. 13 Q Do you think that any of the Burlington Coat Factory 14 employees knew that the liquid had been spilled before 15 you fell? 16 MR. GOINGS: Object to the form of the question. 17 You can answer. 18 THE WITNESS: Do I think any of them seen it? 19 Well, one young lady walked around right in front of me 20 before I was getting to register 2. One lady. I don't 21 know if she'd seen it or not. 22 EXAMINATION CONTINUED 23 BY MR. MERMIGES: 24 Q You don't know if she saw it or not; correct? 25 A No, but she walked by it too.
26 1 you. Trying to help her out. 2 THE WITNESS: Okay. 3 EXAMINATION CONTINUED 4 BY MR. MERMIGES: 5 Q So just to be clear, you can't describe the size or the 6 shape of the liquid on the ground to me in any way; is 7 that correct? 8 A That's correct. 9 Q You don't know where it came from; right? 10 A No. 11 Q You didn't see anybody spill it? 12 A No. 13 Q You don't know how long it was there? 14 A No. 15 Q And remember that everything is written, so when you 16 said, no, no, no, you're telling me you didn't know; 17 correct? 18 A I don't -- I didn't know. 19 Q Just making sure. Okay. 20 A Mm-hmm. 21 Q What -- how would you describe the floor you fell on? 22 What kind of material was it? 23 A It was cement or tile. I don't know. 24 Q You don't remember if it was cement or tile? 25 A Huh-uh.	28 1 Q So, you said -- what did the young lady look like? 2 A She was taller than I was. 3 Q How old was she? 4 A Maybe 18 to 20. 5 Q And it was, obviously, a young lady; is that correct? 6 A That's all I know, a young lady. 7 Q And was she white or black? 8 A Black. 9 Q And she was an employee? 10 A Yes, I guess. She went behind the counter. 11 Q And you said that she walked past the -- 12 A Passed me when I was coming up; yeah. 13 Q Did she do anything that made you think that she knew 14 about the spill? 15 A No. 16 Q She just walked by it? 17 A Yes. 18 Q Do you believe she did or didn't know about the spill? 19 A I can't say. I can't say. 20 Q Was the spill easy to see? 21 A No. 22 Q If it was easy to see, you would've avoided it; right? 23 A Yes. 24 Q Did anybody that worked for Burlington Coat Factory 25 tell you that they knew about the spill?

29 1 A No. 2 Q And you didn't see anybody else slip in the spill 3 before you? 4 A No. 5 Q When you fell, tell me how it happened. 6 A Walking to the register, next thing I know, I was on 7 the floor, crying, saying, "my leg, my leg." 8 Q Do you remember what slipped? 9 A No, it happened so fast. 10 Q Okay. You don't remember whether it was your right 11 foot or your left foot that slipped? 12 A No, I don't. 13 Q The shoes that you had, what kind of bottom did they 14 have? Did they have a smooth bottom? 15 A Yes. 16 Q And they were leather? 17 A Yes. 18 Q Not rubber? 19 A Leather. 20 Q When you fell on the ground, tell me what hurt. 21 A My leg. My left leg. That's all I kept saying. My 22 leg. 23 Q And did anybody respond to you, to your fall? 24 A Oh, I think she said she was the manager. She came, 25 and my daughter came.	31 1 Q Was she with you most of the time until the ambulance 2 came? 3 A No. She came, she left and come back. Not the whole 4 time. 5 Q She wasn't with you the whole time? 6 A No. 7 Q Was she with you most of the time or not? 8 A Most, most. 9 Q Did you talk to the manager? 10 A Well, we didn't have a conversation. She just kneeled 11 down and said she was sorry it happened. That's all. 12 Q Did you tell her what happened? 13 A No, she didn't ask. 14 Q Before you fell, did the floor look like it was dirty? 15 A I couldn't tell. 16 Q So, you didn't notice that the floor was dirty before 17 you fell? 18 A Dirty or clean, no. 19 Q Did you see any mud on the floor before you fell? 20 A No. 21 Q Did you see any dirt on the floor? 22 A No. 23 Q Did the floor look like it had been mopped recently? 24 A No. Couldn't tell. 25 Q Did it look dry?
30 1 Q Did your daughter see you fall? 2 A No, she was behind me. Yeah, she was behind me. 3 Q So, she found out when you started, probably, 4 screaming; right? 5 A Well, I -- yes. I didn't scream, scream, but I was 6 saying, "my leg." 7 Q I understand. But your daughter didn't find out until 8 you -- 9 A Yeah. I'm lying on the floor and people started 10 walking by looking at me down there. 11 Q How long were you on the floor before the manager came? 12 A long time or short time? 13 A Short time. She -- short time. 14 Q Did the manager come right over? 15 A She did. 16 Q Did she help you? 17 A She just kneeled down and said she was sorry this had 18 happened. 19 Q Was she polite or impolite? 20 A She was polite. 21 Q Did she -- well, tell me what happened next. 22 A That's all she said, and my daughter asked had anybody 23 called for help, and they said they had. 24 Q Okay. And then did she wait with you, the manager? 25 A She walked off, but she came back.	32 1 A The floor was dry. 2 Q How long do you think it took for the ambulance to 3 arrive? 4 A Five to seven minutes, maybe. 5 Q And during that time, your left leg was hurting; right? 6 A That's correct. Very bad. 7 Q Were you taken to the hospital? 8 A Yes. 9 Q What hospital? 10 A Richland. 11 Q The emergency room? 12 A Yes. 13 Q And what did they tell you? 14 A Told me I had a bad patella break and we was waiting on 15 an orthopedic doctor to come look. One came, he 16 looked, he left out, said he was already scheduled for 17 surgery. Another one came. 18 Q So, you're talking about, when you say "my orthopedic 19 doctor", you mean the orthopedic doctor that was on 20 duty in the ER? 21 A I didn't say "my". I said "a" orthopedic doctor came. 22 Q I'm just making sure -- 23 A Oh. 24 Q -- you didn't -- 25 A Yeah.

33 1 Q -- already have one. 2 A No. 3 Q That's all. 4 A No, no, no. 5 Q Okay. 6 A Uh-uh. 7 Q So, there was one orthopedic doctor that came and 8 looked? 9 A Came and looked, and he said he couldn't take that on 10 because he was already scheduled for surgery. 11 Q But then a second doctor came; is that right? 12 A And then the second one come; yes. 13 Q And is that the person you wound up using as your 14 doctor? 15 A I don't know, because that was on a Friday night, and 16 they finally came back and told me they couldn't do 17 nothing that Friday night. They was going to cast it, 18 send me home and I had to be back Monday morning for 19 the surgery. 20 Q Okay. And you had a fractured patella? 21 A Yes. 22 Q Did they take x-rays? 23 A Yes. 24 Q Do you know if they did an MRI or a CT scan? 25 A Yes.	35 1 A Yes. 2 Q So, that would've been on, maybe August 3rd? 3 A Yes. Monday. 4 Q And what hospital did you come back to on Monday? 5 A Richland. 6 Q Where's that located? 7 A Columbia, South Carolina. 8 Q Is that the one that's downtown or not? 9 A Downtown. 10 Q On Taylor Street? 11 A No, that's Baptist. Richland is by I-77. 12 Q Okay. 13 A Mm-hmm. 14 Q Richland Hospital by I-77? 15 A Yes. 16 Q Okay. Then you came there on the following Monday for 17 surgery? 18 A Yes. 19 Q Do you know what kind of surgery? 20 A They told me -- all I know is they was going to try to 21 repair and I went in that morning -- I think I come out 22 around 1:00, maybe. 23 Q You were finished with the surgery at 1:00? 24 A Between 1:00 and 2:00. 25 Q Okay. Do you remember the name of the surgery they
34 1 Q Do you know which one? 2 A Both. 3 Q Both an MRI and a CT scan? 4 A Yes. 5 Q And it was your left patella? 6 A That is correct; yes. 7 Q And that was -- the patella break was the full extent 8 of your injuries; is that right? 9 A Yes. 10 Q You didn't hurt any other part of your body besides 11 your knee cap? 12 A That's -- 13 Q The patella? 14 A That's correct. Yes. 15 Q Thank you. 16 A Mm-hmm. 17 Q So they put you in a cast on Friday; correct? 18 A Temporary cast. 19 Q I understand. 20 A Mm-hmm. 21 Q Did they give you pain medication? 22 A Yes. 23 Q And they told you to come back on Monday? 24 A Come back Monday morning. 25 Q And that was for surgery?	36 1 performed on you? 2 A No. It was a doctor named Dr. Hess. 3 Q Mm-hmm. 4 A And he told us that he put a screw and wires to try to 5 repair, but he didn't think it would take. 6 Q Okay. Even -- so right after even the first surgery 7 was done, he was worried that -- 8 A It wouldn't take. Too much damage had been done. 9 Q Did he explain why that was? 10 A It was just broken in too many places. 11 Q Okay. Is that the only surgery you'd ever gotten? 12 A No. 13 Q Was that the only surgery on your knee that you've -- 14 A Oh. 15 Q -- ever gotten? 16 A Yeah. 17 Q Yes? 18 A Yes, mm-hmm. 19 Q Have you ever gotten any other kind of surgery before? 20 A Yes. 21 Q For what? 22 A A mastectomy. 23 Q Okay. Anything besides that? 24 A Rotator cuff, right shoulder. 25 Q Anything else?

37 1 A Those two. 2 Q Before this accident happened, you didn't have any 3 problems with your left knee; did you? 4 A No. 5 Q Okay. After the surgery -- you said Dr. Hess performed 6 your surgery? 7 A Yes. 8 Q Did you follow up with him? 9 A Yes. 10 Q How many -- how long after the surgery did you go see 11 Dr. Hess? 12 A Can't remember how many times. 13 Q So, how -- I'm not asking how many times. I'm saying, 14 how long after the surgery, when was the first time you 15 saw him to follow up? 16 A The first of August -- maybe the second week in August. 17 Q Okay. 18 A Or the middle of August. 19 Q So, like, ten days later? 20 A Yeah, ten days to two weeks. 21 Q And did he take x-rays then? 22 A Yes. 23 Q Now, after the surgery, were you given some kind of a 24 knee brace? 25 A Yes.	39 1 A Not the whole time; no. The first one, yes, but -- 2 Q But the second one you didn't wear? 3 A Not at -- you know, not 24/7. 4 Q Why was that? 5 A I would put it on in the daytime and take it off at 6 night. 7 Q Did it fit right or not? 8 A Yes. 9 Q Was Dr. Hess the person that you would follow up with 10 to check on how the surgery had gone? 11 A Yes. 12 Q Did you have any other doctors besides Dr. Hess? 13 A Not working on me anymore. 14 Q Okay. Did you -- what other -- did you get any other 15 kind of treatment for your knee after the surgery? 16 A Yes. 17 Q What'd you get? 18 A Therapy. 19 Q How long did you do that for? 20 A Six to eight weeks. 21 Q So, did you do it for six weeks or eight weeks or -- 22 A Six to eight weeks. I don't remember. 23 Q Okay. You did it for -- 24 A Six to eight weeks. That's it. 25 Q And how many times a week did you go?
38 1 Q Was that the day you got the surgery, they gave you a 2 knee brace? 3 A Yes. Went home with the cast and a knee brace. 4 Q Okay. 5 A And a walker. 6 Q Now, did you use the knee brace? 7 A Yes. 8 Q Did you have any problems with the knee brace? 9 A No. 10 Q You didn't have any issues with the knee brace fitting? 11 A The second one. Not the first one. 12 Q Go ahead. 13 A The first one was too long, it was ruining my ankle. 14 He had to change that one out. It was ruining my 15 ankle. I told him, you know, I wasn't gonna wear it if 16 it ruined my ankle and make it sore because I was a 17 diabetic. 18 Q Mm-hmm. 19 A So he changed it. 20 Q Did he give you a second knee brace? 21 A Yes. 22 Q And did you wear that one or not? 23 A Yes. 24 Q So, are you telling me that you wore the knee brace the 25 whole time while you were recovering or not?	40 1 A Mondays, Wednesdays and Fridays. Three times. 2 Q Okay. Did you go to your therapy appointments that 3 were scheduled? 4 A Yes. 5 Q Okay. Did the therapy help or not? 6 A No. 7 Q Didn't help at all? 8 A No. 9 Q And what did Dr. Hess say about the surgery? Did it 10 work or not? 11 A No. 12 Q Is there a specific term he used? Do you remember? 13 A He just said it wasn't a success. 14 Q Okay. Did -- is there any other kind of surgery that 15 he thinks that you need to get? 16 A If I want to go back and get the screw and wire taken 17 out. I told him I had to think about that. 18 Q When did he tell that to you? 19 A Maybe on my last visit, and I asked him about it. 20 Q Mm-hmm. 21 A What about it being left in there. 22 Q What'd he say? 23 A He wouldn't -- you know, wouldn't recommend me to do it 24 right now, and give it some more time. 25 Q So, at your last appointment with him, you said he

41 1 would not recommend that you have the screw and wire 2 taken out right now? 3 A Right now. Right, wait a little. 4 Q Is that the only other surgery that you've ever 5 discussed with any of your doctors for the knee? 6 A That's it. Mm-hmm, yes. 7 Q When was your last meeting with Dr. Hess? 8 A 2016. I don't know what month it was. I can't 9 remember. 10 Q Do you know if it was in the first half or second half 11 of 2016? 12 A Maybe mid-2016. 13 Q Mid-2016? 14 A Yes, sir. 15 Q And then your physical therapy, when did that start? 16 A It started a week after the surgery, so it was the 17 second week in August. 18 Q Okay. And it lasted six to eight weeks? 19 A Six to eight weeks. 20 Q Have you gotten any other physical therapy since then? 21 A No. 22 Q Have you gotten any other medical treatment for your 23 knee at all? 24 A No. 25 Q So last time you had any kind of visit with the doctor	43 1 Q How is it that he has North Carolina insurance? 2 A That's what the job gave him. 3 Q Is he still working at that job? 4 A Yes. 5 Q What does he do for a living? 6 A It's textile. 7 Q Textiles? 8 A Textile, mm-hmm. It's a mill. 9 Q Okay. Do you have any idea how much your medical bills 10 are? 11 A No, I don't. 12 Q Were your medical bills paid for by your insurance? 13 A Most of them. 14 Q Do you know whether they were paid for by Medicare or 15 Blue Cross? 16 A Blue Cross. I just got Medicare when I turned 65. 17 Q Mm-hmm. 18 A August last year. 19 Q Okay. So, the last time you saw a doctor for your knee 20 was about a year ago or less than a year ago? 21 A It's less than that. Not quite a year yet. 22 Q Okay. 23 A Less. 24 Q Almost a year ago? 25 A Almost.
42 1 about your knee was in mid-2016? 2 A Yes. 3 Q Okay, and that was Dr. Hess? 4 A Yes. 5 Q And you haven't had any physical therapy since the fall 6 of 2015; right? 7 A Yes. 8 Q Do you have any medical treatment planned for your knee 9 in the future? 10 A Yes, if I get this screw and wire taken out. 11 Q Have you spoken with the doctor to try and do that? 12 A No. 13 Q Do you have any kind of specific timeframe where you 14 want to try to do that? 15 A No, not with what I went through, no. I'm not in a 16 hurry. 17 Q Do you have health insurance? 18 A Yes. 19 Q What kind of insurance do you have? 20 A I have Medicare and I still have my husband's 21 insurance, Blue Cross Blue Shield of North Carolina. 22 Q Of North Carolina? 23 A Yes. 24 Q Does your husband work in North Carolina? 25 A No.	44 1 Q Okay. And you have no appointments scheduled now; is 2 that right? 3 A No. 4 Q And you're not taking any pain medication? 5 A Only, like, a Tylenol. Not no strong meds like I was 6 on. 7 Q Okay. So, how often do you take Tylenol or Advil or a 8 medication like that? 9 A Only as needed. 10 Q Okay, and how often do you need it? 11 A Maybe every other day. I don't take it every day. 12 Q And when you take it, do you take just two pills or do 13 you take more than that? 14 A Two, two, two. 15 Q Two pills every other day? 16 A Yeah. 17 Q I'm listening. 18 A Mm-hmm. I was on Aleve, but my regular doctor told me 19 don't use that. 20 Q Okay. When was the last time you had a stronger, like, 21 a prescribed pain medicine? 22 A A couple weeks -- I mean, two weeks ago. 23 Q Two weeks ago? 24 A Mm-hmm. 25 Q Okay. Who prescribed that for you?

45 1 A My medical doctor. 2 Q Your primary care doctor? 3 A Yes. 4 Q Was it for pain in your knee? 5 A Yes. 6 Q What were you prescribed? 7 A I'm thinking of the name. 8 Q Was it like a Vicodin or a Percocet? 9 A Percocet. 10 Q Do you know how much he prescribed? 11 A 500 milligrams. 12 Q How many pills did he give you? 13 A Just 30. 14 Q 30? 15 A 30. 16 Q How often -- when was the last time before this most 17 recent prescription that you were prescribed Percocet? 18 A Dr. Hess gave me a supply. 19 Q So this -- the last time you got any kind of pain 20 medicine like Percocet was from Dr. Hess? 21 A No, the last prescription I got was from my primary 22 doctor. 23 Q And that was a month or so ago? 24 A Yeah. 25 Q Before that?	47 1 A Yes. 2 Q Okay. Do you always use the cane? 3 A Yes. 4 Q So you can't get around without a cane now; is that 5 correct? 6 A That's correct. 7 Q How else has the injury affected your life 8 specifically? 9 A I can't dance. 10 Q How often would you dance before the accident happened? 11 A We used to like to do line dances. 12 Q When? 13 A We have a festival in Ridgeway called Pig on the Ridge, 14 and we would do some line dancing from here, just have 15 fun. 16 Q Mm-hmm. 17 A I miss it. 18 Q You can't line dance anymore? 19 A No. 20 Q Is there anything else you can't do? 21 A Well, there's a lot. I can't get out there and play 22 with my grandchildren anymore. 23 Q How often did you used to play with your grandchildren? 24 A Well I had seven, so a lot. 25 Q What did you used to do?
46 1 A Oh, no. I still had pills from Dr. Hess. 2 Q Okay. 3 A Mm-hmm. 4 Q So you don't take them that often? 5 A No. 6 Q Okay. And just to be clear, in the past, have you ever 7 had any vertigo or any kind of blackouts? 8 A No. 9 Q Okay. And you've never fallen down before this? 10 A No. 11 Q You have not; is that correct? 12 A No. 13 Q Okay. So, obviously, I know that you fractured your 14 knee cap, your patella. Has that affected your life? 15 And if so, tell me how. 16 A Yes, yes, yes, yes. I can't do a lot of things I used 17 to do. 18 Q Like what? 19 A I can't walk anymore. 20 Q You can't walk at all? 21 A I mean, I can walk with this, but I'm talking, I used 22 to walk. 23 Q I understand. 24 A Mm-hmm. 25 Q Now you have to use a cane; is that right?	48 1 A Well, we like to play ball, throw Frisbee. 2 Q Is there anything else that you could do before the 3 accident that you can't do now? I'm asking you to 4 think of examples for me. 5 A I need a scooter. Like during fair time, I can't go to 6 the fair anymore because I can't walk, and I don't have 7 \$5,000 for a scooter. 8 Q Have you tried to get Medicare to buy you a scooter? 9 A No, I haven't tried. They don't pay for a lot of stuff 10 like they used to. I haven't tried since I had 11 Medicaid. 12 Q Okay. So you need -- so you feel that you need a 13 scooter to get around; is that correct? 14 A Long walks. Yeah, long places, like say from my house 15 to maybe my daughter's house or -- 16 Q Mm-hmm. 17 A -- something like that. 18 Q Okay. But for now, you use a cane; is that right? 19 A Yes. 20 Q Okay. How often does your knee hurt? 21 A Every day. Every day. 22 Q After the accident happened, so June, July, August of 23 2015, did your knee hurt more or less than it does now? 24 A Excruciating pain. 25 Q So immediate -- so after the accident, you were in

