

FORM 4 FILED

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2100341

Allstate Property And
Casualty Insurance Company

2018 AUG -7 PM 12:39
Natoshia Hamilton

Kenneth Collins Coogler

PLAINTIFF(S)

DORIS POULOS CHIARA
COURT CLERK

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

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

RECEIVED
SEP 17 2018
SC Court of Appeals

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

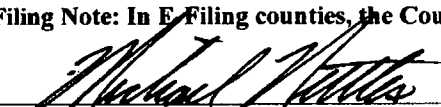
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Allstate Property And Casualty Insurance Company	Natoshia Hamilton and Kenneth Collins Coogler	N/A

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2140
Judge Code

8-7-18
Date

For Clerk of Court Office Use Only

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

Janice Holmes 1201 Main Street, Suite 1200 PO Box 7368
(29202) Columbia, SC 29201
Alfred Johnston Cox PO Box 7368 1201 Main Street, Suite
1200 Columbia, SC 29201

Eric Marc Poulin 32 Ann Street Charleston, SC 29403
Roy T. Willey IV 32 Ann Street Charleston, SC 29403
James Camden Hodge 32 Ann Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

2018 AUG -7 PM 12:39 WELFTH JUDICIAL CIRCUIT

Allstate Property and Casualty Insurance
Company,

**DORIS POULOS O'HARA
Clerk of Court
FLORENCE COUNTY, SC**

C/A#: 2017-CP-21-341

Plaintiff,

vs.

Natoshia Hamilton and Kenneth Collins
Coogler,

Defendants.

ORDER RECEIVED
SEP 17 2018
SC Court of Appeals

This matter came before the Court on the parties' cross motions for summary judgment. A hearing was held before me on June 1, 2018, in the Florence County Court of Common Pleas. Appearing for Plaintiff was A. Johnston Cox of the law firm Gallivan, White & Boyd P.A. and Camden Hodge of the Anastopoulo Law Firm appeared on behalf of Natoshia Hamilton ("Hamilton"). Based upon the arguments of counsel, memoranda of law, exhibits, applicable law, and the record in this case, Plaintiff's Motion for Summary Judgment is granted and Hamilton's Motion is denied. Therefore, judgment should entered as a matter of law in favor of Plaintiff on its Complaint against Defendants.

FINDINGS OF FACT

Based on the competent evidence submitted in this case, the Court makes the following findings of fact:

Allstate Property and Casualty Insurance Company ("Allstate") received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." On January 21, 2016, Allstate received a letter from the Law Firm regarding

radiology bills that were to be added to the bills included with the demand. However, because Allstate had not received the demand referenced in that letter, Allstate called the Law Firm and was told that the demand package had been sent. During the afternoon of January 21, 2016, Allstate received the time-sensitive demand that was dated January 15, 2016.

Per the terms of the demand, the bodily injury liability limits of the policy covering the vehicle Coogler was driving were to be delivered to the Anastopoulo firm by "5:00 pm EDT on January 26, 2016." Hamilton knew that Coogler's policy had \$25,000.00 limits for bodily injury. The demand stated that "[s]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm.

In addition, the letter also demanded that Coogler "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss." Further, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

On January 26, 2016, the settlement check in the amount of \$25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband Kenneth Collins Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams) to satisfy the requirements of the time-sensitive demand.

Despite Allstate's acceptance of the time-sensitive demand by performance, Hamilton rejected Allstate's acceptance with no explanation. In her deposition, Hamilton explained that she rejected Allstate's acceptance of the demand because the check was not a certified check. She explained that the check "didn't meet our demand."¹ However, Hamilton conceded that the amount she demand was \$25,000 and that a certified check in the amount of \$25,000 and the check issued by Allstate in the amount of \$25,000 were for the identical amount of money. Hamilton also admitted that she did not have any concerns that a check from Allstate would bounce. Hamilton also admitted that the check delivered by Allstate was negotiable.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate where 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 judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) and Rule 56, SCRPC). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ." *Allen v. Long Mfg. NC, Inc.*, 332 S.C.

