

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 11 2019
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2018-001788

Toyota of Greer Appellant,

v.

South Carolina Department of Motor Vehicles Respondent.

MOTION TO EXCLUDE 2016 DEALER MANUAL FROM THE RECORD

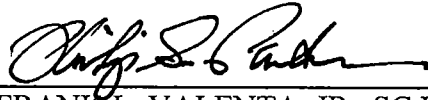
Pursuant to Rule 210, SCACR, the Respondent S.C. Department of Motor Vehicles moves for an Order of this Court excluding the Department's 2016 Dealer and Wholesaler Manual from the record. Appellant requested the 2016 Manual in its Designation of Matter. The 2007 Dealer and Wholesaler Manual is found at pages 342 through 429 of the Record before the Administrative Law Court. It is the only version of the Manual put before the Office of Motor Vehicle Hearings. The 2016 Manual was not offered into evidence at the October 2, 2017, Office of Motor Vehicle Hearings by either party nor was it before the Administrative Law Court for appeal.

Placing material in the record that was not placed before the lower court or tribunal directly violates Rule 210(c). Appellate courts are confined to the record from the lower

tribunal in reviewing a judgment for error. *E. L. Masters Sr. d/b/a R. F. Masters and Sons v. Rodgers Development Group, S.C., Inc.* 283 S.C. 251, 255, 321 S.E. 2d 194, 196 (Ct. App. 1984). *See also, Spreeuw v. Barker*, 385 S.C. 45, 68, 682 S.E. 2d 843, 854 (Ct. App. 2009) (appellate court may not consider any fact which does not appear in the record).

Therefore the Respondent respectfully requests that this Court issue its Order excluding the 2016 Dealer and Wholesaler Manual from the record, and leaving the 2007 Dealer and Wholesaler Manual in the record as designated by both parties. The Department further respectfully requests that the deadline for filing the record and that the deadline for filing of final briefs to be filed be stayed until the Court determines this Motion.

Respectfully submitted,



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Counsel for the Appellant

March 7, 2019
Blythewood, South Carolina

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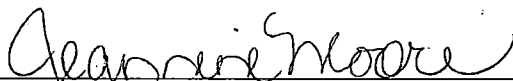
v.

South Carolina Department of Motor Vehicles Respondent.

PROOF OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, March 7, 2019,
I served one (1) copy of the Respondent's Motion to Exclude 2016 Dealer Manual From
the Record by depositing with the United States Postal Service, correct postage prepaid,
to Counsel for the Appellant at the address indicated below:

Bradford N. Martin, Esquire
P.O. Box 10410
Greenville, South Carolina 29603


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

March 7, 2019
Blythewood, South Carolina

Henry McMaster
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

March 7, 2019

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: *Toyota of Greer v. South Carolina Department of Motor Vehicles*
Appellate Case No: 2018-001788

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced action, please find the original and seven (7) copies of Respondent South Carolina Department of Motor Vehicles' Motion to Exclude 2016 Dealer Manual From the Record. As evidenced by the attached Certificate of Service, I am serving the parties with a copy of same. Please file the original and return a copy to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

In kind regards,

A handwritten signature in cursive script that reads "Jeannine Moore".

Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Bradford N. Martin, Esquire



South Carolina Department of Motor Vehicles

Post Office Box 1498
Blythewood, South Carolina 29016

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