49 1 excruciating pain? 2 A Yes, yes. 3 Q And was that every day? 4 A Every day. Every night. 5 Q So on a scale of one to ten, with one being, you know, 6 little or no pain and ten being very, you know, the 7 worst pain, what number would you give to the pain you 8 had after the accident? 9 A Ten. 10 Q Ten out of ten? 11 A Ten. 12 Q Was that all day long? 13 A All the time. 14 Q And how long did that last for? 15 A It just about calming down maybe this year. Over a 16 year, excruciating every day. 17 Q Okay. So, for over -- for a full year, every single 18 day, you had ten out of ten pain? 19 A That's correct. 20 Q Okay. And then it started to get better over time; is 21 that right? 22 A Not better. It calmed down a little bit. I could 23 tolerate it a little more. 24 Q Okay. 25 A It still hurts every day now.	51 1 Q Have any of your doctors told you, you need to get more 2 physical therapy or not? 3 A No. 4 Q Since the accident happened, have you been involved in 5 any kind of falls? 6 A No. 7 Q And you told me also that you'd never fallen before 8 that either; is that right? 9 A No. 10 Q You hadn't -- had you ever fallen before this accident 11 happened? 12 A No. 13 Q Have you been involved in any kind of car accidents 14 before the accident happened? 15 A No. 16 Q Okay. Did you go to any other doctors in connection to 17 this case besides your surgeon and the physical therapy 18 doctor? 19 A No. 20 Q Did your lawyer send you to any doctors? 21 A No, just one place to get an evaluation. 22 Q Okay, your lawyer sent you there? 23 A Yes. 24 Q When they did the evaluation, how did that work? 25 A I didn't get the results.
50 1 Q It still hurts every day now? 2 A Every day. 3 Q Does it hurt all day long? 4 A Yes, I can feel that all the time. 5 Q Are there things that you do to make it worse? 6 A No. 7 Q It's just a constant pain? 8 A It's a constant pain. 9 Q Okay. Is there anything that you can do to make the 10 pain better? 11 A No. 12 Q So now, after the time has passed, how would you rate 13 the level of pain that you feel? 14 A Eight. 15 Q So you're saying that you have eight out of ten pain 16 every single day, all the time? 17 A Every day, all the time. 18 Q Okay. Is there a reason why you don't take more pain 19 medication for it? 20 A I'm trying to have a lining in my stomach. 21 Q I understand. So, having a scooter, would that help 22 you with your pain or not? 23 A Well, it would help me with walking a long ways. 24 Q Mm-hmm. Have any of your doctors told you not to walk? 25 A No.	52 1 Q Did you physically go in there? 2 A Yes. 3 Q Did you bring your medical records with you? 4 A When I went? I didn't have to bring my medical 5 records. I just went. 6 Q Okay. Did they do an exam on you? 7 A Yes, yes. 8 Q What did they do? 9 A She shook it, made some measurements. 10 Q Mm-hmm. Did she give you, like, a physical? 11 A Not a complete physical, no. Just worked on this leg. 12 Q Okay. After you fell, do you remember giving a 13 recorded statement to Burlington? 14 A No. 15 Q You don't remember calling up and speaking with someone 16 who worked at the claims department for Burlington? 17 A I've never called them. They called me. 18 Q Okay. When did they call you? 19 A Maybe a week or so after it happened. 20 Q Okay. Did -- and you spoke with them; is that right? 21 A That is correct. 22 Q And they told you that they were recording your 23 statement; is that correct? 24 A Yes. 25 Q When you answered the questions that they asked, were

53 1 you truthful? 2 A Yes. 3 Q Did you tell them everything you knew to the best of 4 your recollection? 5 MR. GOINGS: Object to the form of the question. 6 You can answer. 7 MR. MERMIGES: You can answer. 8 THE WITNESS: She didn't ask me anything about 9 that anyway. She was saying that if I didn't get an 10 attorney, they would take care of me. She didn't 11 discuss the accident. 12 EXAMINATION CONTINUED 13 BY MR. MERMIGES: 14 Q She didn't ask you what happened? 15 A I don't remember. But I did not call her. She called 16 me. 17 Q But I -- well, just to be clear, though, you are saying 18 you gave a recorded statement; correct? 19 A Yeah. Probably, if she said she was recording when she 20 called me. 21 Q And nobody forced you to do that; did they? 22 A No. 23 Q And when you made that statement, you were telling the 24 truth; is that right? 25 A Yes.	55 1 Q Do you agree that if none of the Burlington employees 2 knew that there was liquid on the floor, that they 3 wouldn't have been able to put up a sign like that? 4 MR. GOINGS: Object to the form of the question. 5 THE WITNESS: You need to answer my question. 6 THE WITNESS: Say it a different way. 7 EXAMINATION CONTINUED 8 BY MR. MERMIGES: 9 Q Do you agree that if none of the Burlington employees 10 knew that there was liquid on the floor, that they 11 wouldn't have been able to put up a sign, a yellow 12 sign? 13 MR. GOINGS: Object to the form of the question. 14 You can answer. 15 THE WITNESS: Okay. You're saying, do I think if 16 any of the Burlington people knew it was there, they 17 would've put up a sign or -- 18 MR. MERMIGES: You need to answer my question to 19 the best of your knowledge. Go ahead and answer. 20 MR. GOINGS: It doesn't seem like she understands 21 your question. 22 THE WITNESS: That's what I'm saying. 23 MR. MERMIGES: Okay. I'll ask you again. 24 THE WITNESS: Yeah, say it -- 25 MR. MERMIGES: Okay.
54 1 Q Okay. Let me take a look through my notes; okay? I'm 2 getting close to being done; all right? 3 A Mm-hmm. 4 Q Just to be clear, after you fell, did any Burlington 5 employee say anything to you to make you think that 6 they knew that there was liquid on the floor before you 7 fell? 8 A No. 9 Q Do you think that Burlington could've done anything to 10 prevent you from falling? 11 A Yes. If one of them little yellow signs would've been 12 down there saying, caution to water, I would've knew to 13 be careful then, but nothing was down there. 14 Q I understand that. 15 A Mm-hmm. 16 Q Would you agree that if Burlington -- if none of the 17 Burlington employees knew that there was liquid on the 18 floor, they wouldn't have been able to put up a sign 19 like that? 20 MR. GOINGS: Object to the form of the question. 21 MR. MERMIGES: You can answer. Do you want me to 22 ask the question again? 23 THE WITNESS: Yes. 24 EXAMINATION CONTINUED 25 BY MR. MERMIGES:	56 1 EXAMINATION CONTINUED 2 BY MR. MERMIGES: 3 Q Do you agree that if nobody at Burlington knew that 4 there was liquid on the floor -- 5 A Mm-hmm. 6 Q -- if they didn't know that, then would you agree that 7 they wouldn't have known to put up a sign? 8 A I don't know. I don't know. 9 Q Okay. If Burlington didn't know -- if nobody -- if 10 none of the employees at Burlington knew that there was 11 liquid on the ground, what could they have done 12 differently? 13 MR. GOINGS: Object to the form of the question. 14 You can answer. 15 EXAMINATION CONTINUED 16 BY MR. MERMIGES: 17 Q If none of the Burlington employees knew that there was 18 liquid on the ground before you fell, what could they 19 have done differently? 20 MR. GOINGS: Same objection. 21 THE WITNESS: I don't know. I don't. 22 EXAMINATION CONTINUED 23 BY MR. MERMIGES: 24 Q Why did you wind up getting your glaucoma surgery? Was 25 it because you had pain?

57 1 A No, but I went to the -- for my year eye exam and my 2 eye doctor told me I needed to be checked for it. 3 Q Okay. Had your vision gotten worse or not? 4 A No. 5 Q Okay. 6 A I had headaches. I was getting headaches a lot. 7 Q Okay. I have no further questions for you. Thank you. 8 MR. GOINGS: I've got a couple follow-up 9 questions. Before I do that, let's take a five minute 10 break. You can use the restroom, refresh yourself and 11 I've got a couple more questions. 12 THE WITNESS: Yes, I need it. 13 OFF THE RECORD 14 EXAMINATION CONTINUED 15 BY MR. GOINGS: 16 Q Ms. Qualls, I've got just some follow-up questions. 17 Did you ask to see the video of the surveillance 18 footage with your fall? 19 A When -- I didn't ever go back to the store, so I guess 20 when I come here and obtained you, I told you, please 21 see if you could get to see what had happened. 22 Q Was I able to get it for you? 23 A Yes, you called and told me you had. 24 Q Okay. Was that -- I had to file a lawsuit to get it, 25 though; right?	59 1 A Yes. 2 MR. MERMIGES: Form. 3 EXAMINATION CONTINUED 4 BY MR. GOINGS: 5 Q Okay. 6 A Mm-hmm. 7 Q And is it your contention that that store employee 8 should have seen it, and if she didn't see it, she 9 should have not been playing on her phone so she could 10 see it? 11 MR. MERMIGES: Form. 12 THE WITNESS: Yes. 13 EXAMINATION CONTINUED 14 BY MR. GOINGS: 15 Q Okay. Now, you said you didn't see it; right? 16 A I did not. 17 Q And you had all the merchandise -- 18 A Mm-hmm. 19 Q -- with your dress that you're buying in your arms; 20 right? 21 A That's correct. 22 Q Okay. 23 A Mm-hmm. 24 Q Okay. Were you looking towards the ground or were you 25 looking towards the register where you were walking?
58 1 A That's correct. 2 Q Okay. Did Burlington ever voluntarily show you the 3 video? 4 A Huh-uh. 5 Q Is that a yes or a no? 6 A No. 7 Q Okay. 8 A Oh, I'm sorry. 9 Q Now, when you filed the lawsuit, you alleged that 10 Burlington Coat Factory knew or should have known of 11 the wet substance on the floor; correct? 12 A I thought they knew. 13 Q Okay. 14 A Uh-huh. 15 Q And you've now seen the video; haven't you? 16 A Yes. 17 Q Did you see on that video, a store clerk walked 18 straight past the location where the substance was on 19 the floor that caused you to fall? 20 A Yes. 21 MR. MERMIGES: Form, just leading, but go ahead. 22 EXAMINATION CONTINUED 23 BY MR. GOINGS: 24 Q Did you see the store employee look in the direction of 25 where the substance was on the floor?	60 1 A I was walking -- 2 MR. MERMIGES: Form. 3 THE WITNESS: -- to get to my register. 4 EXAMINATION CONTINUED 5 BY MR. GOINGS: 6 Q Okay. You didn't see a toddler put a wet substance on 7 the floor; did you? 8 A No. 9 Q Okay. You didn't see how the spill occurred on the day 10 of the fall; did you? 11 A No. 12 Q You've now seen it, what happened, based on the video; 13 haven't you? 14 A On the video. I saw the video. 15 Q Okay. And that spill occurred right in front of store 16 employees running the cash register; right? 17 MR. MERMIGES: Form. 18 THE WITNESS: Yes. 19 EXAMINATION CONTINUED 20 BY MR. GOINGS: 21 Q Okay. You testified when he asked you, that you didn't 22 know what the employees saw or didn't see? 23 A Mm-hmm. 24 Q But is it your testimony in this case that the store 25 employees should have seen that substance on the floor?

61 1 MR. MERMIGES: Form. 2 THE WITNESS: Yes. 3 EXAMINATION CONTINUED 4 BY MR. GOINGS: 5 Q Okay. And -- 6 A It was right in front of the camera. 7 Q Okay. And then it was -- and then a store employee 8 actually walked right beside it? 9 MR. MERMIGES: Form. 10 THE WITNESS: Yes. 11 EXAMINATION CONTINUED 12 BY MR. GOINGS: 13 Q Before you fell? 14 A Yeah, mm-hmm. 15 Q Okay. Did anybody warn you -- 16 A No. 17 Q -- of the condition? 18 A No, everybody was just, like I said, going to a 19 register, walking on and off. 20 Q Okay. You said you thought that Burlington should have 21 put a yellow caution cone up; correct? 22 A Yes, that little yellow thing, yes. I would've been 23 looking then, I bet. 24 Q Okay. So you're saying the store employee that walked 25 past the spill should have stopped and put out a cone	63 1 A Not then, no. 2 Q Okay. 3 A No, uh-uh. 4 Q Is it your allegations in this case that Burlington 5 should have properly cleaned up the floor or warned of 6 the condition? 7 MR. MERMIGES: Form. 8 THE WITNESS: Yes. 9 EXAMINATION CONTINUED 10 BY MR. GOINGS: 11 Q Is it your allegations in this case that Burlington 12 either knew it was there or should have known it was 13 there on the floor and failed to take reasonable and 14 adequate steps to clean it up? 15 MR. MERMIGES: Form. 16 THE WITNESS: Yes. 17 EXAMINATION CONTINUED 18 BY MR. GOINGS: 19 Q Okay. You've saw the -- you've seen some of these 20 still shots from the surveillance footage; haven't you? 21 A Yes. 22 Q And I'll just tell you that they were marked as Exhibit 23 11 to Burlington's deposition. 24 A Mm-hmm. 25 Q And I want to show you on Photograph 3 of Exhibit 11 --
62 1 and warned customers instead of kept walking; is that 2 what you're saying? 3 MR. MERMIGES: Form. 4 THE WITNESS: Yes. 5 EXAMINATION CONTINUED 6 BY MR. GOINGS: 7 Q Okay. I'm just trying to understand what you're 8 saying. 9 A I know, because now if I go in a restaurant and I see 10 them, I'm scared to death. 11 Q Okay. 12 A Yes. 13 Q You didn't know there was something on the floor; did 14 you? 15 A No. 16 Q Okay. And you didn't expect to fall; did you? 17 A No. 18 Q Okay. Now, you heard this about your eyes. Did you 19 have bad eyes at the time of this fall? 20 A No, no, no. 21 Q Okay. 22 A No, no. 23 Q All right. 24 A No. 25 Q You weren't going treating with a doctor for bad eyes?	64 1 A Mm-hmm. 2 Q -- this person that's behind the counter in Photograph 3 1, is now walking in front of the counter, isn't she, 4 in Photograph 3? 5 A Mm-hmm. 6 MR. MERMIGES: Form. 7 THE WITNESS: Mm-hmm. 8 MR. GOINGS: Is that a yes? 9 THE WITNESS: Yes. 10 MR. GOINGS: Okay. 11 THE WITNESS: I'm sorry. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q And isn't it true that you fell in the location where 15 the four black squares are, close to where she's 16 walking? 17 MR. MERMIGES: Form. 18 THE WITNESS: Yes. 19 EXAMINATION CONTINUED 20 BY MR. GOINGS: 21 Q Okay. And her head is pointed towards the four black 22 squares; correct? 23 MR. MERMIGES: Form. 24 THE WITNESS: Yes. 25 EXAMINATION CONTINUED

65 1 BY MR. GOINGS: 2 Q And I'll show you another picture. Picture 4. Her 3 head is facing in the location where the spill was; 4 isn't it? 5 A Yes. 6 Q And then Photograph 5, her head is also looking in that 7 same direction; correct? 8 A Yes. 9 MR. MERMIGES: Form. 10 EXAMINATION CONTINUED 11 BY MR. GOINGS: 12 Q Okay. And is it your testimony that she should have 13 seen the spill when she walked past where it had 14 occurred or -- 15 A Yes. 16 Q All right. But she didn't, did she? 17 MR. MERMIGES: Form. 18 THE WITNESS: No. 19 EXAMINATION CONTINUED 20 BY MR. GOINGS: 21 Q And what happened was shown on Photograph 6, 7 and 8. 22 You fell; correct? 23 A And that's me. 24 Q And that's you; correct? 25 A Yes.	67 1 MR. MERMIGES: Hold on. What number was she 2 pointing at for that? 3 THE WITNESS: That's where I was headed. 4 MR. MERMIGES: I thought she was pointing at this 5 one. 6 MR. GOINGS: Same person. 7 MR. MERMIGES: Okay. 8 THE WITNESS: Yeah. 9 MR. MERMIGES: Six. 10 THE WITNESS: They could see me. 11 MR. MERMIGES: The young lady? The customer? I'm 12 sorry. 13 MR. GOINGS: I saw that she was pointing to the 14 actual photograph -- 15 THE WITNESS: I was going out, coming out here -- 16 MR. GOINGS: Let me finish. 17 THE WITNESS: Mm-hmm. 18 MR. GOINGS: Photograph 7 and then she pointed at 19 this person behind the register. It was about the time 20 if you asked if she was pointing at -- it was, I showed 21 you the same person in Exhibit 8. 22 MR. MERMIGES: Okay. 23 MR. GOINGS: On Photograph 8. 24 THE WITNESS: Mm-hmm. 25 MR. GOINGS: All right.
66 1 Q Okay. Is it your testimony that Burlington had a 2 chance to warn or clean up this location where the 3 spill occurred, but they failed to do so? 4 MR. MERMIGES: Form. 5 THE WITNESS: Yes. 6 EXAMINATION CONTINUED 7 BY MR. GOINGS: 8 Q Okay. And these cash registers are just a couple feet 9 from where the spill occurred? 10 A Yeah. I was laying right there. 11 Q And these photographs show store employees behind the 12 counter; correct? 13 A Mm-hmm. 14 Q Is that a yes? 15 A Yes, yes. 16 Q And is that in visual distance from where the spill 17 occurred? 18 A Yes. 19 Q Okay. 20 A I remember this young lady hollering if I've still got 21 the dress. 22 Q Who said that? 23 A The lady right down there where I was headed. 24 Q Oh, what'd she say? 25 A You still gonna get your dress? I said --	68 1 EXAMINATION CONTINUED 2 BY MR. GOINGS: 3 Q So, someone asked you if you still wanted your dress? 4 A Yeah. 5 Q Okay. Did you get your dress? 6 A No, I didn't get it. 7 Q Have you been back into Burlington since? 8 A No, huh-uh. 9 Q Are you requesting to be fairly compensated for your 10 medical bills and your pain and suffering? 11 A Yes, please. Yes. 12 Q Now, to be clear, you hadn't paid for your dress or 13 your store merchandise by the time the fall occurred; 14 correct? 15 A No. 16 Q Okay. 17 A No. 18 Q And four or five minutes before you fell, you were not 19 even standing in the cash register location; were you? 20 MR. MERMIGES: Form. 21 THE WITNESS: No, huh-uh. I hadn't gotten up 22 there yet. About five minutes. I told you, when me 23 and my daughter got up there, there was one gentleman 24 in front of us, and after the gentleman got called, I 25 was next. My daughter was behind me waiting on the

69 1 next one to call her. 2 EXAMINATION CONTINUED 3 BY MR. GOINGS: 4 Q To the best of your ability, have you tried to give 5 truthful and accurate testimony here today? 6 A Yes, I have. 7 Q Okay. Thank you very much, ma'am. 8 A Yes. 9 FURTHER EXAMINATION 10 BY MR. MERMIGES: 11 Q I've got a few more questions. Before you testified 12 today, you had the chance to watch the entire video; 13 isn't that right? 14 A I have seen portions of it. 15 Q So, you haven't actually watched the entire video with 16 your lawyer? 17 A I've seen portions of it. 18 Q What parts have you seen? 19 A Where I'm going down. 20 Q Anything else? 21 A No. I wanted to see the fall. I wanted to know what 22 happened. 23 Q Your -- you testified through your lawyer that this 24 young lady, Ms. Simon -- her name is Ms. Simon, just so 25 you know.	71 1 Q And she was looking at something in her hand? 2 A Something in her hand. I can't swear on a stack of 3 Bibles it was a phone. 4 Q Okay. Nothing further. 5 FURTHER EXAMINATION 6 BY MR. GOINGS: 7 Q Just one clarification. It's my understanding that I 8 didn't ask, nor did you answer in the affirmative that 9 she had a phone. I indicated that it was told by 10 Burlington that they believe she had a phone; is that 11 correct? 12 A I didn't -- yeah. 13 Q Okay. Did you see her during the fall? 14 A No, I didn't. 15 Q Okay. 16 A I think she was just walking by, so she was so 17 noticeable by the long braids. 18 Q Okay. You just know you recall an employee with long 19 braids? 20 A Braids walking by me, looking down. 21 Q Okay. 22 A That's it. 23 Q And sitting here today, you don't have the video in 24 front of you. You don't know how long it was when she 25 walked by the location of the spill verses how long it
70 1 A Mm-hmm. 2 Q The cashier, that she was playing on her phone; is that 3 right? 4 A I said she was looking at something. 5 Q Okay. Well, your lawyer asked you if she was playing 6 on her phone and you said yes; didn't you? 7 MR. GOINGS: Object to the form of the question. 8 EXAMINATION CONTINUED 9 BY MR. MERMIGES: 10 Q Didn't you answer his question "yes" when he said she 11 was playing on her phone? 12 MR. GOINGS: Object to the form of the question. 13 THE WITNESS: What did I say? I said she was 14 looking at her phone. I can't swear it was a phone. 15 She was looking at something. 16 MR. MERMIGES: Okay. 17 THE WITNESS: She walked by. 18 EXAMINATION CONTINUED 19 BY MR. MERMIGES: 20 Q She was looking at something in her hand? 21 A Yes. 22 Q And you remember that from the actual accident or from 23 the video? 24 A When she walked by me, I'm coming up through there, 25 right after she come from around that counter.	72 1 took for you to actually walk past the spill; correct? 2 A No, I can't. 3 Q Okay. If you had the video, that could help you out, 4 but sitting here today, you don't have the video; do 5 you? 6 A No, I don't. 7 Q Okay. 8 A Huh-uh. 9 Q But you do remember a store clerk in the area of the 10 cash registers with long braids; correct? 11 A Yes. All I remember, she coming from behind the 12 counter walking by. 13 Q Okay, all right. Thank you. No further questions. 14 FURTHER EXAMINATION 15 BY MR. MERMIGES: 16 Q Just to be clear -- 17 A Mm-hmm. 18 Q -- you said that you remember her walking by you 19 looking down, and you held up your hands in front of 20 your face? 21 A I said, she had her hands up and -- 22 Q And was looking down at her hands? 23 A Yeah, that's right. I can't say it was a phone. I 24 can't say. 25 Q You're not certain it was a phone?