¹ Since sending the letter rejecting Allstate's acceptance of her demand, which provided no explanation regarding the rejection, per Hamilton's recently filed Motion for Summary Judgment and Memorandum of Law in Support ("Hamilton's Motion") and her deposition testimony, she has since clarified that she rejected Allstate's acceptance of her demand because Allstate allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." Further, Hamilton testified that she had no issue with the proposed release that was submitted or the affidavits. No other reason for rejecting the settlement was given at the hearing, and the Court finds that this is the only issue of Allstate's acceptance of her demand about which Hamilton takes issue.

422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion “must come forward with specific facts showing there is a genuine issue for trial.” *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. *See, e.g., Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216-217, 407 S.E.2d 637, 638 (1991) (determining grant of summary judgment was proper where “there was no evidence from which a jury could find in [the opposing party’s] favor”).

In viewing the record evidence in this case in the light most favorable to Hamilton, the Court finds that Hamilton has failed to show that genuine issues of material fact exist regarding whether Allstate complied with the material terms of the demand. Based on its review of the evidence in this case and in accordance with South Carolina law, the Court finds that Allstate complied with all material terms of the demand, and the Court further finds that Allstate’s performance of the material terms of the demand constitute acceptance and the settlement was consummated under South Carolina law. Therefore, the Court enters judgment in favor of Allstate as a matter of law.

CONCLUSIONS OF LAW

The Court finds as a matter of law that Allstate’s acceptance and performance of the material terms of the demand constitute a valid acceptance. The Court notes that Hamilton’s only argument in support of her Motion seeking entry of summary judgment in her favor is that Allstate

allegedly “failed to comply with the clear, explicit requirements to tender a cashier’s or certified check.” Further, the Court notes that during her deposition, Hamilton testified her only issue with Allstate’s acceptance of the demand was the form of the check. The Court also notes that Hamilton contends Allstate’s acceptance of the demand “was not a mirror image or in compliance with the terms of [Hamilton]’s offer” and that “under the long-standing dictates of contract law” and that Allstate’s acceptance “was nothing more than a counter proposal.” The Court finds that South Carolina law does not support Hamilton’s contention, and rather, the principles of South Carolina contract law mandate entry of summary judgment in favor of Allstate.

Under South Carolina law, “[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.” *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Further, under South Carolina law, for there to be a valid contract, there must be an offer, an acceptance, and valuable consideration. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (determining a valid contract existed because there was evidence of a meeting of the minds as to the terms and conditions of the agreement) (citing *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) (“The necessary elements for a contract are an offer, acceptance, and valuable consideration.”)). In addition, under South Carolina law, a valid and enforceable contract is created when there is “a meeting of the minds between the parties with regard to all *essential* and *material* terms of the agreement.” *Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d at 450 (citing *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 893 (1989)) (emphasis added). *See also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (explaining that “[a] valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.”) (emphasis in original).

Here, the Court finds that there is no legitimate dispute that Hamilton's demand sought the full, \$25,000 bodily injury limits to resolve Hamilton's claim for bodily injury as to Coogler. *See Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 ("In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered."). The Court further finds that there is no question that Allstate's acceptance of the settlement demand is valid and enforceable. Based on the record evidence, there was an offer from Hamilton that was accepted by Allstate, which provided valuable consideration to Hamilton. The Court further finds that there is no question that Allstate met the essential and material terms of Hamilton's demand – the payment of the entire \$25,000 policy limits for Hamilton's alleged bodily injuries. Therefore, the Court finds that Allstate is entitled to entry of summary judgment in its favor.