73 1 A No, I'm not. 2 Q But she was looking at something in her hands? 3 A Yes. 4 Q Nothing further. 5 (WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION 6 WAS CONCLUDED AT 3:34 P.M.) 7 (DEPONENT HAS WAIVED READING AND SIGNING.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	
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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,) 30(B)(6) DEPOSITION VS.) OF BURLINGTON COAT FACTORY OF) PAMELA ROBIN ARSENAULT SOUTH CAROLINA, LLC AND) BURLINGTON COAT FACTORY DIRECT) CORPORATION,) DEFENDANTS.) 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. C O P Y	3 EXHIBITS PLAINTIFF'S EXHIBIT NUMBER 1 DOCUMENT ENTITLED "BURLINGTON THE HEART OF SUCCESS CORE VALUES"-----18 PLAINTIFF'S EXHIBIT NUMBER 2 DOCUMENT ENTITLED "LOSS PREVENTION DEPARTMENT PROCEDURAL MANUAL"-----21 PLAINTIFF'S EXHIBIT NUMBER 3 DOCUMENT ENTITLED "BURLINGTON ASSOCIATE HANDBOOK OUR KEY TO SUCCESS FOR CONTINENTAL US STORES"-----38 PLAINTIFF'S EXHIBIT NUMBER 4 DOCUMENT ENTITLED "BELIEVE IN SAFETY"-----44 PLAINTIFF'S EXHIBIT NUMBER 5 DOCUMENT ENTITLED "TOPIC: ILLNESS AND INJURY PREVENTION PROGRAM"-----47 PLAINTIFF'S EXHIBIT NUMBER 6 INCIDENT REPORT-----54 PLAINTIFF'S EXHIBIT NUMBER 7 PACKET OF FIVE PHOTOGRAPHS-----57 PLAINTIFF'S EXHIBIT NUMBER 8 BLANK SHEET OF PAPER-----61 PLAINTIFF'S EXHIBIT NUMBER 9 PDF FILE OF A GATEWAY PORTAL-----71 PLAINTIFF'S EXHIBIT NUMBER 10 DOCUMENT ENTITLED "SAFETY TIPS IT ALL BEGINS WITH YOU"-----75 PLAINTIFF'S EXHIBIT NUMBER 11 PACKET OF EIGHT PHOTOGRAPHS-----76
2 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 INDEX STIPULATIONS-----4 EXAMINATION BY MR. GOINGS-----4 EXAMINATION BY MR. MERMIGES-----103 CERTIFICATE-----110 *THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.	4 1 STIPULATIONS 2 IT IS STIPULATED BY AND BETWEEN COUNSEL FOR 3 THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED 4 UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE 5 QUESTIONS. 6 THIS 30(b)(6) DEPOSITION IS BEING TAKEN 7 PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL 8 PROCEDURE. 9 ---- 10 THE READING AND SIGNING OF THIS 30(b)(6) 11 DEPOSITION IS RESERVED BY THE DEPONENT AND COUNSEL FOR 12 THE RESPECTIVE PARTIES. 13 WHEREUPON, PAMELA ROBIN ARSENAULT, BEING DULY 14 SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE 15 TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED 16 AS FOLLOWS: 17 EXAMINATION 18 BY MR. GOINGS: 19 Q Can you state your full name for the record? 20 A Pamela Robin Arsenault. 21 Q Can you spell your last name for the court reporter? 22 A Sure. A-R-S-E-N-A-U-L-T. 23 Q All right. You're here today to give testimony in a 24 case of Lallie Qualls verses Burlington Coat Factory of 25 South Carolina, LLC and Burlington Coat Factory Direct

5 1 Corp. Are you aware that we're here today for a 2 deposition? 3 A Yes. 4 Q Have you ever given a deposition before? 5 A No. 6 Q All right. So this will be your first time? 7 A Mm-hmm. 8 Q Well, I'm sure that Nick has kind of given you some 9 preliminary ground rules and kind of what to expect. A 10 couple things to help the process go a little more 11 smoothly and help the court reporter, make sure your 12 answers are audible. You can shake your head or nod 13 your head, but make sure you say yes or no. 14 A Okay. 15 Q And try to let me finish my question before you answer 16 your question. You may know exactly where I'm going 17 with the question, but to help the court reporter so 18 we're not talking over each other, let me finish before 19 you answer. I'm gonna let you finish your answer 20 before I go into the next question; is that fair? 21 A Yes. 22 Q If you answer my question, I'm gonna assume that you 23 understand my question; is that fair? 24 A Yes. 25 Q If you need me to clarify my question or you don't	7 1 A I was. 2 Q All right. What's your birth date? 3 A August 27th. 4 Q And where did you grow up? 5 A Massachusetts. 6 Q And how long have you lived here in South Carolina? 7 A I think it's been six years now. Six years. 8 Q Can you describe for me your educational and work 9 history, up until the present point? 10 A Sure. I graduated -- 11 Q In a chronological order. 12 A I graduated from high school in 2000 and I went to 13 college for a year. Actually, sorry, for about half a 14 semester, and then started working with TJ Maxx, and 15 ended up really liking the retail job, and got promoted 16 quickly. And just never returned back to school. 17 Q Okay. So that was your education? 18 A Mm-hmm. 19 Q Work history, you started working with TJ Maxx -- 20 A In 2001. 21 Q In 2001, and you now work for Burlington; is that 22 correct? 23 A Yes. 24 Q Explain to me, if you will, you know, your work history 25 with TJ Maxx, your positions, approximate dates of any
6 1 understand my question, under the rules, you have to 2 ask me to clarify my question or rephrase it. Not 3 Nick, who is also in the room; okay? 4 A Mm-hmm. 5 Q If you -- which normally I do in common talk, say mm- 6 hmm or uh-uh, try to refrain from that to the extent 7 that you can because it doesn't show up correctly on a 8 transcript. 9 A Okay. 10 Q So, say yes or no and if you say, mm-hmm, I may say, is 11 that a yes or is that a no, just so the record is 12 clear; okay? 13 A Okay, I understand. 14 Q Do you have any questions for me before we begin? 15 A No. 16 Q I'm gonna start and ask you some kind of background 17 questions about you and your work at Burlington, and 18 then we're gonna kind of get into the specifics related 19 to the fall that Ms. Qualls had at the store. 20 A Okay. 21 Q So, background, I hate to ask ladies this question, but 22 how old are you? 23 A I'm 35. 24 Q Thirty-five, okay. Well, I am 36, so I've got you 25 beat. Were you born in '81?	8 1 promotions, and then when you started to work at 2 Burlington and what you've done for Burlington. 3 A Okay. So I started with TJ Maxx in 2001. I was 4 actually a backroom associate. I used to hang the 5 clothes and sort the trucks. I would probably say I 6 did that for about a year and they promoted me to a 7 full-time sales floor associate. So that would've been 8 2002. I did that for two or three years, and then got 9 promoted to an assistant manager, and then I was 10 assistant manager with them until I left the company in 11 2009. I apologize, 2010. I left there in 2010. I 12 started with Burlington. 13 Q Now, let me tell you, there's one little rule and I 14 don't care about it for purposes -- 15 A Sorry. 16 Q -- of this question. You can't ask your lawyer to help 17 you. That's just the rule. I don't really mind, but 18 if you don't know the exact date, I'm not holding you 19 to the exact dates. 20 A Okay. 21 Q Okay? Just give me kind of approximates. 22 A I think it was 2012 that I started with Burlington. 23 Q And why did you leave TJ Maxx? 24 A I moved down here to be closer to my family and they 25 didn't have a position for me that we had agreed upon,

9 1 so -- 2 Q Okay. Were you terminated from TJ Maxx or did you 3 leave voluntarily? 4 A I was terminated. 5 Q Okay. 6 A Mm-hmm. 7 Q What grounds? 8 A I didn't like the job that they put me into, so I 9 didn't show up. 10 Q Okay. What job did they put you into? 11 A It was an assistant store manager of merchandising, but 12 I was originally transferred to come down as a store 13 manager. They promised me my own store. 14 Q Okay. 15 A So, sorry, long story. 16 Q So, you originally had a job with TJ Maxx as a store 17 manager here in South Carolina? 18 A I interviewed for a position and was offered a store 19 manager position, yes. 20 Q Okay. 21 A When I got down here, they filled it. 22 Q I understand. So, you came to South Carolina thinking 23 that you had a store manager position at TJ Maxx? 24 A Mm-hmm. 25 Q Is that a yes?	11 1 Q Okay. What is your current address? 2 A 495 Silver Lake Road in Duncan, South Carolina. 3 Q Okay. Have you lived at this address since moving to 4 South Carolina? 5 A No. 6 Q Okay. How long have you lived at this address? 7 A For three years. 8 Q All right. So give me the timeframe that Burlington 9 started to recruit you. 10 A It was June or July of 2012. 11 Q How did those events unfold with Burlington recruiting 12 you? Did you -- I guess, did you apply to work for 13 Burlington or did Burlington seek you out? 14 A I had to -- I believe in the process of me applying for 15 some jobs, that Burlington was one of them and when 16 they hadn't called and I accepted the Rue 21 position, 17 and I kind of forget about them. And then I believe I 18 had gotten a phone call and I told them that I already 19 got a job, and they came into my store, actually, and 20 just asked me some questions about my merchandising 21 skills and my background history. And they offered me 22 -- they asked me for an interview, and so we had more 23 of a professional interview at their store, so -- 24 Q Okay. Who came to meet you in, I take it, Rue 21? 25 A Mm-hmm.
10 1 A Yes. 2 Q Okay. 3 A Sorry. 4 Q You're good. And in that process, you found out that 5 they actually filled the store manager job with someone 6 else and they -- 7 A Mm-hmm. 8 Q -- offered you a position that you did not want; is 9 that correct? 10 A Yes. 11 Q So you just stopped working for TJ Maxx? 12 A Yes. 13 Q All right. And did you apply to work somewhere else? 14 A I took some time off for a little while to be with my 15 family since I had just moved down here, and I believe 16 I was a bartender for a little bit so I could meet some 17 -- meet people, and then I started working with Rue 21 18 for maybe six months. And then that's when Burlington 19 recruited me, I guess you could say. They were looking 20 for some people to run their stores. They found me. 21 Q Okay. You said your -- you have family that lives in 22 South Carolina? 23 A Mm-hmm. 24 Q Who lives in South Carolina? 25 A My mother and my two brothers.	12 1 Q Who came to meet you? 2 A I don't remember. 3 Q Okay. But they did meet you and then eventually, you 4 had an interview -- 5 A Mm-hmm. 6 Q -- to go to? 7 A Yeah. 8 Q And where was your interview in Burlington? 9 A It was at the Spartanburg location. 10 Q Okay, and did you accept the job at Burlington? 11 A I did. 12 Q Okay. Was this in June or July of 2012? 13 A Around that time; yes. 14 Q Okay, and what position did you accept? 15 A Assistant store manager. 16 Q Was it the assistant store manager of the Spartanburg 17 location? 18 A Yes. 19 Q Is there only one location in Spartanburg? 20 A Yes. 21 Q Okay. And how long did you work as the assistant store 22 manager in Spartanburg for Burlington? 23 A I believe, a year and a half. 24 Q Okay. Continue on. 25 A And then, I believe, for three months, I was interim

13 1 store manager when the store manager that had hired me 2 left, and the store did well, so they promoted me to 3 store manager. And I was there, in the Spartanburg 4 location, for about another year, in which they 5 promoted me again to the Columbia location on Bush 6 River Road. There's two here, so -- 7 Q What are the locations for the South Carolina Columbia 8 Burlington stores? There's one on Bush River Road 9 and -- 10 A And then the other one is Two Notch Road. 11 Q Are you currently employed by Burlington? 12 A Yes. 13 Q And how long have you been at the Bush River store 14 location? 15 A I was there for two and a half, three years, and then 16 they transferred me to Greenville in August of 2016. 17 Q So, currently, you work at the Greenville location? 18 A Yes. 19 Q So tell me if I'm correctly -- 20 A That's all. 21 Q -- summarizing this. You went to work as an assistant 22 store manager at the Spartanburg location of Burlington 23 at first? 24 A Yes. 25 Q And you worked there for a period time. Then, you	15 1 Q Okay. 2 A So -- 3 Q Give me approximate years you think you worked. 4 A 2013 to 2016. 5 Q Why were you transferred from the Spartanburg location 6 to the Columbia location? 7 A Promotion. 8 Q Okay. 9 A It's a higher volume store. 10 Q Okay. And why were you transferred from the Bush River 11 Road location in Columbia to the Greenville store? 12 A I had moved to Duncan and it was a 90-mile drive back 13 and forth, so I was asking my boss to get me closer to 14 home. Plus, I was in the process of getting married 15 and my husband didn't want me driving that far there 16 and back. 17 Q Okay, so did you move back to Duncan due to getting 18 married? 19 A Mm-hmm. 20 Q Is that a yes? 21 A Yes. 22 Q Now, you're -- 23 A Sorry. 24 Q I'm not picking on you. You understand I'm just 25 trying --
14 1 became the interim store manager for the Spartanburg 2 location; correct? 3 A Yes. 4 Q And then you did so well that they promoted you to 5 store manager at the Spartanburg location; correct? 6 A Yes. 7 Q And you did so well that they then gave you the store 8 manager position for the Burlington location in 9 Columbia, South Carolina on Two Notch Road; correct? 10 No, Bush River Road. 11 A Yes, Bush River Road. 12 Q Okay, and you worked at that location until August of 13 2016? 14 A Yes. 15 Q And then in August of 2016, you went back to Greenville 16 to work for the Greenville location of Burlington as 17 its store manager? 18 A Yes. 19 Q Okay. We got that right? 20 A Mm-hmm. 21 Q All right. How long did you work at the Bush River 22 location here in Columbia? 23 A I don't think it was quite three years, so it was -- I 24 can't remember the exact date of when I started, but I 25 know that I was there for at least three Christmases.	16 1 A No, I forget. You're fine. 2 Q No, you're good. You're good. We can help each other. 3 A Okay. 4 Q When you moved to the -- so you relocated to the 5 Greenville location because you were getting married or 6 you had gotten married? 7 A I was in the -- we were living together and we were in 8 the process of getting married and -- 9 Q Got you. Are you currently married today? 10 A Yes. 11 Q And your husband, what's his name? 12 A Craig Vahle. 13 Q Craig Vahle. And what does Craig Vahle do? 14 A He runs the IT department with Synnex Group 15 Corporation. 16 Q Okay, let's go off the record real quick. 17 OFF THE RECORD 18 EXAMINATION CONTINUED 19 BY MR. GOINGS: 20 Q You said your husband works for? 21 A Synnex. 22 Q Synnex. What does he do for Synnex? 23 A He runs the IT department. 24 Q Okay. Do you and your husband have any children? 25 A No.

17 1 Q Do you have any children? 2 A No. 3 Q Have you ever been married previously? 4 A No. 5 Q Okay. You have been the store manager of the 6 Greenville location since August 2016; correct? 7 A Yes. 8 Q Okay. Do you have a title other than store manager or 9 is it just store manager? 10 A Just store manager. 11 Q Okay. Are you familiar with the policies and 12 procedures of Burlington? 13 A Yes. 14 Q Okay. And are policies and procedures of the store 15 given to store associates and people who work in the 16 store for Burlington? 17 A Yes. 18 Q When you are paid each week or every two weeks or every 19 month, however you're paid, are you paid by the 20 company, Burlington Coat Factory of South Carolina, LLC 21 or are you paid by Burlington Coat Factory Direct Corp, 22 or is it another entity in which you're paid? 23 MR. MERMIGES: So, hold on. I'm gonna interject 24 and say that that is beyond the scope of this notice. 25 The witness is not prepared to give a correct answer to	19 1 HEART OF SUCCESS CORE VALUES.") 2 EXAMINATION CONTINUED 3 BY MR. GOINGS: 4 Q Are you familiar with this document marked as Exhibit 5 I? 6 A Yes. 7 MR. GOINGS: I can print off additional copies if 8 you need them. 9 MR. MERMIGES: It's fine. 10 EXAMINATION CONTINUED 11 BY MR. GOINGS: 12 Q Okay. What is this document? 13 A It discusses Burlington's core values and what every 14 associate and manager, what they are supposed to, you 15 know, hold our standards to every day while working. 16 Q Are these core values given to each employee of the 17 store? 18 A Yes. 19 Q Okay. When is it given to them? 20 A In orientation. 21 Q Okay, and is it handed to them, you know, paper copy or 22 is it shown to them in some type of multimedia 23 presentation? 24 A It's now on computer. 25 Q Okay. So when someone has their orientation, they're
18 1 that. I don't see that in this notice. However, if 2 from her personally she can provide an answer, I've got 3 no problem with her giving it to you, but it's got to 4 be subject to that objection. 5 MR. GOINGS: I don't have a problem with that, 6 Nick. 7 MR. MERMIGES: I'm not trying to -- you know, it's 8 just I don't want her to -- you know? If you know what 9 specific company pays your paycheck, then -- 10 THE WITNESS: I believe it's Direct. I've never 11 heard of Burlington of South Carolina. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q I'm gonna hand you some documents for you to identify. 15 Let's kind of go over them. These are documents that 16 have been produced in discovery in this case and I just 17 want to just run through them with you, and you've 18 probably recognized them. If you haven't recognized 19 them, just let me know; okay? 20 A Okay. 21 Q First document I'm gonna hand you what looks to be a 22 multi-page document titled "Burlington Winning 23 Together, The Heart of Success Core Values." 24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 1 WAS MARKED FOR 25 IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "BURLINGTON THE	20 1 in front of a computer looking at items? 2 A Yes. 3 Q Okay, and this is something they would look at? 4 A Mm-hmm, yes. 5 Q How would you describe the core values of Burlington 6 Coat Factory? 7 A They're made up of, you know, three steps. Builds 8 teams and partnership, delivers results and develops 9 trust and respect, so mainly things that most people 10 try to live by as far as respecting each other and 11 helping each other out, teamwork. 12 Q Things that you learn in kindergarten? 13 A We try. 14 Q Yeah. 15 A Yeah. 16 Q So, this would be given to all new employees? 17 A Yes. 18 Q And you expect the employees of Burlington Coat Factory 19 to follow the core values; correct? 20 A Yes. 21 Q Okay. And you as a store manager, you help to promote 22 the core values among you and the other associates; 23 correct? 24 A Of course, yes. 25 Q Okay. I'm gonna hand you what has been marked as

21 1 Exhibit 2 and this says, "Loss Prevention Department 2 Burlington Procedural Manual." 3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 2 WAS MARKED FOR 4 IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "LOSS PREVENTION 5 DEPARTMENT PROCEDURAL MANUAL".) 6 EXAMINATION CONTINUED 7 BY MR. GOINGS: 8 Q If you could just look through this and I'm gonna ask 9 you if you've ever seen this document before. 10 A I can't be 100 percent sure this is exactly what I was 11 given in my orientation, but a lot of the content in 12 here is stuff that I have seen before; yes. 13 Q Okay. This says, "Loss Prevent Department Procedural 14 Manual." Is this a manual that is kept at every store 15 from a loss prevention standpoint? 16 A Yes. 17 Q Okay. 18 A Or in -- now, it must be in computer form for them, for 19 an associate. A loss prevention associate. 20 Q Okay, so it may not be printed off in a -- printed off 21 and put in a binder -- 22 A Mm-hmm, right. 23 Q -- like it was a long time ago? 24 A Mm-hmm, right. 25 Q Now, it's possibly on the --	23 1 how many loss prevention employees did you have? 2 A I had two at the time. 3 Q Okay. Does it help that they're in plain clothes for 4 purposes of promoting or determining potential 5 shoplifters? 6 A Right. 7 Q Okay. 8 A If they had seen something that they can't have access 9 to on camera, they can look at it on the floor, but 10 they would take the vest off. 11 Q I got you. Okay. Does this manual right here, loss 12 prevent manual, have anything to do with safety in the 13 store or safety regarding hazards, such as water or 14 spills on the floor? 15 A I believe there is something in here. 16 Q Okay. Show me where that is. And I'm not challenging 17 you. I'm just trying to figure it out. 18 A Okay. 19 Q I figure you know these documents better than I would. 20 A Right here. 21 Q Let the record reflect that you are showing me what is 22 Page 50 to Exhibit 2; correct? 23 A Mm-hmm, right. 24 Q And this section is regarding safety. On top, it says, 25 "It is a responsibility of all Burlington Coat Factory
22 1 A Correct. 2 Q -- on the computer? 3 A Mm-hmm. 4 Q It's accessible to store employees; correct? 5 A Not -- no, not all store employees. 6 Q It's accessible to loss prevention employees? 7 A Correct. 8 Q Okay, and help me understand. How many loss prevention 9 employees are in any given store -- 10 A Depending on -- 11 Q -- or is there loss prevention employees in a store? 12 A It depends. All stores should at least have one, 13 depending on volume. There are some stores that don't 14 have any just because of -- well, I'm not sure what the 15 reason is, but there should be one in each store, yeah, 16 depending on volume. 17 Q Is a loss prevention employee, are they dressed in a 18 Burlington uniform or are they plain clothed? 19 A They're in plain clothes, but they're required to wear 20 a vest that says "loss prevention" on the back, I 21 believe, and it has Burlington's shield on the front. 22 Q Okay. How many loss prevention employees do you 23 currently have in your store in Greenville? 24 A I currently do not have one. 25 Q Okay. And the Bush River Road location in Columbia,	24 1 employees to actively participate in efforts to improve 2 the safety of our stores." Do you agree with that 3 statement? 4 A Yes. 5 Q Okay. Then underneath it, it has 11 points. Actually, 6 it says, a list of ten action points designed to ensure 7 a safe environment for our customers and loss prevent 8 associates, but then, actually, it's 11 items, not ten. 9 Do you see that? 10 A Right. 11 Q Okay. Either way, do you see that there are 11 items 12 under the section, critical standards for safety? 13 A Yes. 14 Q Okay. And do any of these items deal with debris or 15 spills at or around flooring? 16 A Yes, Number 8. 17 Q Okay. What does it say? 18 A Debris/spills, all floors must be kept clean and clear 19 at all times. They should be inspected often. 20 Q Do you agree with that statement? 21 A Yes. 22 Q Okay. And why is it important for floors to be kept 23 clean and clear at all times? 24 A So that it doesn't cause a hazard to anyone. 25 Q Okay. And why is it important for floors to be

25 1 inspected often? 2 A In case there's something that is on the floor that 3 someone didn't catch. 4 Q Okay. Is spills or debris on the floor, is that a 5 safety concern for customers in the store? 6 A Of course; yes. 7 Q Okay. And would you agree with me that trips or slips 8 due to hazards on the floor is a foreseeable hazard in 9 a Burlington store? 10 MR. MERMIGES: I'm gonna object to the form 11 because I believe that calls for a legal conclusion, 12 but I'm gonna -- the witness can go ahead and answer. 13 THE WITNESS: Is it a hazard to a customer if 14 there's something on the floor? Yes. 15 EXAMINATION CONTINUED 16 BY MR. GOINGS: 17 Q You can say it like that. Okay. You agree that a 18 spill or debris on the floor can become a hazard for a 19 customer? 20 A Yes. 21 Q Okay. Why? 22 A Because they could slip or something. 23 Q Okay. Is a spill on the floor -- does that constitute 24 a foreseeable hazard that could cause harm to a 25 customer?	27 1 cords should be secured. Why is that? 2 A I don't even know what wrap desks are. 3 Q Okay. 4 A So, I apologize. 5 Q I understand. 6 A I don't have one in my store, anyway. 7 Q Okay. It says the floors behind wrap desks. 8 A Oh. That might mean the old baby registry desks. They 9 could sometimes have cords because of the wiring that's 10 there, so just to be free of that, in case a customer 11 walked behind the desk and -- 12 Q Okay. That's another policy of the store, to deter 13 trip or slip hazards; correct? 14 A Correct. 15 Q Okay. The next one is ladders. It says, a ladder and 16 step stool must be in every stock room. Nothing else 17 should be used for reaching. Neither ladders nor step 18 stools should be left on the selling floor unattended. 19 Why is that a policy? 20 A So that anyone that's not used to maybe going on a 21 ladder or knows how to use one properly would, you 22 know, fall off it or whatever the reason may be. 23 Q Okay. 24 A Just to prevent hazard. 25 Q And the policy is to make sure that ladders and step
26 1 MR. MERMIGES: Same objection, but I'm gonna go 2 ahead -- just go ahead and answer. 3 THE WITNESS: Yes. 4 EXAMINATION CONTINUED 5 BY MR. GOINGS: 6 Q Okay. Do any of these other items, these 11 items, 7 have anything to do with preventing injury to patrons 8 or customers in the store? 9 A Preventing injury? 10 Q Yes, ma'am. 11 A A lot of these are. Well, maybe rolling racks, the 12 rolling racks. 13 Q Let's go through and just quickly -- 14 A Okay. 15 Q Rolling racks. It says, all empty rolling racks must 16 be removed from the floor without exception. Why is 17 that a policy of the store? 18 A Because customers or maybe even associates who aren't 19 paying attention could walk and trip over the rolling 20 rack when it's left out. 21 Q Okay, so rolling racks can be a tripping hazard; 22 correct? Is that a yes? 23 A Yes, sorry. 24 Q Wrap desks. The floors behind all wrap desks must be 25 kept completely clear at all times. All electrical	28 1 stools are not left on the selling floor unattended, 2 because that could create a hazard? 3 A Right. 4 Q Okay. And then the next one is caution cones. Caution 5 cones and rain mats should be used during inclement 6 weather and during floor maintenance. Why is that? 7 A There may be some wet spots as they're drying, so to 8 let customers know that this is an area that could 9 possibly be wet. 10 Q Okay, and it's important to warn customers of potential 11 hazards in the event that a floor could be wet or 12 slippery; correct? 13 A Yes. 14 Q Okay. Elevators, escalators, is that applicable in any 15 of your stores? 16 A No. 17 Q Okay. And there was not an elevator or an escalator at 18 the Burlington location on Bush River Road; correct? 19 A Correct. 20 Q Okay. Visual displays. It says, visual displays must 21 be inspected daily to ensure that they are secure and 22 free of defect. Why is that? 23 A In case something were to fall on a customer. We 24 wouldn't want those displays to fall on anyone or 25 anyone get hurt.

29 1 Q Okay. Have you ever been in a store when a display 2 fell on a customer or an associate? 3 A Yes. 4 Q Okay. Displays can fall; right? 5 A Mm-hmm. 6 Q Is that a yes? 7 A Yes. 8 Q So it's important to make sure they're secured so they 9 don't fall; correct? 10 A Correct. 11 Q All right. And that is to prevent a potential hazard 12 from a visual display; correct? 13 A Yes. 14 Q Okay. Next one is fixtures and glass. Fixtures and 15 glass must be inspected daily to ensure that they are 16 stable and defect free. All fixtures with empty arms 17 should be flagged. Explain this one to me. 18 A For instance, some of the fixtures that we have at the 19 front of the store, they're called four ways and they 20 have arms. And a lot of times, if it's not -- doesn't 21 have any kind of merchandise at all on it, you could 22 bump into it or, you know, something along the lines of 23 that, so try to put merchandise on it or some sort of 24 flag to let people know that it's there. 25 Q Next one is stock room, back areas. It says that the	31 1 non-compliance to these points should be brought to the 2 attention of the operations manager or store manager; 3 you see that? 4 A Yes. 5 Q Do you agree with that? 6 A Yes. 7 Q Who is the operations manager verses the store manager? 8 A They run the building as far as all of the -- maybe the 9 hiring and any of these instances to correct them. 10 Q Is the operations manager above you or below you? 11 A Below me. 12 Q Okay, so you're the supervisor for the operations 13 manager? 14 A Yes. 15 Q Okay. Who was the operations manager at the Burlington 16 location, Bush River Road, at or around the date of Ms. 17 Qualls' fall? 18 A I believe it was Darrell Harmon. 19 Q Okay. Was Darrell Harmon working on the day of the 20 incident? 21 MR. MERMIGES: Object to form. 22 THE WITNESS: I don't remember. 23 EXAMINATION CONTINUED 24 BY MR. GOINGS: 25 Q So you're gonna give me some employee names throughout
30 1 areas must be clean and clear. Why is that? 2 A You don't want anyone to trip and fall. Also, there's 3 usually emergency exit doors back there so that they 4 are clean and free, so that if there was an emergency, 5 that people would be able to get out. 6 Q Okay. Hanging artwork, mirrors and similar items must 7 be checked daily to ensure that they are secure and 8 merchandised correctly. Is that similar to the item of 9 fixtures and glass that we just talked about? 10 A Correct, and also, sometimes when people are 11 rearranging things as far as artwork and, you know, 12 customer may not want something or whatever it may be, 13 they put heavier items on the top by accident and 14 sometimes if we rearrange that, then it's not the 15 heavier stuff that's on the floor. Not on the top, 16 so -- 17 Q I understand. And then the last one, Number 11, not 18 10, read that one. 19 A Broken tiles, torn carpeting and floor obstructions 20 should be secured to ensure that they do not cause a 21 slip or a trip fall. 22 Q Why is this? 23 A Someone could fall over some torn carpeting or any 24 floor obstructions. 25 Q Okay. And it says then at the end, all instances of	32 1 the deposition. I'm just gonna write them down to make 2 sure I've got everybody. 3 A Okay. 4 Q Darrell Harmon, H-A-R -- 5 A M-O-N. 6 Q -- M-O-N, and he was the operations manager; correct? 7 A Yes. 8 Q You were the store manager? 9 A Yes. 10 Q Okay. Who was the loss prevention employee/employees 11 at this time when Ms. Qualls fell? 12 A It was Jerry Williams and -- I can't remember his name. 13 I'm sorry. Carey Johnson. 14 Q Was Jerry Williams and Carey Johnson working on the 15 date of Ms. Qualls' fall? 16 A Just Jerry, I believe. 17 Q Okay. Was Darrell Harmon not working on the date of 18 the fall? 19 A I don't remember. 20 Q Okay. You were working, though; correct? 21 A I was. 22 Q Okay. 23 A Mm-hmm. 24 Q How many employees of Burlington were working that day 25 in the store, the day that Ms. Qualls fell?

33 1 MR. MERMIGES: Could we, just for a clear record, 2 specify the day, month and year that you're talking 3 about, so -- it's, obviously, July 31st, 2015, but I 4 just want to make sure the record is clear on that. 5 MR. GOINGS: Yep. 6 EXAMINATION CONTINUED 7 BY MR. GOINGS: 8 Q So, if I tell you that Ms. Qualls fell on July 31st, 9 2015 and based on the Burlington Coat Factory's 10 incident report it shows that the fall occurred at or 11 around 3:30, do you agree with that? 12 A Yes. 13 Q Okay. If I -- throughout the deposition, so the record 14 is clear, if I say, on the day that Ms. Qualls fell, do 15 you understand that I'm talking about July 31st, 2015? 16 A Yes. 17 Q Okay. So as to July 31st, 2015, you were working; 18 correct? 19 A Yes. 20 Q Darrell Harmon, you don't know? 21 A I don't remember. 22 Q Okay. Jerry Williams, you think was working? 23 A Yes. 24 Q And then Carey Johnson, you don't think was working? 25 A I don't think so.	35 1 employee than a sales employee? 2 A Technically, no. They just do a different job. 3 Q Okay. They get paid more than a sales clerk or someone 4 on the floor? 5 A Not necessarily. 6 Q Okay. When you're working as a store manager on a 7 given day, do you work the floor sometimes? 8 A Yes, mm-hmm. 9 Q Okay. Do you work the cash register sometimes? 10 A I do, yes. 11 Q Okay. Do you do stocking sometimes? 12 A Yes. 13 Q Okay. So you -- your duties, in addition to being the 14 store manager, you do it all; correct? 15 A Correct. 16 Q Okay. If there is a need at the store that day you're 17 working, you do it; correct? 18 A Correct. 19 Q So if people are standing in line to pay and the line 20 is getting long and you see the line getting long, you 21 stop what you're doing and you go to a cash register, 22 perhaps? 23 A That or I would get someone to go up there and take 24 care of the line. 25 Q I got you. Okay. Is it fair to say your job is to
34 1 Q Okay. So my previous question as to how many employees 2 were working on July 31st, 2015 at the Burlington Coat 3 Factory store on Bush River Road? 4 A I don't remember. I'm not quite sure off the top of my 5 head, but it's a Friday, so chances are, there probably 6 would've been at least 10 to 15 associates, depending 7 on the time. 8 Q Now, when you used the phrase "associates", are you 9 considered a store associate? 10 A No, that would be my direct employees. So -- 11 Q I got you. 12 A -- it would be sales floor associates and cashiers. 13 Q What about loss prevention? Would that be considered 14 different from an associate? 15 A Yeah, I guess I would separate them, too, so -- 16 Q Okay. So 15 to 16 sales employees? 17 MR. MERMIGES: She said 10 to 15. I just wanted 18 to -- 19 THE WITNESS: It's 10 -- yeah, 10 to 15 sales 20 employees and then, you know, two to three loss 21 prevention and management, I guess you could say if you 22 wanted to put it that way. 23 EXAMINATION CONTINUED 24 BY MR. GOINGS: 25 Q Now, is a loss prevention employee a higher ranked	36 1 make it happen at the store? 2 A Pretty much, yeah. 3 Q Okay. So in addition to you, there would be 10 to 15 4 sales employees and two to three loss prevention? 5 A Slash managers, including him and -- or including loss 6 prevention with management. There's probably one or 7 two other managers with me at the time. 8 Q Okay. Who were the managers working that day? 9 A I'm not sure if they were there that day, but I had two 10 other assistant managers besides Darrell Harmon. It 11 was Tina Gullo and Marcia Eaves. 12 Q Could you spell that for the court reporter? 13 A Gullo? 14 Q Both names. 15 A Or both? T-I-N-A G-U-L-L-O and Marcia Eaves, M-A-R-C- 16 I-A-E-A-V-E-S, I believe. 17 Q Assistant manager on duty, Marcia Eaves and Tina Gullo? 18 A Correct. 19 Q You're sure they were working that day? 20 A I'm not positive. 21 Q Okay. You believe they were working that day? 22 A They could've been. I apologize. I don't remember. 23 Q Okay. 24 A It was a Friday. We tend to usually work on busier 25 days, all of us.

37 1 Q Okay. 2 A So — 3 Q More likely than not, they were working, but obviously, 4 you don't have the employee logs for that day in front 5 of you; is that fair to say? 6 A Correct, yes. 7 Q Okay. Oftentimes I restate what you said, just to make 8 sure I understand. 9 A Okay. 10 Q Okay? So on Exhibit 2, are there any other pages to 11 this document that deal with safety, other than Section 12 9, and that includes Page 50, 51, 52 and 53? 13 A No. 14 Q Okay. Is it the responsibility of the loss prevention 15 department to respond to accident scenes? 16 A Unless a manager responds first. 17 Q Okay. 18 A I wouldn't — he wouldn't need to respond if I was 19 there. 20 Q Okay. But between a loss prevention employee and a 21 store clerk, the loss prevention employee would respond 22 to the accident scene over the clerk; correct? 23 A Right, yes. 24 Q Look at Pages 52 and 53 regarding responding to an 25 accident or injury, and my question is: Do you believe	39 EXAMINATION CONTINUED 1 BY MR. GOINGS: 2 Q Are you familiar with this document? 3 A Yes. 4 Q Is this a document that is given to all associates? 5 A It is part of their on-boarding packages when they do 6 their paperwork online through the computer, so yes, it 7 is available to them. 8 Q Okay. Are they expected to read and understand the 9 associate handbook as a part of their job with 10 Burlington? 11 A Yes, and they actually have to sign off that they 12 received it. 13 Q Okay. 14 A I mean, not necessarily read it, but received it. 15 Q I understand. And that's a — that is a requirement of 16 employment; correct? 17 A Yes. 18 Q And is the associate handbook made available to the 19 employees if ever they have questions regarding their 20 job duties, descriptions and performance obligations? 21 A Yes, they can log on to the portal and get it at any 22 time. 23 Q Got you. So, it's made available to an associate any 24 time they need it? 25
38 1 that these steps and policies of Burlington regarding 2 responding to an accident or an injury are reasonable 3 and necessary? 4 A Yes. 5 Q And it says, the loss prevention associate, but would 6 you agree that if you are the manager at the store and 7 you respond, then these policies and procedures equally 8 apply to you as the store manager? 9 A Of course; yes. 10 Q Okay. Other than this section, Section 9 regarding 11 safety, is there any other provisions in the loss 12 prevention document, which is Exhibit 2, that deal with 13 injuries to customers? 14 A No. 15 Q Okay. It seems like the rest of this handbook deals 16 with shoplifting and other instances related to loss of 17 inventory; is that correct? 18 A Correct, yes. 19 Q I'm gonna hand you what has been marked as Exhibit 3. 20 And this says, "Burlington Associate Handbook, Our Key 21 to Success for Continental U.S. Stores." 22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 3 WAS MARKED FOR 23 IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "BURLINGTON 24 ASSOCIATE HANDBOOK OUR KEY TO SUCCESS FOR CONTINENTAL U.S. 25 STORES".)	40 1 A Correct. 2 Q Okay. Does this associate handbook have anything to do 3 with safety of customers? 4 A Yes. 5 Q This is Section 7; correct? 6 A Yes. 7 Q So, for the record, that would be Pages 44, 45; is that 8 correct? 9 A Yes, mm-hmm. 10 Q Okay. It says, "The company is concerned with the 11 safety and health of its associates and the general 12 public." Do you agree with that statement? 13 A Yes. 14 Q Okay. We seek to provide a safe work environment and 15 to prevent accidents and casualties caused by 16 associates under the influence of controlled substance 17 or alcohol; do you agree with that? 18 A Yes. 19 Q Okay. And do you agree that a safe work environment in 20 preventing accidents goes beyond just associates who 21 are under the influence of drugs or alcohol; correct? 22 A Yes. 23 Q Okay. Another sentence on Page 44 says, "We are 24 committed to occupational health and safety and will 25 comply with all applicable safety and health laws,

41 1 regulations and industry standards." Do you agree with 2 that statement? 3 A Yes. 4 Q Okay. It says, "All work areas should be kept clear of 5 items that can cause slips or falls, including debris, 6 spills, electrical cords, et cetera." Do you agree 7 with that? 8 A Yes. 9 Q Okay. Do you agree that debris on the floor can cause 10 a slip or fall? 11 A Yes. 12 Q Do you believe that a spill on the floor can cause a 13 slip or fall? 14 A Yes. 15 Q Do you agree that electrical cords can result in a slip 16 or a fall? 17 A Yes. 18 Q Okay. Then it says, "If an associate observes an 19 unsafe or potentially hazardous condition, they should 20 report it to their supervisor or contact a member of 21 the risk management department" with the phone number. 22 Do you -- are you aware of that? 23 A Yes. 24 Q Do you also agree, though, that if an associate 25 observes a potentially unsafe or hazardous condition,	43 1 related specifically to workplace safety, all 2 associates should review the Workplace Safety Rules for 3 Burlington document, located in the Burlington Accident 4 Prevent Program Manual. Ask your supervisor or manager 5 for the manual or on the portal under safety." My 6 question is: Are you familiar with this Workplace 7 Safety Rules for Burlington document? 8 A Something along the lines of that, yes. 9 Q What does that document look like? 10 A As far as I remember, it's not in paper form anymore. 11 It's on -- number one, it's part of their -- part of e- 12 learning and on-boarding courses for new hires and 13 associates. 14 Q Okay. 15 A But also, you can access it under the portal, so at any 16 time, if somebody wanted to, you know, look it up, they 17 can do that. 18 Q Okay. And I have a couple more documents that I want 19 to show you and tell me if you think these documents 20 are that Workplace Safety Rules for Burlington, because 21 in reading Exhibit 3, which is the associate handbook, 22 it seems like there is a document that it's actually 23 called, Workplace Safety Rules for Burlington; do you 24 see that? 25 A Yes.
42 1 that they should take immediate action to try to warn 2 any potential customers of that condition or take 3 action to remedy it immediately? 4 A Yes. 5 Q Okay. So, if an associate observes an unsafe or 6 potentially hazardous condition, they should take 7 immediate action to warn or fix the problem in addition 8 to reporting it to a supervisor; correct? 9 A Correct. 10 Q Okay. Because sometimes, there can be a hazard on the 11 floor that requires immediate attention; correct? 12 A Right. 13 Q And waiting to tell a supervisor or the store manager 14 could result in additional harm or accidents occurring; 15 correct? 16 A Correct. 17 Q Okay. Because isn't it true that if you have a spill 18 or something on the floor that can cause a slip and 19 fall, that it's important to take immediate action and 20 not wait? 21 A Yes. 22 Q Okay. And that is ingrained or should be ingrained in 23 the values of store associates at Burlington; correct? 24 A Yes. 25 Q Okay. And then it says, "For more detailed guidelines	44 1 Q Okay. I just have not seen a document that actually is 2 titled that. 3 A I haven't either. 4 Q Okay. Let me show you what is marked as Exhibit 4. 5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 4 WAS MARKED FOR 6 IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "BELIEVE IN 7 SAFETY") 8 EXAMINATION CONTINUED 9 BY MR. GOINGS: 10 Q Is this the document referenced in the associate 11 handbook? 12 A I believe so. 13 Q Okay. Are you positive? 14 A No. 15 Q Or is that something you probably would need to look 16 into? 17 A I would probably need to look into. I'm not positively 18 sure. 19 Q Okay. Let's go off the record real quick. 20 OFF THE RECORD 21 EXAMINATION CONTINUED 22 BY MR. GOINGS: 23 Q All right. So, we went off the record. I understand 24 we're gonna take a break in about 15 minutes and you're 25 gonna try to log into the portal to see if there is