The Court further notes that Hamilton's contention seems to suggest that because Allstate's acceptance of the settlement demand was not a "mirror image" in that the type of check issued was not a cashier's check or certified check, there was not an acceptance of Hamilton's demand. South Carolina law does not support Hamilton's contention. Rather, contrary to Hamilton's assertion, the Court finds that the type of check is not a material term of the settlement demand, and further, it was a term that was impossible for Allstate to meet.

The demand requires Allstate to issue a cashier's or certified check. Hamilton conceded that the type of check would not change the amount of money – the amount would still be \$25,000. She further testified that they "had no problem with that [the check] would bounce or anything." It should go without saying that insurance companies such as Allstate do not issue cashier's checks or

certified checks. Allstate is not a bank.² Moreover, Hamilton has not demonstrated that issuing such checks in this manner is an accepted practice for insurance companies. Notwithstanding this fact, at least one South Carolina court has questioned the continued vitality of the so-called "mirror-image" rule and has noted that it is outdated in that it was "well suited to simple, one time transactions, in which the parties contract face to face" and that "it fails to accommodate the realities of much modern commercial practice." *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991).

In addition, Hamilton has pointed to no South Carolina case stating that such a rule would apply to determine that Allstate's performance of the essential and material terms of the time-sensitive demand constitutes a counteroffer. Because there is no material difference between how the manual check issued by Allstate in this case and a certified or cashier's check issued by a bank would be treated under South Carolina law, the Court finds that Allstate's issuance of the manual check (the kind of check that it can actually issue), does not constitute a counteroffer.³

The South Carolina Supreme Court has already determined that payment in the form of a cashier's or certified check is not an essential or material term of a settlement agreement. South Carolina Rule of Professional Conduct 1.15 states as such. Specifically, the rule provides in pertinent part:

² In Hamilton's Motion, she cites to a decision by the Court of Appeals of South Carolina, *Fender & Latham, Inc. v. First Union National Bank*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994), seemingly in support of her contention that Allstate's performance of the demand was not sufficient. The Court notes that in *Fender*, the bank's commitment letter to the borrower stated that to accept the offer the borrower needed to make an escrow deposit of \$125,000, obtain "pole line rights," and accept the offer in writing. Fender did not comply with any of these clearly material terms by the date required in the offer. Therefore, the Court finds that *Fender* has no bearing on the case before the Court.

³ Further, there is no evidence in the record before the court of an actual material difference between the check issued by Allstate a certified or cashier's check.

(f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.

(2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:

(iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed \$50,000.

Rules of Professional Conduct: Rule 1.15, RPC, Rule 407, SCACR. Therefore, per the mandate of the South Carolina Supreme Court, there is no material difference between a check issued by an insurance company, such as Allstate, and a certified check, cashier's check, or other check drawn by a depository institution.

Because Allstate complied with the terms of the demand, Hamilton was obligated to sign the Covenant Not to Execute and resolve her claims for bodily injury.

In addition, the Court finds that Allstate's acceptance of the settlement demand constitutes an accord and satisfaction. Under South Carolina law, "[t]he essential elements of an accord and satisfaction are an agreement to settle a dispute and consideration which supports the agreement." *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998). The Court finds: 1) that there was an offer to settle Hamilton's claim, 2) Allstate accepted the demand, and 3) Allstate provided the demanded consideration to support the agreement to settle Hamilton's claim. The Court finds that this is a textbook example of an accord and satisfaction.

In this case, the Court finds that Allstate complied with the material terms of the demand. As stated above, the manual check issued by Allstate is treated the same as a certified check or a cashier's check under South Carolina law. Therefore, the Court finds that Allstate's manual check

was sufficient to meet the terms of the agreement and the payment thereof constitutes an accord and satisfaction.