45 1 documentation or a handbook referenced. 2 A Workplace safety. 3 Q As workplace safety in the associate handbook; okay? I 4 did show you Exhibit 4. Are you familiar with this 5 document? 6 A Yes. 7 Q Okay. And what does this document describe? 8 A Certain culture that our sales floor associates and all 9 associates should have while working. 10 Q And is this the policy of Burlington Coat Factory? 11 A Yes. 12 Q Exhibit 4, what is the first item? 13 A Pick it up, don't pass it up. Pick up all the debris, 14 merchandise or fixture parts that could cause a slip, 15 trip or fall. 16 Q Do you agree with that statement? 17 A Yes. 18 Q Okay. Do you believe that it's important for a -- 19 important and necessary for safety, for a store 20 associate, if they see debris or see a spill on the 21 floor, to not keep walking and stop them and take 22 corrective action? 23 A Yes. 24 Q Okay. And that's what it -- that's kind of what it 25 says. Pick it up, don't pass it up; correct?	47 1 hazards at the store regarding slips and falls or trips 2 and falls? 3 A Yes. 4 Q Okay. 5 A It's part of our culture. 6 Q Okay. Is it re-enforced with store employees 7 throughout their employment tenure? 8 A Yes. 9 Q Okay. Does Burlington have monthly safety meetings? 10 A Yes. 11 Q Okay. Who performs or puts on monthly safety meetings? 12 A Store management. 13 Q Okay. Are you, you as a store manager, active in 14 putting on safety training for employees? 15 A Yes. 16 Q Okay. I'm gonna hand you what is marked as Exhibit 5 17 and this appears to be various monthly safety topics 18 and training. 19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 5 WAS MARKED FOR 20 IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "TOPIC: ILLNESS 21 AND INJURY PREVENTION PROGRAM.) 22 EXAMINATION CONTINUED 23 BY MR. GOINGS: 24 Q And if you could just review Exhibit 5 and tell me if 25 these, in fact, are monthly safety training topics that
46 1 A Yes. 2 Q That means, don't walk past a hazardous condition. 3 Take action. Is that -- 4 A Yes. 5 Q -- what it says? 6 A Mm-hmm, yes. 7 Q Okay. Then next, it says -- Number 2, read that out 8 loud. 9 A Clean up spills or any other slippery conditions. Call 10 maintenance if necessary and block off the area until 11 it's completely cleaned up. Always use wet floor 12 signs. 13 Q Okay. Do you believe that once you clean up spills or 14 any other slippery conditions, immediately? 15 A Yes. 16 Q Okay. And similar to the first item, don't walk past a 17 slippery condition. Stop and fix the problem, is what 18 should be done; correct? 19 A Yes. 20 Q Okay. Are these rules given to store associates upon 21 orientation? 22 A Yes. 23 Q Okay. Are they provided this information? 24 A Yes. 25 Q Are they trained on a routine basis as to safety and	48 1 are given to stores. 2 A Yes. 3 Q See towards the bottom, it's got a store manager 4 signature on it? 5 A Yes. 6 Q And why does it have a store manager signature? 7 A To signify that we let or we talk to all the store 8 associates about the training. 9 Q Okay. It appears that Burlington headquarters sends 10 out monthly safety topics for each store; correct? 11 A Yep. 12 Q Okay. 13 A Yes. 14 Q These aren't safety topics you come up with it? These 15 are given by the store; correct? 16 A By the company; yes. 17 Q Okay. And do you have to turn in monthly safety topic 18 forms that are signed by you, the manager? 19 A No. 20 Q Okay. How does the company know that these safety 21 topics are presented to all the store associates if 22 nothing is sent back verifying that it was presented to 23 the store? 24 A I don't know. 25 Q Okay. One of these in here, I think it was in June of

49 1 2015. Is it the beginning of the month, the end of the 2 month, the middle of the month? When are these safety 3 meetings performed? 4 A Either the beginning of the month or the end of the 5 month, so that you can have time to let everyone know 6 about it for the month. 7 Q Do you recall presenting to store employees this topic 8 in June of 2015 entitled "Illness and Injury 9 Prevention?" 10 A I'm almost positive, yes. 11 Q Okay. At the bottom, it says, "safety, talk about it." 12 Why is it important for you, as a store manager, to 13 talk about safety within your store? 14 A Because everyone plays a part in it. Every single 15 associate, not only for safety for us, but for 16 customers as well. 17 Q Are you familiar with this monthly safety topic back 18 here for the topic slips, trips and falls? 19 A Yes. 20 Q Did you engage your store associates as to this topic? 21 A Yes. 22 Q Now, is an issue like slips, trips and falls, is that 23 an issue that you just discuss one time and then you 24 don't talk about it for the rest of the year, or is it 25 something that is reinforced on a monthly or daily	51 1 walking past it? 2 A Yeah. 3 Q Why would that be improper? 4 A Because someone could fall. 5 Q Okay. Does the store policy require employees, if they 6 see a substance on the floor, that could be a slip or 7 trip hazard, to stop immediately and take action 8 promptly? 9 A Yes. 10 Q Okay. Do y'all have spill kits? 11 A We do now. 12 Q It says, coming soon, April 2016. Help me understand 13 this. This says March 2013. How, in March 2013, at 14 the monthly safety topic, they would know that three 15 years later in April, they would have a spill kit? 16 A I think that's a typo, as we had another typo in the 17 loss prevention one. 18 Q Okay. 19 A I think it's supposed to be 2015. 20 Q All right. And that would make more sense because the 21 rest of these are 2015; correct? 22 A Mm-hmm. 23 Q Okay. So can we agree that -- and I'll let you look 24 February 2015, all of these '15 dates, up until June 25 2015, the only outlier is March. It says March 2013,
50 1 basis? 2 A We always talk about how to prevent things like that, 3 so it's -- 4 Q Why? 5 A You know, we talk about don't pass it up, pick it up, 6 all the time. It's just a mantra almost; you know? 7 Q Okay. 8 A Because we don't want to get hurt. No one wants to get 9 hurt. 10 Q Okay. And you -- as a store manager, you want all of 11 your customers to have a good experience in your store; 12 correct? 13 A Of course; yes. 14 Q And the last thing you want is a customer to be injured 15 based on something that is preventable; correct? 16 A Yes. 17 Q Okay. And the top item listed in the bullet point is 18 react properly, and that's in bold; correct? 19 A Yes. 20 Q Why do you need to react properly? 21 A So that an accident doesn't happen. 22 Q And it says, don't ignore a spill; correct? 23 A Yes. 24 Q So, would it improper for a store associate to observe 25 a spill or a substance on the floor and then to keep	52 1 and we agree that that should be March 2015, not March 2 2013? 3 A Yes. 4 Q Okay. Do you recall, in March of 2015, receiving this 5 document regarding slips, trips and falls? 6 A Yeah. I'm pretty sure I got it; yeah. 7 Q In the Columbia store; correct? 8 A Yes, mm-hmm. 9 Q March 2013, you were not in the Columbia store; were 10 you? 11 A I don't think so; no. 12 Q Were you even working for the company in March 2013? 13 A Yes, I was in Spartanburg, I believe. 14 Q Okay, but would this be a document that you would 15 recall seeing in March 2015, not March 2013? 16 A I think I would recall more 2015 than 2013. 17 Q Okay. Are the same topics used year in and year out? 18 A For this month, March, it's that same topic. A little 19 -- few updates, but same topic. 20 Q Okay, so you shook your head yes. Is that a yes? 21 A Yes, sorry. 22 Q I know. I'm just trying to help you out. That would 23 make sense while this says March of 2013 because it was 24 probably also given in March of 2013 as well; correct? 25 A Yes.

53 1 Q Okay. It's the same monthly safety topics generally 2 year to year since you've been working there; correct? 3 A Yes. 4 Q Okay. And you would agree with me that the safety 5 concerns that a store may have in 2013 are still really 6 generally the same safety concerns that a store may 7 have in 2015 or 2016; right? 8 A Yes, it's pretty much the same. 9 Q Right. I mean, a slip and fall can be bad in 2013 just 10 like it can be bad in 2015? 11 A Yes. 12 Q What do you do as a store manager when you know that a 13 store employee fails to stop and pick it up or fails to 14 stop and clean it up? 15 A Well, I would delegate them to pick it up and then 16 maybe pull them aside or even in a private area, maybe 17 the office or something, and asked them why they passed 18 it and didn't pick it up, so -- 19 Q And that's because it's the company mantra or policy to 20 pick it up, don't pass it up; correct? 21 A Correct. 22 Q Clean it up, not pass it up or won't pass it; correct? 23 A Yes. 24 Q Have you ever had to discipline an employee because 25 they did not clean it up or pick it up?	55 1 A No. 2 Q Okay. So, this accident report was created prior to 3 you ever reviewing the video footage? 4 A Yes. 5 Q Okay. This was based on information that you were told 6 by the store employees? 7 A No, this is from Ms. Qualls herself. 8 Q Okay, I understand. Did you ever review the 9 surveillance video of the store that shows the fall? 10 A Before I sent it to the insurance company; yes. 11 Q Okay. When did you first review the surveillance 12 video? 13 A A couple days after, maybe. 14 Q A couple days after the fall? 15 A Yes. 16 Q Okay. When is the last time you actually did review 17 the video? 18 A A week ago. 19 Q Okay. Did you review it with anyone? 20 A Yes. 21 MR. MERMIGES: You can tell them that I was 22 present. 23 THE WITNESS: Oh. 24 MR. MERMIGES: You can't talk about any -- you 25 know, our discussions.
54 1 A Not to my knowledge, no. 2 Q Okay. Have you ever had to just talk to an employee 3 about their failure to pick it up or clean it up? 4 A No. 5 Q I want to show you an incident report. Here's some 6 copies. I'm gonna mark this as Exhibit 6. 7 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 6 WAS MARKED FOR 8 IDENTIFICATION PURPOSES, INCIDENT REPORT.) 9 EXAMINATION CONTINUED 10 BY MR. GOINGS: 11 Q Is this the incident report regarding the fall of Ms. 12 Lallie Qualls on July 31st, 2015? 13 A Yes. 14 Q Did you complete this document? 15 A I did. 16 Q How did you complete this document? 17 A There is a report in the computer that we fill out and 18 we submit it after we fill out all the required 19 information. 20 Q Do you know when this document was completed and 21 submitted? What day and what time? 22 A As soon as Ms. Qualls left in the ambulance. I did it 23 right after that. 24 Q Did you have the opportunity to review the video before 25 putting this document together?	56 1 THE WITNESS: Yes. 2 MR. MERMIGES: But that's fine. 3 EXAMINATION CONTINUED 4 BY MR. GOINGS: 5 Q Was your lawyer present? 6 A Yes. 7 Q Okay. Was anybody else present? 8 A No. 9 Q Okay. Did you take photographs after the fall? 10 A Yes. 11 Q Did you take the photographs or did someone else take 12 the photographs? 13 A Under my direction, I believe my loss prevention 14 associate took the photographs. 15 Q What loss prevention associate took the photographs? 16 A Jerry Williams. 17 Q How many photographs were taken? 18 A I think five or six. 19 Q Okay. It says on here, were photos taken, it says, no. 20 A I hadn't done it at that time of the report. 21 Q I got you. So, no photographs were taken before you 22 did the report; correct? 23 A Correct. 24 Q Okay. And then after you did the report, you then took 25 photographs?

57 1 A Yes. 2 Q Okay. I understand. I'm going to mark this as Exhibit 3 7. 4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 7 WAS MARKED FOR 5 IDENTIFICATION PURPOSES, PACKET OF FIVE PHOTOGRAPHS.) 6 EXAMINATION CONTINUED 7 BY MR. GOINGS: 8 Q Are these the photographs that your loss prevention 9 associate took? 10 A Yes. 11 Q Are there any additional pictures that were taken, 12 other than the ones that are marked as Exhibit 7? 13 A Not that I know of. 14 Q Do you know how these pictures were taken? 15 A With a digital camera. 16 Q Okay. Would it be a phone camera or an actual digital 17 camera? 18 A I believe it was an actual digital camera. 19 Q Okay. It's amazing how the days of the digital camera, 20 it's now getting replaced with the smartphone. 21 A I know. 22 Q Okay, so you don't think it was an iPhone or an Android 23 device or a smartphone? 24 A No, because -- yeah, no, it wasn't. We had a digital 25 camera at the store.	59 1 A Mm-hmm. 2 Q Were you the first one to respond? 3 A Yes. 4 Q Okay. And what did you do when you got to the scene -- 5 to the location where Ms. Qualls was laying on the 6 floor? 7 A I spoke with her daughter who was right there. 8 Q Okay. 9 A And she told me to call 911. 10 Q Okay. 11 A In which I did. 12 Q Did it appear that Ms. Qualls was in pain or distress? 13 A Yes. 14 Q Okay. Did it look like, that she had an injury to her 15 leg or knee? 16 A Her daughter said she did, but yeah -- 17 Q Okay. 18 A -- she had pain in her knee. 19 Q Okay. Did she tell you that her knee was hurting? 20 A Yes. 21 Q Okay. Did you see her knee look out of socket or any 22 visual observations of her knee that would leave you to 23 believe that she had an internal injury to her knee? 24 A No. 25 Q Okay. Was she holding her knee or complaining of knee
58 1 Q Okay. And did he print out the pictures after he took 2 them and gave them to you or did you get the digital 3 camera images from the camera and then send them to 4 somebody? 5 A They had to be e-mailed so -- I can't remember exactly 6 what I did, but I downloaded them onto the computer and 7 then e-mailed them this way. 8 Q Who'd you e-mail them to? 9 A Vivian Frasier, I think, at our insurance company. 10 Q Okay. Do you recall getting a letter from my office to 11 preserve the video footage or any materials related to 12 this fall? 13 A No, sir. 14 Q Okay. This would be around the time that you would've 15 corresponded with the insurance adjuster. 16 A Not to my recollection, no. 17 Q Who was the first person to respond to the accident 18 scene? 19 A Me. 20 Q Okay. Do you recall what you were wearing? 21 A Yeah. A pink dress. 22 Q Okay. So you're the girl in the pink dress in the 23 video? 24 A Yes. 25 Q Okay. Pink and white dress maybe?	60 1 pain? 2 A I was holding her hand. 3 Q Okay. 4 A I was just trying to comfort her. 5 Q Got you. So, she said that there was a very nice lady 6 that was trying to comfort her. Would that have been 7 you? 8 A Yeah. 9 Q Okay. Was Ms. Qualls very nice to you? 10 A Of course. Yeah, mm-hmm. 11 Q Okay. Were you very nice to her? 12 A Of course, yes. 13 Q What did she say to you as to what happened? 14 A She slipped. 15 Q Okay. 16 A And fell. 17 Q Did she tell you why she slipped? 18 A I don't recall. 19 Q Okay. Did the daughter tell you why she slipped? 20 A There was a little bit of -- a spill on the floor. 21 Q Okay. Did you see the spill on the floor? 22 A When I bent down next to her, I did. Yes. 23 Q Okay. What color was the spill? 24 A Dark, like Coke. 25 Q Okay. How big was the spill?

61 1 A Maybe, like, the size of this coaster. 2 Q Okay. Would you say -- 3 A Bigger than a hockey puck. 4 Q Bigger than a hockey puck, but smaller than an 8 x 10 5 piece of paper? 6 A Yes. 7 Q Okay. If I gave you a sheet of paper, could you just 8 draw what you believe the size of the spill was? Just 9 based on your best recollection; okay? 10 A Okay. 11 MR. MERMIGES: I'm gonna instruct the witness not 12 to draw anything. If you're asking her to mark 13 something, I'm just concerned how it might be used. 14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 8 WAS MARKED FOR 15 IDENTIFICATION PURPOSES, BLANK SHEET OF PAPER.) 16 EXAMINATION CONTINUED 17 BY MR. GOINGS: 18 Q Are you unable to draw the size of the spill? 19 A I can't be accurate that that would be exactly the size 20 of it. 21 Q Okay. Would you describe it as a large spill, medium 22 sized spill or small spill? 23 A I thought it was small. 24 Q Okay. And you -- Ms. Qualls was actually on the floor 25 at this time; correct?	63 1 duty? 2 A Yes. 3 Q Manager on duty, store manager, Pam. That's you; 4 correct? 5 A Yes. 6 Q How were you notified? 7 A I was already at the front registers. The cashier that 8 was at register 6 called over and said that someone had 9 fallen. 10 Q How many people were at the front registers? 11 A Four to five. 12 Q Okay. And you? 13 A And me. 14 Q So five to six. 15 A Okay. Yes. 16 Q Is that fair? 17 A Yes. 18 Q Were you actually running a register or just observing? 19 A I was helping a customer. 20 Q Okay. 21 A I was not ringing a register. I was answering a 22 question. 23 Q Okay. Did you see Ms. Qualls fall? 24 A No. 25 Q Did you hear Ms. Qualls fall?
62 1 A Yes. 2 Q So, you would agree that if she had already fallen in 3 the -- from the spill, that the size of the spill or 4 the shape of the spill or the amount of the spill 5 would've changed due to her fall? 6 A Yeah, possibly. 7 Q Okay. Did you notice any wetness or moistness on her 8 clothing or legs as she laid on the ground? 9 A No. 10 Q Okay. Would you believe that she would've had some 11 dampness or wetness or moistness on her body from the 12 fall? 13 A If there was a large enough spill. 14 Q Would you think this was a large enough spill or not? 15 A No. 16 Q Okay. You don't know what the spill looked like before 17 she slipped in it; is that fair to say? 18 A Yes. 19 Q Okay. So you can't say the size of the spill before 20 you got there? 21 A Right; yes. 22 Q Okay. This incident report, Exhibit 6, it says, the 23 cashier on reg 6 -- that's register 6; correct? 24 A Yes. 25 Q Immediately notified the MOD. Who is that? Manager on	64 1 A No. 2 Q Did you -- what was the first thing you heard after she 3 fell? 4 A Him yelling at me to go see if she's okay. 5 Q Okay. Were you standing in visible range to where Ms. 6 Qualls fell? 7 A I don't think so. I was, I believe, answering a 8 layaway question, which is register 9, which is some 9 more lanes over. 10 Q Do customers in the store regularly carry clothes and 11 merchandise in their arms and hands? 12 A Yes. 13 Q Okay. Is it foreseeable that a customer would be 14 walking with clothes or other merchandise and carrying 15 clothes and other merchandise while walking towards the 16 registers? 17 A Yeah. 18 Q Okay. Could merchandise, you know, when you're holding 19 and carrying merchandise, could that obstruct or 20 prevent you from seeing what may or may not be on the 21 floor immediately in front of you? 22 A Yes. 23 Q Okay. Is that one reason why the policies and 24 procedures at Burlington is to remove any obstructions 25 or hazards that could be on the floor?

65 1 A Yes. 2 Q Okay. And going back to the rack that we talked about 3 earlier. Individuals can see a rack; correct? 4 A Right. 5 Q But if they're shopping or distracted or carrying 6 items, they may not appreciate that the rack is there; 7 correct? 8 A Right. 9 Q And that's why you want to remove the rack from the 10 store; correct? 11 A Yes. 12 Q Or from the floor? 13 A Yes. 14 Q Okay. Did Ms. Qualls tell you that she saw the spill 15 on the floor and fell anyway or that she did not see or 16 appreciate the spill on the floor? 17 A I don't -- she didn't say, but I don't think she saw 18 it. 19 Q Okay. When you walked up to the scene of the fall 20 while Ms. Qualls was on the floor, did you immediately 21 see the brown substance on the floor? 22 A I did. 23 Q Okay. So, when you got to see her, before you even 24 said anything to her, you had put it together that she 25 slipped on a substance on the floor; correct?	67 1 Q Okay. And so, all the pictures that were taken, were 2 taken after the incident then; correct? 3 A Yes. 4 Q So, if I can't visualize a substance on the floor in 5 these photographs, it's because it was cleaned up by 6 the time the photographs were taken; correct? 7 A Yes. 8 Q Okay. And I see, caution, wet floor signs were put 9 out. Why were they put out? 10 A As part of policy, any time we clean up a spill, even 11 if it's dry, we put signs up just in case, you know, 12 there's maybe some mop residue or something like that. 13 Just so customers know. 14 Q Okay. So I'm clear, was there any caution wet floor 15 signs at or around the location where Ms. Qualls fell 16 prior to her fall? 17 A No. 18 Q Okay. Would Ms. Qualls had known that there was a 19 substance on the floor before she slipped? 20 MR. MERMIGES: I object. You're asking my client 21 to speculate about the state of mind, so -- 22 EXAMINATION CONTINUED 23 BY MR. GOINGS: 24 Q Was the condition of the floor such that Ms. Qualls 25 would have known that there was a substance on the
66 1 A Yes. 2 Q Okay. So, without even asking her why she slipped, you 3 saw why she slipped; correct? 4 A Yes. 5 Q Okay. What did the daughter tell you? Ms. Qualls' 6 daughter. 7 MR. MERMIGES: That's been asked and answered. 8 I'm not gonna instruct my client to not answer, but I'm 9 gonna put that on the record. Go ahead and answer. 10 THE WITNESS: I believe she -- well, she told me 11 immediately to call 911, that her mom broke her leg, 12 and then we -- as we were comforting her and I was 13 getting all of the information, that's when her 14 daughter had said, it looks like she slipped on this. 15 And I said, oh, my gosh, I can't believe, you know? 16 I'm so sorry, that kind of stuff. And we got it 17 cleaned up right away. 18 EXAMINATION CONTINUED 19 BY MR. GOINGS: 20 Q Okay. Who cleaned it up? 21 A I had one of my associates clean it up. I believe her 22 name was Ladawn. 23 Q Okay. Were any pictures taken of the substance before 24 it was cleaned up? 25 A No.	68 1 floor prior to her fall? 2 MR. MERMIGES: My client has already -- we've 3 already confirmed that she was not aware of the 4 condition on the floor. So, I'm gonna object to that, 5 that that's been asked and answered and I believe that 6 it calls for speculation. 7 MR. GOINGS: All right. I assume your objection 8 is to the form of the question? 9 MR. MERMIGES: My objection is to the form of the 10 question and I'm instructing my client to answer the 11 question. 12 MR. GOINGS: All right. You can answer the 13 question. 14 THE WITNESS: Can you ask again? 15 MR. GOINGS: Yes. Was the condition of the floor 16 prior to her falling, such that Ms. Qualls would not 17 have known that a spill had occurred and that she could 18 slip on that substance? 19 THE WITNESS: Yes. 20 EXAMINATION CONTINUED 21 BY MR. GOINGS: 22 Q And you've seen the video; correct? 23 A Yes. 24 Q And Ms. Qualls is walking towards the cash register 25 with merchandise in her arms and hands; correct?

69 1 A No, that's not correct. She had already checked out 2 and they were walking out. I don't think she had 3 anything in her hand. 4 Q Okay. Let's take a five- to ten-minute break and see 5 if you can go online to the portal. 6 A Okay. 7 MR. MERMIGES: So then as we discussed off the 8 record, because we're looking to produce potentially 9 additional documents, I'm gonna have the right to talk 10 to my client about what's going on and what you see is 11 on the portal and that would stand in the normal rules 12 that would attach to a deposition. We agree on that; 13 is that right? 14 MR. GOINGS: Absolutely fine. 15 MR. MERMIGES: Just me being very cautious. 16 That's all. 17 OFF THE RECORD 18 MR. MERMIGES: My client was able to retrieve a 19 PDF file from the gateway portal that we believe 20 corresponds to what Mr. Goings raised earlier, which 21 there was a document in the employee handbook. 22 However, the document that we retrieved is dated May 23 26th, 2016, which is obviously after the incident 24 happened, and we believe that -- we've got concerns 25 that this is not actually what we'd call a responsive	71 1 BY MR. GOINGS: 2 Q I'm gonna hand you what has been marked as Exhibit 9, 3 which is the document that we just discussed. 4 A All right. 5 COURT REPORTER: Is that Exhibit 8 or Exhibit 9? 6 MR. MERMIGES: Exhibit 8 is the blank piece of 7 paper. 8 MR. GOINGS: Exhibit 8 is her drawing of the -- 9 COURT REPORTER: Oh, okay. 10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 9 WAS MARKED FOR 11 IDENTIFICATION PURPOSES, PDF FILE OF A GATEWAY PORTAL.) 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q Is Exhibit 9 the document you retrieved off the portal 15 prior discussions? 16 A Yes. 17 Q Okay. Are you familiar with this document? 18 A I am. 19 Q Okay. The first page appears to be an injury and 20 illness prevention program annual recertification; 21 correct? 22 A Mm-hmm. 23 Q Is that a yes? 24 A Yes. 25 Q And then behind that document is the injury and illness
70 1 document in this case because it wasn't effective at 2 the time of the fall. 3 Obviously, I'm gonna have to go back and seek out 4 a prior version through my own channels, and I will, of 5 course, do that. But I just want to be clear that we 6 are -- while this designated confidential, under our 7 confidentiality order, we're stating very clearly on 8 the record that this may not even be a responsive 9 document because it may not have been in effect at the 10 time that the incident happened. We don't want to 11 prejudice y'all and we want to at least give you the 12 chance to ask questions about the principles in the 13 document. 14 MR. GOINGS: And I understand this has a date of 15 5/26/16. And this may be -- this may have some 16 updates. If there is one that was in effect at the 17 time of the accident and it's substantially different, 18 please let me know. I will note that the date is on 19 the injury and illness prevention program annual 20 recertification, but there's no date that I'm aware of 21 on the actual injury and illness prevention program 22 document. So, but please let me know if there's one 23 that's substantially different if there just may be a 24 version with no substantial changes. 25 EXAMINATION CONTINUED	72 1 prevention program, and it's a multipage document 2 consisting of probably 20-plus pages; correct? 3 A Yes. 4 Q Okay. Do you know if the injury and illness prevention 5 program manual, which is the second page to the end, 6 was in effect in July of 2015? 7 A No. 8 Q This was not in effect in July -- 9 A No. 10 Q -- of 2015? 11 A It was -- 12 Q Why not? 13 A Well, there was a program, as far as safety. I just 14 don't know what we call it or named that. 15 Q Okay. Was there an injury and illness prevention 16 program in effect in the year 2015? 17 MR. MERMIGES: Are you referring to that specific 18 -- and I object just to the extent that I want you to 19 clarify if you're referring to that specific title or 20 if you're saying, was there a program that addressed 21 those issues; does that make sense? 22 EXAMINATION CONTINUED 23 BY MR. GOINGS: 24 Q Well, first, was there an injury and illness program in 25 effect at Burlington in 2015?

73 1 A There was a program; yes. 2 Q Okay. Do you know what exact documents were given to 3 you in 2015? 4 A The monthly topics that we presented in -- 5 Q Who is Thomas Culotta, C-U-L-O-T-T-A? Culotta? 6 A Culotta? 7 Q Yeah. Who is that? 8 A President. 9 Q He's the president of the company? 10 A Mm-hmm. 11 Q Is that a yes? 12 A Yes. 13 Q Okay. On this document, it shows that Thomas Kingsbury 14 is the CEO. 15 A Yes. 16 Q Is that correct? 17 A Yes. 18 Q But you said the president of the company is Thomas B. 19 Culotta? 20 MR. MERMIGES: Can you show her the document 21 you're referring to? 22 EXAMINATION CONTINUED 23 BY MR. GOINGS: 24 Q Page 4. 25 A You're right; okay. So, I apologize. Thomas Kingsbury	75 1 back in 2015, so -- 2 MR. GOINGS: Well, we'll have to agree to disagree 3 on that. I may notice this guy's deposition to get the 4 accurate information, but I'll move on. 5 EXAMINATION CONTINUED 6 BY MR. GOINGS: 7 Q I'm gonna show you another document, which is Exhibit 8 10. 9 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 10 WAS MARKED FOR 10 IDENTIFICATION PURPOSES, DOCUMENT ENTITLED "SAFETY TIPS IT 11 ALL BEGINS WITH YOU.") 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q Are you familiar with this document? 15 A No, actually I'm not. This looks different than the 16 other material that you've given. 17 Q Just take your time looking over it. 18 A Yes, all the information is the same. 19 Q Have you ever seen this document before today? 20 A No, I don't think so. Bits and pieces, yes, but not 21 all in this form. 22 Q Do you know where this information can be accessed? 23 A I'm assuming on the portal. 24 Q Okay. Have you ever seen this information on the 25 portal? Showing you this Plaintiff's Exhibit 10.
74 1 is the president. Fred Hand is the director of stores, 2 is the next one, and he -- Thomas Culotta is the 3 director of this program, the management program. 4 Q Have you ever spoken to Mr. Culotta? 5 A No. 6 Q Okay. Well, it says that the Director of Risk 7 Management and Safety, Thomas -- it's spelled C-U-L-O- 8 T-T-A for the record. 9 A Culotta? 10 Q But we may disagree on the pronunciation. 11 MR. MERMIGES: Culotta. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q Culotta, is responsible for overseeing and implementing 15 the provisions of this program; is that correct? 16 A Yes. 17 Q Would you -- do I need to defer any questions to this 18 gentleman, Tom Culotta, as to whether or not there was 19 a program in place and the documentation in place for 20 Burlington at the time of Ms. Lallie Qualls fall? 21 MR. MERMIGES: I'm gonna object to the -- 22 Burlington has got the right to choose its corporate 23 designee and again, I'm just breezing this document to 24 avoid prejudice. That's -- and you've already 25 clarified that it may not have been this specific fact	76 1 A Yes, with the exception of this one. 2 Q Which is that one? 3 A The body mechanics and back to school. I just don't 4 recall ever seeing that part. 5 Q Back to school? 6 A Back to school; yeah. 7 Q Okay. The sections, though, were -- 8 A Yeah, the stuff I've seen. 9 Q Okay. So I'm clear on the record what this stuff is -- 10 A Oh, I'm sorry. Rolling racks, H racks, tears in 11 carpet, uneven floor surfaces, wet floor, grid racks, 12 sharp objects, shelving bags and boxes. 13 Q You've seen before? 14 A I have seen before. 15 Q Okay. You've not seen the topic on any documentation 16 on body mechanics and back to school? 17 A No. 18 Q I want to show you a set of photographs that are still 19 images or print screens from the video of the date that 20 shows and depicts Ms. Qualls fall. This is going to be 21 marked as Exhibit 11. 22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 11 WAS MARKED FOR 23 IDENTIFICATION PURPOSES, PACKET OF EIGHT PHOTOGRAPHS.) 24 EXAMINATION CONTINUED 25 BY MR. GOINGS:

77 1 Q If you could just look through these photographs to 2 familiarize yourself with them, I just have some 3 questions. 4 A Okay. 5 Q And these are a total of eight photographs in Exhibit 6 11. 7 MR. MERMIGES: I'm gonna just object to the 8 reference of these photos because of omitting the time 9 reference, which I believe renders them misleading. 10 You ask all the questions you want about that, but I'm 11 gonna raise that objection. 12 MR. GOINGS: Well, let me say this. We didn't 13 omit any time reference. The file that you sent us of 14 the video allows you to take screen captures inside 15 that program, and this is the screen capture within 16 inside that program. 17 MR. MERMIGES: So, the one thing that I will 18 advise is that there is a specific time stamped file 19 that was contained in the video that I produced to you 20 that will show the time of day with each frame that you 21 could've done screen capture on, and then separately, a 22 video player would show second, five seconds, in real 23 time. It would've been present on the photos. 24 However, I believe that would render them potentially 25 inaccurate, but feel free to question the witness on	79 1 A Oh, I have no idea. 2 Q More than ten or less than ten? 3 A Probably more than ten. 4 Q Okay. Are you aware of any other footage that was 5 preserved other than the footage for this camera? 6 A No. 7 Q Okay. Help me understand. What direction do 8 individuals enter the cash register area and what 9 direction do they leave the cash register area? 10 A So, we can see here that there's this wall and they 11 enter through -- it's almost sort of like a maze, and 12 they enter through over here on this left-hand side and 13 they come through here and walk all the way down, and 14 then that's where they wait for the next cashier. And 15 when you see this space here, this aisle is where they 16 walk out. 17 Q Okay. Just so the record is clear -- 18 A Oh, sorry. 19 Q A store customer would -- in order to get to a cashier 20 register, they would have to walk from the left side of 21 the page to the right side of the page; is that 22 correct? 23 A Yes. 24 Q Okay. Do you mind drawing an arrow of the direction, 25 so we're clear on the record?
78 1 those issues. 2 MR. GOINGS: All right. Just object to the form 3 of the question because it can be misconstrued and -- 4 MR. MERMIGES: Can I have a standing objection on 5 that issue? Is that okay? 6 MR. GOINGS: Absolutely, absolutely. 7 EXAMINATION CONTINUED 8 BY MR. GOINGS: 9 Q All right. What do these photographs depict? What 10 store? 11 A What store? The Columbia location Burlington. 12 Q Okay. And you've seen the video; correct? 13 A Yes. 14 Q Okay. Does this appear to be the Bush River store 15 location for Burlington Coat Factory? 16 A Yes. 17 Q Okay. And where is this camera positioned within the 18 store? 19 A Above one of the registers. I think register 3 or 4. 20 I can't remember. 21 Q Are there any other security cameras other than the 22 security camera that is being shown in this -- in these 23 still shots, behind the register, other than this one? 24 A There may be two more down on the other end. 25 Q How many security cameras are there in the store?	80 1 MR. MERMIGES: Again, the witness is here to 2 testify -- 3 MR. GOINGS: Right. I'll draw it. 4 EXAMINATION CONTINUED 5 BY MR. GOINGS: 6 Q Does this arrow right here show the direction of 7 movement of store customers into the cash register 8 area? 9 A Yes. 10 Q Okay. When a customer is trying to leave the cash 11 register area, does the arrow at the bottom of the page 12 show the direction flow of customers to exit the cash 13 register area? 14 A Yes. 15 Q All right. Who is the store employee with the long 16 dark hair, a white shirt, and khaki pants shown on 17 Picture 1 of Plaintiff's Exhibit 11? 18 A Taylor Simon. 19 Q Do you know Taylor Simon? 20 A Yes. 21 Q How do you know Taylor Simon? 22 A I hired her. 23 Q When did Taylor Simon start working at the Burlington 24 Coat Factory store? 25 A I don't recall the exact date. It was when the school

81 1 let out, so probably in May or June. She was just -- 2 she's a college student, so she was just there for the 3 summer. 4 Q You know what college she attended? 5 A I think Charleston. College of Charleston. 6 Q Now, the store employee shown in Photograph 1, the 7 store employee has a black top, light colored pants, it 8 looks to be, white color sole to his or her shoe. And 9 then shown on the bottom right hand corner of the 10 picture. Who is this person? 11 A I can't make who that is out. 12 Q Look at Photographs Number 2 and 3, and do you know who 13 the store employee that's working the cash register on 14 the left hand of the page is? 15 A I believe that's Brandon. 16 Q Brandon who? 17 A Effridge. 18 Q And how long did he work there? 19 A He was there for at least three or four years. He was 20 there before I got there. 21 Q The first photograph, it shows three registers? 22 A Mm-hmm. 23 Q Is that a yes? 24 A Yes, uh-huh. 25 Q The register to the far left, what register number is	83 1 and 2, you can see where the customer in the pink or 2 orange colored top with a buggy and it looks like a 3 toddler in the buggy is moving from right to left; do 4 you see that? 5 A Mm-hmm. 6 Q Is that a yes? 7 A Yes. 8 Q Okay. On Photograph 3 of Exhibit 11, do you know who 9 this person is on the right-hand page with a white 10 shirt, dark, long hair and khaki pants is? 11 A Taylor Simon. 12 Q Okay. On Photograph 3, 4 and 5, do you know what 13 Taylor is looking at in these photographs? 14 MR. MERMIGES: Form. 15 MR. GOINGS: You can answer. 16 MR. MERMIGES: Objecting to the form of the 17 question. You can answer. 18 THE WITNESS: It appears to be a cell phone. 19 EXAMINATION CONTINUED 20 BY MR. GOINGS: 21 Q She looks like she's on her cell phone? 22 A Yeah. 23 Q Okay. Are store employees allowed to be on their cell 24 phone at work? 25 A She was technically on a break, but yes. They are
82 1 that? 2 A I think it's four. 3 Q The register in the middle, what register is that? 4 A Five. 5 Q The register on the left, what register is that? 6 A Six. 7 Q Register one, what side of the page would register one 8 be located? 9 A Left. 10 Q Is it shown on this picture? 11 A No. 12 Q Okay. So register one would be then closest to the 13 exit doors? 14 A Yes. 15 Q Okay. How many registers are there? 16 A Nine. 17 Q Nine. Where would register nine be? 18 A To the right of the page. 19 Q Not shown on this, though; right? 20 A Not shown on this. 21 Q It would be closer to where a customer would enter the 22 register area; correct? 23 A No, it's where -- yes. It would be waiting in line to 24 be called for the next cashier; yes. 25 Q Okay, all right. If you look at Exhibit 11, Pages 1	84 1 allowed to carry them. 2 Q How is she technically on break at this point? 3 A She left her work station. 4 Q Does that mean you're on break if you leave your work 5 station? 6 A You go get your stuff and you're on break. 7 Q What -- 8 A She was sent on break. 9 Q By who? 10 A Either a manager or CSS. 11 Q Why was she sent on break? 12 A They're scheduled. 13 Q Where can I find Taylor's schedule for that day? 14 A I'm not sure. 15 Q Are the schedules kept electronically? 16 A Yes. 17 Q Does the schedule have their break times in it? 18 A No. 19 Q Okay. Why not? 20 A Because it's the needs of the business as to when we 21 schedule a break. 22 Q How do you know she had a cell phone in her hand? 23 A I've seen the camera. I mean, I've seen the video. 24 Q Does it show that she actually does have a cell phone 25 in her hand?