Finally, the Court finds based on its review of the evidence in this case, that demanding a certified or cashier's check and rejecting the check issued by Allstate without attempting to negotiate it was done for the purpose of attempting to manufacture a *Tyger River* bad faith claim. When asked by the Court why such demand letters are sent and valid settlement checks rejected, counsel for Hamilton stated it was for the purpose of "getting our clients paid quicker." The Court rejects this explanation. Specifically, the Court finds that if the true reason for requesting payment of the policy proceeds in this manner was to get the client paid quicker, counsel would have deposited the check that was hand delivered by Allstate to Hamilton's counsel on January 26, 2016. Hamilton would have been paid within 2 weeks of the demand and over two years ago.⁴

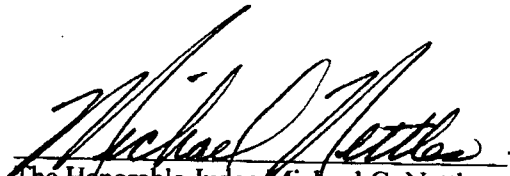
THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Allstate's Motion for Summary Judgment is hereby GRANTED and Hamilton's Motion for Summary Judgment is hereby DENIED. Accordingly, the Court declares as follows:

- a. Hamilton's demand that Allstate issue a certified or cashier's check in payment of the claim is not a material term of the settlement in light of Allstate's payment of the claim with a valid insurance check;
- b. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;
- c. Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the bodily injury limits of the policy;

⁴ Furthermore, as discussed above, under Rule 1.15, the Law Firm can negotiate an insurance check just as quickly as a certified or cashier's check.

- d. Because the settlement agreement is valid and enforceable, Allstate and any insured under the policy, including Kathryn Broach and Kenneth Collins Coogler, have no additional obligation to Hamilton with regard to the claim for bodily injury; and
- e. Because the settlement agreement is valid and enforceable, Hamilton is directed to execute the Covenant Not to Execute provided by Allstate upon receipt of the \$25,000.00 in resolution of her claims for bodily injury arising from the accident that occurred on January 31, 2015.⁵

AND IT IS SO ORDERED


The Honorable Judge Michael G. Nettles
Presiding Judge

Florence, South Carolina
June __, 2018

August 6

2018 AUG - 7 PM 12: 39
DORIS PAULOS OJARA
CCCP & OS
FLORENCE COURTHOUSE

FILED

⁵ Allstate shall issue a second check to Hamilton, as the original check most likely has expired due to the passage of time.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
12th JUDICIAL CIRCUIT

ALLSTATE PROPERTY AND
CASUALTY INSURANCE COMPANY,

CASE NO: 2017-CP-21-0341

Plaintiff,

v.

ORDER

NATOSHIA HAMILTON and KENNETH
COLLINS COOGLER,

Defendants

2018 AUG 30 AM 11:44
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

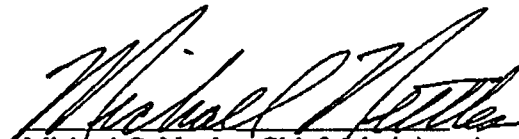
FILED

This matter comes before the Court by way of Defendant's "Motion to Reconsider and/or Alter or Amend Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant Hamilton's Motion for Summary Judgment."

This Court's Order Granting Summary Judgment and Denying Plaintiff's Motion for Summary Judgment was filed on August 7, 2018. Based upon careful reconsideration of all the evidence in this case, and upon full consideration of Defendant's motion and Memorandum of Law, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid the reconsideration of the original judgment. Therefore, this Court finds that the original Order Granting Summary Judgment shall stand as it was written.

AND IT IS SO ORDERED.

August 30, 2018
Florence, SC


Michael G. Nettles, Chief Administrative Judge
Twelfth Judicial Circuit

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018- CP-21-0341

Allstate Property and Casualty Insurance Company

Natoshia Hamilton, Kenneth Collins Coogler

PLAINTIFF(S)

DEFENDANT(S)

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

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- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2018 AUG 30 AM 11:43
 CLERK OF COURT
 COUNTY OF FLORENCE
 SOUTH CAROLINA

FILED

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

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

ORDER INFORMATION

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 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