85 1 A Well, it appeared to be a cell phone. 2 Q All right. Have you asked her what she had in her 3 hand? 4 A I don't recall asking her that; no. 5 Q It's not store policy for an employee to walk around 6 the store playing with their cell phone; is it? 7 A No, not while working; no. 8 Q Okay. And she's technically on the job while she's 9 shown in these photographs that are marked as Exhibit 10 11; correct? 11 A Yes. 12 Q I mean, she's technically on the job and on the clock 13 at the point that she's walking in front of the cash 14 registers; isn't she? 15 A I guess. 16 MR. MERMIGES: Object to the form, but go ahead 17 and answer. 18 THE WITNESS: Yes. 19 EXAMINATION CONTINUED 20 BY MR. GOINGS: 21 Q Okay. Have you talked to her to ask her what she had 22 in her hand? 23 A No. 24 Q When you say she was on her phone, are you speculating 25 or are you positive that she was actually on her phone?	87 1 A Yes. 2 Q Okay. And you agree, in fact, that Ms. Taylor Simon 3 had the opportunity to observe the spill when she 4 walked past it? 5 MR. MERMIGES: Form. 6 THE WITNESS: Not if she wasn't looking. 7 EXAMINATION CONTINUED 8 BY MR. GOINGS: 9 Q But she had the opportunity to observe it; didn't she? 10 MR. MERMIGES: Form. 11 THE WITNESS: Yeah. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q Okay. And you agree, though, that a store employee 15 literally walked within inches of the spill that was on 16 the floor; correct? 17 MR. MERMIGES: Form. 18 THE WITNESS: Yeah. 19 EXAMINATION CONTINUED 20 BY MR. GOINGS: 21 Q But instead of stopping, she kept on going; correct? 22 A Because she didn't see it. 23 Q Okay. How do you know she didn't see it? 24 A She said she didn't see it. 25 Q Did you ask her?
86 1 A It looks like a phone on the tape. 2 Q Now -- 3 A You can't really tell in the picture. 4 Q -- does it look, on the tape, that she is looking over 5 her right shoulder as she passes by the location here 6 the fall would ultimately occur? 7 A No. 8 Q Okay. Is it your testimony that Pages 3, 4 and 5 show 9 her looking straight ahead as she walks? 10 A I can't really tell. 11 Q Okay. She's not facing the camera, though; is she? 12 A No. 13 Q In fact, you cannot even see her face in the 14 photographs; can you? 15 A Not really; no. 16 Q Okay. Instead, you see the side of her head; correct? 17 A Yes. 18 Q Okay. Do you agree that this employee, and her name is 19 Taylor Effridge; is that right? 20 A Simon. 21 Q Taylor Simon? 22 A Mm-hmm. 23 Q Would you agree that Taylor Simon did, in fact, walk 24 past the location where the spill had previously 25 occurred?	88 1 A Yeah, I did. 2 Q When did you ask her? 3 A When I taped -- got together this footage and saw her 4 walk by. 5 Q Okay. Did you tell her that she should've seen the 6 spill? 7 A No. 8 Q Okay. But you asked her, did you not, if she saw the 9 spill on the floor; correct? 10 A Yes. 11 Q Why would you have asked her that question? 12 A Just to make sure -- 13 Q Okay. 14 A -- that she didn't see it. 15 Q But in reviewing the video and what you saw in the 16 video, would lead a reasonable person such as yourself 17 to conclude that she, in fact, could have seen the 18 spill; correct? 19 MR. MERMIGES: Form. 20 THE WITNESS: No. 21 EXAMINATION CONTINUED 22 BY MR. GOINGS: 23 Q Why were you concerned as to whether or not she saw the 24 spill, though? 25 A Because there were other customers that had walked by

89 1 the same thing and didn't say anything to me or didn't 2 notify anyone. 3 Q Now, it's not the job of the customer to inform the 4 store employee of a condition or a spill on the floor; 5 is it? 6 A No, but it's, I mean, common courtesy so that someone 7 else doesn't fall. 8 Q It is. It is common courtesy; isn't it? 9 A Mm-hmm. 10 Q But they don't have a duty; do they? 11 A No. 12 Q Okay. But a store employee does have a duty to notify 13 and to stop and to correct the problem; correct? 14 A If they see it. 15 Q Okay. 16 MR. MERMIGES: Objection to the extent that that 17 calls for a legal conclusion. 18 EXAMINATION CONTINUED 19 BY MR. GOINGS: 20 Q When was the last time that you talked to Taylor Simon? 21 A I believe this was the only summer she worked for me, 22 so I hadn't spoken to her in a while. 23 Q Do you think the fact that she was on the phone 24 prevented her from seeing the spill on the floor? 25 A Possibly.	91 1 A No. 2 Q Okay. What color is the Burlington shopping bag? 3 A White, but that's what this item here is, white. 4 Q If she had already checked out, you could have easily 5 reviewed the customer receipts that day to see if she 6 actually checked out or not; correct? 7 A No, it doesn't work like that. 8 Q Did you try to look to determine if she had already 9 checked out? 10 A No. 11 Q Is there anything you think that Burlington and its 12 employees on July 31st, 2015 could have done 13 differently to prevent this fall? 14 A No. 15 Q Do you believe this fall was preventable by Burlington? 16 A No. 17 Q Why not? 18 A Because we did not know it was there. 19 Q How long was the spill on the floor before Ms. Qualls 20 fell? 21 A I believe it was four minutes. Four and a half 22 minutes. 23 Q Is four or five minutes too long for a substance to be 24 on the floor before it is observed and corrected? 25 MR. MERMIGES: Form. You can answer.
90 1 Q Now, the last two photographs, which would be 7 and 8 2 in this packet, show Ms. Qualls at the point prior to 3 her fall and -- actually, 6, 7 and 8 show Ms. Qualls at 4 a point prior to slipping and then while she's 5 slipping, and then Photograph 8 shows her actually on 6 the floor; do you see that? 7 A Yes. 8 Q Do you see her carrying things in her hand? 9 A Yes. 10 Q Would she be coming from the direction where she would 11 be approaching the cash registers to pay or would she 12 be coming from a direction where she had already paid 13 and was exiting the store? 14 A Either one. There's registers on the other end on the 15 right-hand side that she could have purchased her items 16 at. 17 Q Have you reviewed the video carefully to see if she had 18 actually paid or not? 19 A I haven't, but I could have sworn, I thought I saw a 20 shopping bag with her, a Burlington shopping bag. 21 Q In these photographs, which are Plaintiff's Exhibit 11, 22 do you see a Burlington shopping bag in or about her 23 person? 24 A I can't tell. 25 Q Are the Burlington shopping bags blue?	92 1 THE WITNESS: No. 2 EXAMINATION CONTINUED 3 BY MR. GOINGS: 4 Q How long does a substance have to be on the floor 5 before a store employee is obligated to clean it up? 6 MR. MERMIGES: Form. Calls for legal conclusion. 7 You can answer. 8 THE WITNESS: Well, there's not always gonna be 9 somebody in every single area to notice a spill, so I 10 couldn't tell a time. 11 EXAMINATION CONTINUED 12 BY MR. GOINGS: 13 Q Do you agree with me that the cash register location is 14 a heavy traffic area? 15 A Yes. 16 Q Do you agree with me that the cash register location is 17 an area of the store that has employees present almost 18 all day long? 19 A Yes. 20 Q Okay. And you agree with me that the location where 21 the spill had occurred was in eye sight range of the 22 cash registers? 23 MR. MERMIGES: Form. 24 THE WITNESS: No. 25 EXAMINATION CONTINUED

93 1 BY MR. GOINGS: 2 Q Okay. How far from cash register -- was this cash 3 register four in the middle? 4 A Five. 5 Q How far from cash register five to where the spill was? 6 A I believe the spill was almost all the way against that 7 wall, like, totally across the aisle. I don't know how 8 -- underneath that red bag area. 9 Q Well, it looks like Ms. Qualls fell in the location 10 here. You have the four black square tiles with a 11 center white square tile; do you see that? 12 A Mm-hmm. 13 Q Is that correct? 14 A Mm-hmm. 15 Q How far is that distance-wise from the closest 16 register? 17 A Maybe ten feet. 18 Q You agree with me that ten feet is close enough for an 19 employee at the register to notice a spill or substance 20 on the floor? 21 MR. MERMIGES: Form. 22 THE WITNESS: No. 23 EXAMINATION CONTINUED 24 BY MR. GOINGS: 25 Q Is the configuration of this store today like it was in	95 1 A Two or three. 2 Q Okay. So, two or three in 2014, two or three in 2013 3 and two or three prior to when Ms. Qualls fell? 4 A Mm-hmm. 5 Q Is that a yes? 6 A Yes. 7 Q Okay. Do you know if incident reports were generated 8 for each one of those falls? 9 A Yes. 10 Q Was any of the falls as a result of a wet substance on 11 the floor? 12 A Yes. 13 Q Which ones? 14 A I believe almost all. 15 Q Okay. Were any of the falls occurring in the cash 16 register area? 17 A No. 18 Q Okay. Where did these falls occur? 19 A I believe one was in the bathroom, a couple were at the 20 doors and maybe another one or two would've been 21 somewhere on the sales floor. 22 Q Do you agree with me that the tile on front of the cash 23 registers becomes slippery when wet? 24 A Well, it's the same tile everywhere in the store. 25 Q Okay. Well, can tile inside the Burlington Coat
94 1 2015? 2 A I believe it is. 3 Q When you worked there, were there any renovations made 4 to the store? 5 A No. 6 Q Okay. 7 A Actually, I apologize. There's none to the front. 8 They did remodel the store since I've left. 9 Q Any remodeling done to the cash register location? 10 A No. 11 Q Okay. Are you aware of any other trips and falls or 12 slips and falls while you were a manager at the Bush 13 River Road Burlington Coat Factory store? 14 A Yes. 15 Q Okay. In chronological order, tell me the first one. 16 A Do you want, like, specific incidences or -- 17 Q Yes, ma'am. 18 A I couldn't tell you specific incidences. I'm not 19 always the one that puts all of the reports in. 20 Q Okay. 21 A But I know that there were probably three to four the 22 first year I think I got there and then the year that 23 she slipped and fell, I think there were two others 24 besides her. 25 Q Okay. Any falls in 2014?	96 1 Factory store become slippery when wet? 2 A Yes. 3 Q Do you agree with me that the soda or substance that 4 was spilled on the floor was in the walkway in front of 5 the registers? 6 A Yes. 7 Q Do you agree with me that the spill was a noticeable 8 spill on the floor? 9 MR. MERMIGES: Form. 10 THE WITNESS: It wasn't noticeable until I bent 11 down and saw it. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q The incident report that you prepared says, must have 15 been spilled right before customer fell. Noticeable 16 spill, heavy traffic area. Do you agree with that 17 statement? 18 A Yes. 19 Q Okay. Why did you say that it must've been spilled 20 right before customer fell? 21 A Because there's no way that a spill would have stayed. 22 We react to spills and we pick them up. 23 Q Why would they -- 24 A It had to have happened right before she fell because 25 we would've taken care of it if we had known about it.

97 1 Q But if it wasn't noticeable by you until you actually 2 got down on the floor, then how would it have ever been 3 noticed? 4 A I mean, anybody walking by it -- they said it was 5 small. I remember that it was dark in color. I want 6 to say in color tile, so black on black. I noticed it 7 when I bent down and then I saw it. 8 Q Okay. But if -- are you saying that anybody that 9 would've walked by would have noticed it? 10 MR. MERMIGES: Form. Answer the question, please. 11 THE WITNESS: That was paying attention; yes. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q Okay. What is the policy at Burlington Coat Factory 15 for employees having their phone with them while 16 employed? 17 A There isn't one. 18 Q There's nothing about a phone in -- or use of your 19 personal phone in the associate handbook? 20 A No. 21 Q There's no policy or procedure at all about the use of 22 a phone? 23 A Just so that -- just not using it towards, you know, 24 having company information on it. 25 Q Isn't it the policy of Burlington that employees should	99 1 associates to keep their phones and their cell phones 2 in this locked storage area while they're working? 3 A I encourage it; yes. 4 Q Why? 5 A So that it doesn't get lost or stolen. 6 Q Is it also because you expect your employees to spend 7 time working for Burlington when they're on the clock 8 instead of playing with their phones or other 9 electronic devices? 10 MR. MERMIGES: Form. 11 THE WITNESS: I do expect that; yes. 12 EXAMINATION CONTINUED 13 BY MR. GOINGS: 14 Q In fact, isn't it true that associates are discouraged 15 from using phones or personal devices? 16 MR. MERMIGES: Can you show me where in the notice 17 this -- you've been in this line of inquiry for a while 18 and I'm looking at this 30(b)(6) notice and I'm trying 19 to see what category of the notice you contend. 20 MR. GOINGS: Well, quite frankly, until today, no 21 one in your written discovery or any documentation that 22 you provided says that she was on the phone, so, you 23 know, if you would've told me that beforehand, it 24 would've been in the discovery notice for today's 25 deposition, but I believe that it is certainly
98 1 not be using or looking at their phone while they're on 2 the clock? 3 A There is not a policy. 4 Q Would you be surprised to know that there was a policy 5 that prevented that type of behavior at work? 6 A Would I be surprised if there was? 7 Q Yes, ma'am. 8 A Yes, but there isn't. 9 Q Tell me about the company's time and attendance system. 10 What is that? 11 A It's a policy requiring associates a point system for 12 if they come to work late or call out. So, for 13 instance, if they punch in seven minutes more past 14 their scheduled shift, it's considered a tardy and they 15 get half a point accumulated to their total. Calling 16 out Monday through Friday is one point, calling out on 17 a Saturday or Sunday is two. Once they accumulate 12 18 points, they're terminated. 19 Q What is compensable time? 20 A I am sorry. I do not know that. 21 Q Is there any locked storage areas or locked office 22 spaces for employees to put their belongings while at 23 work? 24 A Yes. 25 Q And do you encourage your store employees and	100 1 contemplated within the scope of Item 1 in the 2 discovery deposition. 3 MR. MERMIGES: The facts, allegations, causes of 4 action and defenses of this litigation. 5 MR. GOINGS: That's right. If y'all are claiming 6 that she was on the phone at the time, then I need to 7 ask questions about it. 8 EXAMINATION CONTINUED 9 BY MR. GOINGS: 10 Q So, back to my question. Isn't it true that Burlington 11 discourages employees from using their phone while on 12 company time? 13 MR. MERMIGES: I'm gonna have a standing objection 14 based on the scope of the notice, but you can go ahead 15 and answer from your personal knowledge. 16 THE WITNESS: Discourages or are you saying that 17 there's a policy? 18 MR. MERMIGES: Discourage. 19 THE WITNESS: No. 20 EXAMINATION CONTINUED 21 BY MR. GOINGS: 22 Q Okay. So, it's acceptable then for you as a store 23 manager to have your employees walking around, playing 24 on the phones, talking on the phones, their personal 25 phones, while at work?

101 1 A No, it's not. It doesn't really work like that. I 2 mean, they're allowed to have it on silent in their 3 pocket and if they are caught with it, using it 4 personally while on work time, then that's something 5 that's a conversation that we could have, but they're 6 usually very good with it. 7 Q Have you ever written up an employee for being on their 8 phone? 9 A Never. 10 Q Okay. Have you ever had to talk to an employee about 11 not really being on their phone as much as they are? 12 A No. 13 Q Okay. Did this lady, Taylor – 14 A Simon. 15 Q – Simon – did Taylor Simon tell you that she was on 16 her phone? 17 A No, I didn't ask. 18 Q You didn't ask if she was on the phone? 19 A Huh-uh. 20 Q Yes or no? 21 A No, sorry. 22 Q Okay. Did she tell you that she was on the phone? 23 A No. 24 Q Okay. Are you sure that she was going on a break at 25 this time?	103 1 EXAMINATION CONTINUED 2 BY MR. GOINGS: 3 Q Okay. Have you ever testified in court before? 4 A Yes. 5 Q For what reasons? 6 A One of my girlfriends got a DUI and I had to testify 7 that I was driving. 8 Q Okay. Have you ever testified for Burlington or TJ 9 Maxx or any of your other employers in any type of 10 criminal or civil case? 11 A No. 12 Q Okay. Have you understood my questions here today? 13 A Yeah. 14 Q All right. Well, listen, it was very nice meeting you 15 and sorry under the circumstances of under a 16 deposition. 17 A Mm-hmm. 18 Q But I appreciate your time here today. 19 A Nice meeting you, too. Thank you. 20 Q And feel free to answer any questions your lawyer may 21 have, if he has any. 22 EXAMINATION 23 BY MR. MERMIGES: 24 Q Did you ever – the spill in this case, did you ever 25 see the spill before the plaintiff had slipped in it?
102 1 A Yes. 2 Q Okay. And wouldn't it have been more appropriate for 3 her to pull out her phone if she was on a phone when 4 she got to the break room and not while she was walking 5 through the sale floor at Burlington? 6 A Yes. 7 Q Okay. Have you ever heard stories of drivers being 8 distracted on their phone and get in a car accident? 9 A Yeah, it's the age of media. Everyone is always glued 10 to their phones. 11 Q Okay. Do you believe that she was distracted because 12 she was on her phone or playing with her phone when she 13 walked past the spill on the floor? 14 MR. MERMIGES: Form. 15 THE WITNESS: Yes. 16 MR. MERMIGES: That's fine. 17 EXAMINATION CONTINUED 18 BY MR. GOINGS: 19 Q Have you answered my questions truthfully and 20 accurately here today? 21 A Yes. 22 Q Okay. Is there anything about this case that you know 23 about that we have not discussed? 24 MR. MERMIGES: Form. 25 THE WITNESS: No.	104 1 A No. 2 Q Did any – was any employee, to your knowledge, aware 3 of the liquid on the ground before the plaintiff had 4 slipped in it? 5 A No. 6 Q Did any Burlington employee, to your knowledge, create 7 this spill that the plaintiff slipped in? 8 A No. 9 Q In terms of what the spill looked like, the size of the 10 spill, I just want to be clear, you did not get a sense 11 of that – strike that. In terms of the size and the 12 shape of the spill, you would agree that that would 13 have been impacted by the plaintiff slipping through 14 it; is that right? 15 A Yes. 16 Q So in your response, in your investigation of whatever 17 spill you saw was not – would not have been the same 18 as the spill that occurred that she initially slipped 19 on? 20 A Right. 21 Q Okay. And when it comes to safety training, the 22 monthly safety materials that we discussed, are those 23 posted anywhere in the store when it's a given month? 24 A Yes. They're posted on the bulletin board in the 25 associate break room.

105 1 Q Okay. On the photos in Exhibit 11, can you see any 2 liquid on the ground in those actual photos? 3 A No, sir. 4 Q When you prepare an incident report, who is that 5 transmitted to? 6 A I believe Gallagher Bassett, the insurance company. 7 Q I don't think I have anything else. What's the policy 8 -- the stated policy when it comes to employees 9 encountering a hazardous condition? 10 A To notify a member of management or get someone to help 11 pick it up. 12 Q Ask them to pick it up; is that right? 13 A Right, yes. 14 Q Is every employee in the store trained on that issue? 15 A Yes. 16 Q Do employees walk the store throughout the day? 17 A Yes. 18 Q If an employee encounters a hazardous condition during 19 their walking through the store, what are they trained 20 to do? 21 A Take care of it immediately. 22 Q I don't have anymore questions for you. Thank you. 23 A Thank you. 24 MR. MERMIGES: Do you have any more, Robert? 25 MR. GOINGS: I don't. Thank you very much for	107
106 1 your time. 2 THE WITNESS: Yes. 3 MR. GOINGS: Safe travels back to Greenville. 4 THE WITNESS: Thank you. 5 (WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE 30(b)(6) 6 DEPOSITION WAS CONCLUDED AT 1:09 P.M.) 7 (DEPONENT HAS RESERVED READING AND SIGNING.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	

Exhibit 3

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-01699

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

-v-

Defendant.

This matter arises out of an incident where Plaintiff Lallie Qualls (Plaintiff) suffered personal injuries on July 31, 2015, while visiting a store operated by Defendants Burlington Coat Factory of South Carolina LLC and Burlington Coat Factory Direct Corp. (hereinafter "Burlington" or "Defendants"). Plaintiff alleged that the Defendants were negligent for failing to exercise reasonable care while she was on their premises, and claimed that said negligence was the proximate cause of her injuries. (Plaintiff's Complaint ¶¶18-¶19). Plaintiff specifically claimed that the Defendants had actual or constructive knowledge of a wet substance on their floor prior to the Plaintiff's fall and that the substance was "on the floor for a sufficient amount of time for Burlington to take reasonable action to clean up the substance or place warning signs in a location to prevent a patron from being harmed by the hazardous condition." (Plaintiff's Complaint ¶7-¶11). Plaintiff sought to recover both actual and punitive damages from Defendants. (Plaintiff's Complaint ¶19-¶20).

This matter came before the Court on Defendants' Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The Court heard oral



argument of the parties on June 6, 2017. For the reasons set forth herein, the Court hereby **GRANTS** the Defendants' Motion for Summary Judgment.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On July 31, 2015, Plaintiff visited Defendants' store located at 302 Bush River Road, Columbia, SC. While walking in the checkout aisle, Plaintiff fell to the ground after slipping on a wet substance. As a result of the fall, Plaintiff alleges that she sustained injuries to her left knee, which required surgical repair.

The subject incident was captured on Burlington's DVR video surveillance system, and footage of the incident was preserved. Said DVR footage was presented to the Court by the Defendants and was attached to their Motion for Summary Judgment, which was filed on March 9, 2017. Defendants subsequently filed two deposition transcripts (Deposition of Plaintiff and Deposition of Pamela Arsenault) on May 19, 2017. Plaintiff filed her Memorandum in Opposition to Defendants' Motion for Summary Judgment on May 31, 2017, and Defendants filed their Reply on June 6, 2017.

Plaintiff did not contest the authenticity or accuracy of the time stamped DVR footage submitted by the Defendants, but the parties dispute the evidentiary significance of the footage. Defendants assert that the video clearly shows the following: (1) while a family is checking out, their young child throws a cup onto the ground at 2:45:55 PM; (2) an older child in the party retrieves the cup from the floor at 2:46:06; (3) the video does not reveal any identifiable spill on the floor; (4) the older child takes the cup to throw it away at 2:46:33; (5) the Burlington cashier, Taylor Simon, does not witness either the cup being thrown or the cup being picked up; (6) the family completes their checkout at 2:49:17; (7) Ms. Simon leaves for her break, and walks past the spill without noticing it at

2:49:33; (8) the Plaintiff slips and falls in the area where the cup landed at 2:50:20 PM; (9) three customers walk past the spill area without noticing it or notifying any Burlington employee; (10) a total of 4 minutes and 25 seconds elapses between the cup hitting the ground and the Plaintiff falling.

In her Return, Plaintiff asserts that the DVR footage shows that (1) the cup of liquid was thrown by a young boy sitting in a shopping cart just across the counter from Mrs. Simon while she was ringing up guests; (2) at least three customers noticed the spill when passing by and conspicuously altered their paths or took exaggerated steps to avoid the spill; and (3) Ms. Simon was looking down towards the spill on the floor as she walked by, but did not stop to clean it up.

Plaintiff's Return also cites to the deposition transcripts of Pamela Arsenault and Lallie Qualls, asserting that their sworn testimony proves: (1) the spill occurred in a high traffic area in close proximity to at least two store employees; (2) Defendants' employee Taylor Simon walked within inches of the spill that was on the floor; (3) Defendants' employee Taylor Simon had the opportunity to see the spill; (4) Defendants' employee Taylor Simon appeared to look down at her phone when she walked past the spill, which could have prevented her from seeing the spill.

Defendants, in their reply, cited to the same two deposition transcripts to establish the following: (1) Defendants' employee did not see the spill before Plaintiff fell; (2) the spill was not easy to see; (3) Defendants' employee did nothing to make the Plaintiff think that she knew about the spill; (4) Defendants' employee was on break when she left her workstation, and Burlington employees are allowed to carry their phones at work.

II. LEGAL STANDARD

a. Summary Judgment Generally

Summary Judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Calvert v. House Beautiful Paint and Decorating Ctr., Inc., 443 S.E.2d 398 (S.C. 1994). In deciding whether Summary Judgment is proper, the court should construe all inferences arising from the evidence against the moving party. Id.

A genuine question of material fact exists where, after reviewing the record as a whole, the court finds that a reasonable jury could return a verdict for the nonmoving party. See Bloom v. Ravoir, 529 SE 2d 710 (S.C. 2000). Summary Judgment should be granted when plain, palpable and undisputed facts exist on which reasonable minds cannot differ. Trico Surveying, Inc. v. Godley Auction Co., 431 S.E.2d 565 (S.C. 1993). Mere speculation does not create a material issue of fact warranting denial of a Motion for Summary Judgment. Jackson v. Bermuda Sands, Inc., 677 S.E. 2d 612 (Ct. App 2009).

b. Negligence

To assert direct liability based on a negligence claim in South Carolina, a plaintiff must show that (1) defendant owed her a duty of care; (2) defendant breached this duty by a negligent act or omission; (3) defendant's breach was the proximate cause of her injuries; and (4) she suffered injury or damages. Dorrell v. S.C. DOT, 605 S.E.2d 12, 15 (S.C. 2004) (citation omitted). "Whether the law recognizes a particular duty is an issue of law to be determined by the court." Jackson v. Swordfish Inv., L.L.C., 620 S.E.2d 54, 56 (S.C. 2005) (citation omitted).

c. Premises Liability

Under South Carolina law, the owner of a property owes business visitors or invitees the duty of exercising reasonable and ordinary care for their safety and is liable for any injuries resulting from a breach of such duty. H.P. Larimore v. Carolina Power & Light, 531 S.E.2d 535, 538 (S.C. Ct. App. 2000) (citing Israel v. Carolina Bar-B-Que, Inc., 356 S.E.2d 123, 128 (S.C. Ct. App. 1987)). The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner is on actual or constructive notice. H.P. Larimore, 531 S.E.2d at 538 (citing Callander v. Charleston Doughnut Corp., 406 S.E.2d 361, 362-63 (S.C. 1991)). The landowner is not required to maintain the premises in such condition that no accident could happen to a patron using them. See Denton v. Winn-Dixie Greenville, Inc., 439 S.E.2d 292, 293 (S.C. 1993). In the context of slip and fall cases sounding in negligence, “[t]he mere fact that the substance was on the floor is insufficient standing alone to charge the storekeeper with negligence.” Calvert 443 SE 2d at 399.

In South Carolina, shopkeepers cannot be held liable for a “negligent mode of operations” and do not have a “continuous duty to look out for the safety of patrons.” Wintersteen v. Food Lion, Inc., 542 S.E.2d 728, 738 (S.C. 2001). “To require shopkeepers to anticipate and prevent the acts of third parties is, in effect, to render them insurers of their customers’ safety. This is simply not the law of this state.” Id.

To recover damages for injuries caused by a dangerous or defective condition on a landowner’s premises, a plaintiff must show that (1) the injury was caused by a specific act of the defendant which created the dangerous condition, or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. Id. At 729 (citing Anderson v. Racetrac Petroleum, Inc., 371 S.E.2d 530 (S.C. 1988)); Pennington v.

Zayre Corp., 165 S.E.2d 695 (S.C. 1969); Hunter v. Dixie Home Stores, 101 S.E.2d 262 (S.C. 1957).

“The entire basis of an invitor’s liability rests upon his superior knowledge of the danger that causes the invitee’s injuries. If that superior knowledge is lacking ... the invitor cannot be held liable.” H.P. Larimore, 531 S.E.2d at 540.

d. Constructive Knowledge of Foreign Substance

In the absence of evidence that the shopkeeper either created or knew of the dangerous condition causing the Plaintiff’s injury, a claim for negligence must be supported by evidence of the shopkeeper’s constructive knowledge of the dangerous condition. Specifically, the Plaintiff must present specific evidence that “the foreign substance had been on the floor for a sufficient length of time that the storekeeper would or should have discovered and removed it had the storekeeper used ordinary care.” Gillespie 394 S.E.2d at 24–25; See also Calvert 443 SE 2d at 399 (affirming Summary Judgment where Plaintiff failed to produce affirmative evidence that any employee was aware of the foreign substance, or how long the substance had been on the floor); Simmons v. Winn-Dixie Greenville, Inc., 457 SE 2d 608 (S.C. 1995) (same); Gillespie v. Wal Mart Stores, Inc., 394 SE 2d 24 (Ct. App 1990) (same; noting that mere proximity of store employee to the spill is not sufficient to escape Summary Judgment); Bessinger v. BiLo, Inc., 496 SE 2d 33 (Ct. App 1998) (same; noting that the substance had been on the floor for up to fourteen minutes without being discovered).

III. ANALYSIS

a. The Parties’ Arguments

Defendants move for Summary Judgment, arguing that Plaintiff's evidence fails to create a question of fact regarding whether Defendants created the condition of the substance on the floor or had actual or constructive notice of the substance on the floor. In support of its argument, Defendants assert that there is no evidence in the record that Defendants created the dangerous condition by placing the substance on the floor or had actual notice that the substance was on the floor. Defendants further assert that the amount of time the substance was on the floor is insufficient to establish constructive knowledge as a matter of law.

It is not disputed that Defendants did not create the dangerous condition in this case, as the video shows a young child throwing a cup on the floor shortly before the Plaintiff's fall.¹ With respect to the question of actual knowledge, Defendants assert that the video very clearly shows that employee Taylor Simon did not see the spill prior to Plaintiff's fall. Ms. Simon did not witness the child throwing the cup, because her view was blocked as she was checking out the child's family. The cup was removed by an older child in the party before Ms. Simon had completed checking the family out, leaving no visible evidence that a spill had occurred. The spill itself is not large enough to be visible on the DVR footage. Three customers walked past the spill location without either slipping or notifying any Burlington employee. After checking out the family, Ms. Simon goes on break and walks past the spill without noticing it.² Defendants' corporate designee and store manager Pamela Arsenault repeatedly stated in her deposition that Taylor Simon walked past the spill because "she didn't see it."³ Plaintiff, in her deposition, testified that the spill was not

¹ While the video does not reveal a visible spill, Plaintiff has not come forward with any evidence indicating that a Burlington employee created the condition.

² See, generally, DVR Footage time stamped from 2:45:55 PM to 2:50:20 PM.

³ Deposition of Pamela Arsenault, P. 86-P.88.

easy to see, and that Ms. Simon didn't do anything that made the Plaintiff think that Ms. Simon knew about the spill.⁴ Plaintiff went on to testify that she believed that Ms. Simon should have seen the spill but didn't see it.⁵ Ms. Arsenault further testified that Ms. Simon walked past the spill when she was off duty, and that there is no policy against employees using their cell phones.⁶

Specifically as to constructive knowledge, Defendants assert that there was "no more than 4:25 (four minutes and twenty five seconds) between the time the child threw the cup on the ground and the Plaintiff's fall."⁷ Defendants argue that this amount of time is insufficient to establish constructive knowledge as a matter of law. Defendants cite to multiple South Carolina opinions, as well as foreign authority in support of this position. Defendants argue that there are no South Carolina appellate opinions finding that a material issue of fact as to constructive knowledge exists where the foreign substance was on the ground for less than five minutes.

Defendants further argue that the mere proximity of Taylor Simon to the spill does not create an issue of material fact, due to her lack of actual knowledge. Defendants cite to several South Carolina cases holding that mere proximity of an employee to a foreign substance, or the mere fact that the substance is within the employee's field of vision, is insufficient to establish constructive knowledge as a matter of law.

In support of her claims and in opposition to Defendants' Motion for Summary Judgment, Plaintiff argues that Defendants failed to exercise reasonable and ordinary care for her safety. In support of her argument, Plaintiff points to the testimony of Ms. Arsenault

⁴ Deposition of Plaintiff, P.28.

⁵ Deposition of Plaintiff, P.65.

⁶ Deposition of Pamela Arsenault, P. 97-102.

⁷ Defendants' Memorandum in Support of Motion for Summary Judgment, Page 10.

which states that Ms. Simon walked within inches of the spill that was on the floor, and that Ms. Simon had the opportunity to see the spill.⁸ Ms. Simon left to go on break, and appeared to have a cell phone in her hand at that time.⁹ Ms. Simon's use of the cell phone could have prevented her from seeing the spill.¹⁰ The spill itself occurred in a high traffic area.¹¹ Plaintiff also refers to the video, which shows that three customers walked past the spill before the Plaintiff fell, and Plaintiff argues that those customers took abnormally large steps to avoid the spill.

Plaintiff asserts that the evidence before the Court was sufficient to establish actual notice on the part of the Defendants, because Ms. Simon had the opportunity to observe the spill when she walked past it. Plaintiff also argues that because the spill occurred near Ms. Simon and another Burlington employee, and because the spill occurred in a high traffic area, this was sufficient to establish constructive knowledge. Plaintiff finally argues that a reasonable jury could find that Ms. Simon saw the spill and chose to ignore it, and that this would justify an award of punitive damages against the Defendants.

b. The Court's Review

To survive Defendants' Motion for Summary Judgment, Plaintiff has to submit evidence showing that her injuries were caused by Defendants' specific act(s) that created the dangerous condition, or that Defendants had actual or constructive knowledge of the dangerous condition and failed to remedy it. Upon review, the court concludes that there is not any evidence in the record supporting a finding that Defendants created the dangerous condition at issue in this matter. Moreover, the court finds that the evidence of

⁸ Deposition of Pamela Arsenault, P. 85-87.

⁹ Deposition of Pamela Arsenault, P. 83-84.

¹⁰ Deposition of Pamela Arsenault, P. 89.

¹¹ Deposition of Pamela Arsenault, P. 92.

record does not support a finding that Defendants had actual notice of the substance on the floor in the Burlington Coat Factory store on Bush River Road on July 31, 2015. The Plaintiff's own sworn deposition testimony and the surveillance video submitted by Defendants support both of these findings.

With respect to the question of actual knowledge, Plaintiff testified that the spill was hard to see, and that she had no idea of the size or color of the spill. She further testified that there were no footprints or cart tracks around the spill and that the rest of the floor was dry.¹² Plaintiff testified that Ms. Simon did nothing to make Plaintiff conclude that she saw the spill, and subsequently testified that Ms. Simon did not see the spill, but that she should have seen it.¹³ The DVR footage does not show any visible spill whatsoever. When Ms. Simon walks past the spill, there is no indication that she is aware of a spill, or is changing her walk to avoid a spill. In short, there is no record evidence tending to show that the spill was visible before the Plaintiff fell.¹⁴ Defendants' corporate designee repeatedly denied that Ms. Simon or any other Burlington employee had knowledge of the spill prior to the Plaintiff's fall. Ms. Simon's mere proximity to the spill does not create a disputed issue of material of fact as to the question of Burlington's actual knowledge of the dangerous condition. Plaintiff did not present the court with any other evidence tending to create a dispute of material fact on this issue.¹⁵

With respect to the question of constructive knowledge, the Court notes that Plaintiff does not have any independent knowledge of how long the substance was on the

¹² Plaintiff's Deposition, P. 24-25; 28; 32.

¹³ Plaintiff's Deposition, P. 28; 65.

¹⁴ Note that Manager Pam Arsenault testified that she never saw the shape or size of the spill before Plaintiff slipped on it. Deposition of Pamela Arsenault, P. 103-104.

¹⁵ The record is devoid of any of Ms. Simon's own sworn testimony.

floor before she fell.¹⁶ While the spilled liquid is not actually visible on the DVR footage, Plaintiff does not dispute the timeline presented by Defendants based upon said footage. Having reviewed the video and the complete record before the Court¹⁷, I find that Plaintiff has failed to come forward with evidence that would tend to create an issue of material fact as to constructive knowledge, and that Defendants are entitled to Judgment as a Matter of Law. Specifically, the video establishes that the liquid was on the floor for less than five minutes. Several South Carolina cases have held that five minutes is insufficient to establish constructive knowledge as a matter of law.

In cases where there is no DVR footage showing the specific time of a spill, Courts considering Summary Judgment calculate the length of time the spill was on the ground by drawing the most favorable inference possible: specifically, they infer that the spill could have occurred immediately after the last inspection of the area. In Bessinger, the South Carolina Supreme Court affirmed an award of Summary Judgment where there was testimony that an inspection had occurred fourteen minutes before the accident. 492 S.E. 2d 33. Likewise, in Wimberley v. Winn Dixie Greenville, Inc., 165 SE2d 627 (1969), the South Carolina Supreme Court vacated a trial Court verdict and held that a retailer could not be liable as a matter of law 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); Gilliland v. Pierce Motor Company, 111

¹⁶ Deposition of Plaintiff, P. 23-24.

¹⁷ In considering Defendants’ Motion, the Court was presented with the following evidence:

1. Affidavit of Pamela Arsenault
2. Time Stamped DVR Footage of Incident (Exhibit A to Affidavit).
3. Screenshot Timeline from DVR Footage of 7/31/15 Incident (Exhibit B to Affidavit).
4. Defendants’ Notice of Filing Depositions of Lallie Qualls and Pamela Arsenault.
5. Photographs handed up by Plaintiff’s Counsel at the June 6, 2017 hearing.

S.E. 2d 521 (S.C. 1959) (holding that store could not be liable as a matter of law where the foreign substance may have been on the floor for up to five (5) minutes).¹⁸

Ms. Simon's proximity to the spill, and the allegation that Ms. Simon may have looked down at her cell phone after going off duty and walking past the spill¹⁹, are not sufficient to create an issue of material fact as to constructive knowledge. The DVR footage does not reveal a visible spill. The Plaintiff testified that the spill was hard to see, and that she had no idea of the size or color of the spill. She further testified that there were no footprints or cart tracks around the spill and that the rest of the floor was dry.²⁰ In short, there is no evidence tending to establish that the spill was actually visible before the Plaintiff fell.

Even if the spill were visible and within Ms. Simon's field of vision, this would not create a disputed issue of material fact in this case. In Gillespie, a slip and fall action where the Plaintiff was seeking to establish constructive knowledge, the South Carolina Court of Appeals affirmed an order of Summary Judgment in favor of the retailer and expressly found that "the mere fact that water was on the floor of the store and was within

¹⁸ Note, further, that the District of South Carolina, sitting in diversity and applying South Carolina law has granted Summary Judgment under similar circumstances. Norris v. Wal-Mart Stores East, L.P., Civil Action No. 1:12-02592-JMC (D-SC 2014) (granting Summary Judgment where video revealed that substance was on floor for 2:33); Massey v. Wal-Mart Stores East, LP, 2010 WL 3786056 (D. S.C. 2010) (granting Summary Judgment due to lack of constructive notice when video showed spill occurred less than three minutes before plaintiff's fall).

¹⁹ 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. Gillespie, 394 S.E. 2d at 25. Retailers do not have a continuous duty to inspect the premises. Wintersteen, 542 S.E.2d at 738.

²⁰ Plaintiff's Deposition, P. 24-25; 28; 32.

the field of vision of a nearby store employee at the time Gillespie slipped upon it is not by itself enough evidence to charge [Defendant] with negligence.” 394 S.E.2d 24, 25 (1990) (citations omitted).²¹ See also, Pennington, 165 S.E. 2d 695 (evidence held insufficient to prove constructive notice where the plaintiff, while shopping in a department store, slipped on a transparent plastic bag and fell to the floor and an employee was apparently in the immediate area at the time of the fall); Hunter, 101 S.E. 2d 262 (evidence held insufficient to charge a storekeeper with constructive notice of the presence on the floor of green beans that caused the plaintiff to slip and fall even though a store employee faced toward the area where the plaintiff fell and stood 10 or 12 feet away and another employee worked 20 or 30 feet from where she fell).

In summation, the Plaintiff cannot meet her burden of establishing constructive knowledge by showing that the substance “was on the floor for such a length of time as to infer that [the retailer] was negligent in not discovering and removing it.” Gillespie, 394 S.E.2d at 25. Therefore, the Defendants are entitled to Summary Judgment on Plaintiff’s claim for premises liability negligence.

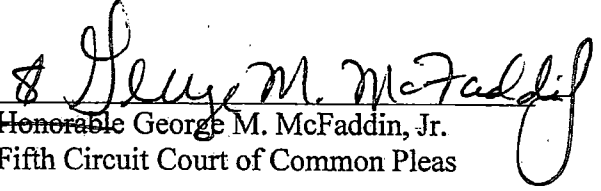
IV. CONCLUSION

²¹ The Gillespie court cited multiple South Carolina opinions, as well as the following foreign case law:

H.E.B. Foods, Inc. v. Moore, 599 S.W. (2d) 126 (Tex. Ct. Civ. App. 1980) (mere fact that a foreign substance was on the floor of a store, which caused the floor to become slippery, and that a store employee was in the immediate vicinity at the time the plaintiff fell is insufficient evidence, standing alone, to raise the inference that the storekeeper placed the substance there or knew it was there and negligently failed to remove it); Kroger Grocery & Banking Co. v. Spillman, 279 Ky. 366, 130 S.W. (2d) 786 (1939) (a case cited with approval in Hunter, supra, and reversing a verdict in favor of a customer who slipped on grapes lying on the floor within a few feet of where two or more employees were working where there was no proof regarding the length of time the grapes were on the floor).

Upon careful consideration of the entire record, the court hereby **GRANTS** the Motion for Summary Judgment of Defendants Burlington Coat Factory of South Carolina LLC and Burlington Coat Factory Direct Corp.

IT IS SO ORDERED


Honorable George M. McFaddin, Jr.
Fifth Circuit Court of Common Pleas

This 23rd day of August, 2017.

Sumter, SC.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable George M. McFaddin, Jr., Circuit Court Judge

Circuit Court Case No. 2016-CP-40-01699

Appellate Case No.: 2017-002433

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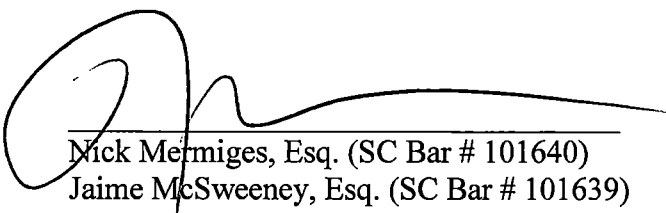
Lallie Qualls.....Appellant,

v.

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

CERTIFICATE OF SERVICE

I certify that a true copy of the Respondents' Reply in Support of Motion to Strike in the above case has been served via US Mail upon Robert F. Goings and Jessica L. Gooding of the Goings Law Firm at: PO Box 436 Columbia, SC 29202 on this 30 day of April, 2018.



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April 30, 2018



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April 30, 2018

Via US Mail to:

Jenny Kitchings

SC Appeals Court Clerk

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Columbia, SC 29211

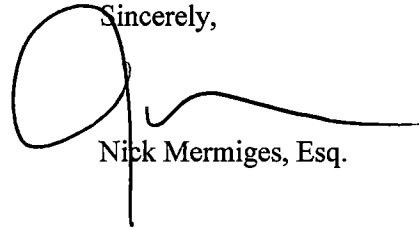
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SC Court of Appeals

Re: Qualls v. Burlington Coat Factory of South Carolina, Et Al.
Reply in Support of Motion to Strike
App Case No.: 2017-002433

Dear Ms. Kitchings,

Enclosed please find one original and six copies of Respondents' Reply in Support of Motion to Strike.

Sincerely,



Nick Mermiges, Esq.

CC: Robert Goings, Esq. (US Mail)

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